

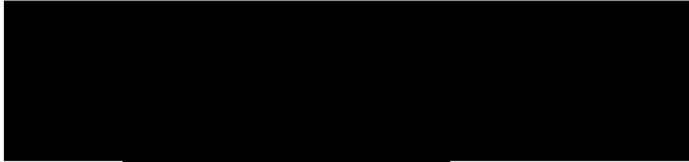
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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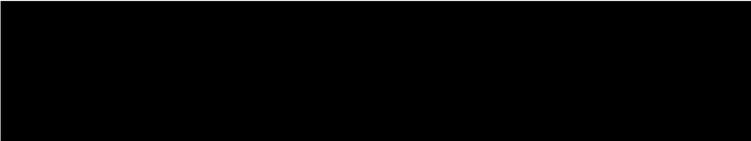
Office: VERMONT SERVICE CENTER

Date: JAN 09 2007

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition because the record did not establish that the petitioner had resided with her spouse, that she entered into their marriage in good faith, and that she was battered by or subjected to extreme cruelty by her spouse.

The petitioner, through counsel, submits a timely appeal.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The petitioner in this case is a native and citizen of South Korea. The petitioner entered the United States as an

F-2 nonimmigrant on June 20, 1989. The petitioner married Y-L,¹ a lawful permanent resident of the United States in South Lake Tahoe on January 14, 2001. The petitioner filed this Form I-360 on February 17, 2006.² On May 17, 2006, the director issued a Request for Evidence (RFE) to the petitioner. The petitioner, through counsel, responded to the RFE on June 12, 2006. The director issued a NOID on July 10, 2006 and the petitioner responded on August 4, 2006. The director denied the petition on August 30, 2006 and the petitioner, through counsel, filed a timely appeal.

On appeal, counsel contests the director's findings but does not allege any specific error of fact or law on the part of the director. Although the petitioner also submits an additional affidavit on appeal, upon review, as will be discussed we concur with the director's determinations and find that the petitioner's appellate submission does not overcome the grounds for denial of the petition.

Joint Residence

On the Form I-360, the petitioner claimed that she resided with her spouse from March 2001 until September 2002 and that she last resided with her spouse at [REDACTED], Fremont, California. The petitioner did not submit any documentary evidence such as financial, insurance, or tax documents, or correspondence to show a residence at this address. We note that although the petitioner indicated that she had a car and her own personal savings, the record does not contain evidence of bank statements or car insurance information issued to the petitioner at the claimed address. While the petitioner did submit a personal statement, the statement did not provide any specific details regarding her residence with her spouse. Instead, the petitioner stated after getting married, "we moved to his house in Fremont, California but I continued to work in Los Angeles . . . However, after a few months, he said he didn't want me to work and [sic]so I quit work and stayed home." In response to the director's RFE, the petitioner submitted a second statement in which she again indicated that after getting married, she continued to work in a different city from where her spouse lived and that she would "come home every day" that she was off. Despite the issuance of the director's NOID indicating that the petitioner's testimonial evidence was insufficient to establish her claim of residing with her spouse, the petitioner offered no further testimonial or documentary evidence.

Upon review, we concur with the findings of the director that the petitioner failed to establish that she resided with his spouse. The sole evidence submitted to support the petitioner's claim that she resided with her spouse consists of her two statements. The director's decision was not based upon the petitioner's failure to submit corroborating evidence of her residence, but rather because the petitioner's statements lacked sufficient detail to establish a claim of residence. For example, the statements fail to describe their home, any of her spouse's or their jointly owned belongings, their daily routines or shared activities at home.

On appeal, counsel asserts that the evidence in the record is sufficient to establish that the petitioner resided with her spouse. He points to the Form I-130 filed by the petitioner's spouse in behalf of the petitioner which indicated a joint address and evidence that the petitioner's arrest for domestic violence took place at their residence. Counsel's assertions are not persuasive. The listing of an address on the Form I-130 is of minimal probative value. Further, the record does not contain any evidence to establish that the petitioner was arrested at her home. The disposition submitted in relation to the domestic violence arrest does not list any address and the

¹ Name withheld to protect individual's identity.

² Although not at issue in this proceeding the record also contains an approved Form I-130, Petition for Alien Relative, and a denied Form I-485, Application to Adjust Status.

petitioner did not submit the actual police report from the incident to support counsel's claims. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Counsel makes additional unsupported claims on appeal. First, counsel claims that although the petitioner and her spouse did have a joint bank account and that bills were paid from that account, "the bank has not replied to her requests for statements from that account." Counsel then claims that the petitioner could not obtain affidavits from friends and acquaintances because they were her spouse's friends and "she did not know them well enough to seek their assistance." Contrary to counsel's claims, however, neither of the petitioner's statements contains a reference to a joint bank account or an attempt to obtain verification of this account. Similarly, the excuse regarding a lack of testimonial evidence being the result of the petitioner's lack of friends cannot be attributed to any statement on the part of the petitioner. Accordingly, the claims of counsel are not entitled to any evidentiary weight. *Id.*

While the petitioner does submit an affidavit on appeal from [REDACTED], a friend of the petitioner, [REDACTED] provides only the most general statement regarding the petitioner's residence. [REDACTED] states, "they had lived together about two years" since getting married. [REDACTED] does not indicate where they resided, that she ever visited them at their residence, or provide any other details to establish that they resided together. Regardless, in instances where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the document in response to the director's RFE or NOID. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

As discussed above, the petitioner's general statements regarding her residence with her spouse are not sufficient to establish that she resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In her initial statement, the petitioner generally claims that her spouse became verbally and physically abusive, that he would yell at her, throw her clothes outside, shove her, and slap her. The petitioner also claimed that after hitting her, her spouse would pull telephones out of the plugs so that she could not call the police. Finally, the petitioner claimed that her spouse would accuse her of sleeping with other men. The petitioner describes a single incident in which the police were called and charges initially brought against the petitioner until subsequently dropped when "bruises showed up on [the petitioner's] body the next day . . ." The petitioner submitted a document from the Superior Court of California, Count of Alameda showing that the charges against her for domestic violence were dropped by the District Attorney. The petitioner submitted no other documentation, such as the police report describing the petitioner's claimed injuries or any documentation related to any other incidents of claimed abuse.

