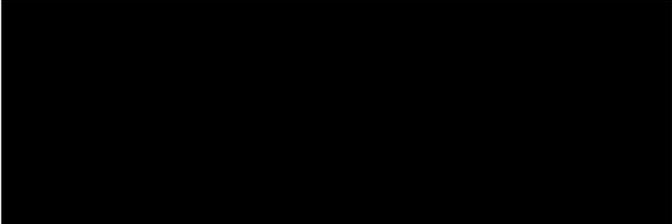


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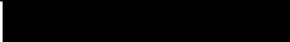
U.S. Citizenship
and Immigration
Services

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FILE:



EAC 05 130 52678

Office: VERMONT SERVICE CENTER

Date: **JAN 30 2008**

IN RE:

Petitioner:



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

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.

Maura Deadrick