In response to the director's RFE, the petitioner reasserted her claims regarding her spouse's accusations of cheating, that he forced her to quit her job, and would slap and push her. Again, the petitioner's description of the abuse consists of general details and fails to describe any single incident specifically. In his response

to the director's RFE, counsel claims that the petitioner has no photographs of the bruises inflicted as the result of her spouse's abuse because she "never allowed her bruises or black and blue marks to show, so no pictures were ever taken." Given the petitioner's statement that the domestic violence charges against her were dropped when the police saw the bruises on her body, counsel's explanation is simply not credible. Regardless, as previously noted, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While counsel submitted a letter in response to the director's NOID, the petitioner submitted no further testimonial or documentary evidence.

On appeal, counsel generally refers to the "mental cruelty and physical abuse" of the petitioner and argues that the petitioner's spouse "used her illegal presence and employment by using the promise of filing a visa petition for her but never having her file an application for adjustment of status." We note that the petitioner herself has never made a claim regarding her spouse using her immigration status against her. While the petitioner submits an affidavit on appeal, as previously noted we will not consider this evidence as the petitioner had ample opportunity to provide this evidence prior to the director's denial. The petitioner has not provided any explanation on appeal that this evidence was not available to her prior to the appeal. It is further noted that even if considered on appeal, the general statement that the petitioner and her spouse had "frequent arguments" is not sufficient to establish the petitioner's claim of abuse.

As discussed above, based upon the general claims contained in the petitioner's statements, the petitioner has failed to establish that she was battered by or subjected to extreme cruelty by her spouse. This finding has not been overcome by counsel's general statements on appeal. Accordingly, the petitioner has failed to establish that she was battered by or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act..

Good Faith Entry into Marriage

In the statement submitted by the petitioner at the time of filing, the petitioner provided very few details related to her claim of a good faith marriage. She stated:

In September 2000 I met [Y-L-] . . . We got married on January 14, 2001. He had a landscaping business in Fremont so we moved to his house in Fremont, California.

Although the petitioner mentioned having a job and a car, the petitioner submitted no evidence such as tax returns, a car title, or car insurance as evidence of the sharing of joint assets or the commingling of funds.

In response to the director's RFE, the petitioner mentions using all of her savings to pay for things she needed such as her car and helping her spouse in his "bar business." Again, however, the petitioner failed to submit evidence of the filing of taxes with her spouse (either as married filing jointly or married filing separately) or evidence of her savings account being commingled with that of her spouse. The statement also lacks any probative detail regarding the petitioner's good faith intent in marrying her spouse. In her second statement she states:

I studied fashion in the United States and I was working in the fashion industry when I first met [Y-L-]. We liked each other and dated. He asked me to marry him and I agreed.

The petitioner does not provide any further details of the events leading up to her marriage or her relationship and courtship with her spouse prior to their marriage in response to the director's NOID.

On appeal, counsel claims the reason there are no utility bills is because the petitioner's name was not on the deed to the home and that while they did have a joint bank account the petitioner has not been able to obtain evidence of the joint account from the bank. Counsel fails to provide any explanation for the lack of documentation related to the petitioner's acknowledged savings account, the lack of insurance or ownership information related to the petitioner's car, or tax information. Regardless, the petitioner herself has failed to provide any testimonial evidence regarding the ownership of the home she claims to have shared with her spouse or any explanation for the lack of documentary evidence. Accordingly, the claims of counsel will not be afforded any evidentiary value. *Id.* Finally, although the petitioner submitted an affidavit on appeal that will not be considered on appeal, we note that the affidavit states only that the affiant knows that the petitioner married her spouse. The affiant does not indicate how she knows of their marriage, whether she was a witness at the marriage, or any indication as to the petitioner's feelings for her spouse or intent in marrying her spouse.

The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). As discussed above, the petitioner's statements contain little probative value in establishing her claim of a good faith marriage. The statements contain no specific details regarding their life together either prior to or after their marriage, shared events, trips, or other pertinent information. The claim that the petitioner quit her job and assisted her spouse in his bar business is not sufficient to establish that she intended to establish a life with her spouse. Accordingly, the petitioner has failed to establish that she entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the present record fails to establish that the petitioner is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(i) indicates that primary evidence of the petitioner's good moral character is *an affidavit from the petitioner accompanied by a police clearance from each place the petitioner has lived for at least six months during the 3-year period immediately preceding the filing of the self-petition.* The record reflects that in the three-year period prior to filing, the petitioner lived in California and Hawaii; however, the petitioner has failed to submit police clearances from either of these states.³ The petitioner's submission of the disposition for her arrest in California does not suffice for the required police clearance.

For this additional reason, the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative

³ The record does contain a document from the Texas Department of Public Safety indicating no record for the petitioner in Texas.

basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The appeal is dismissed.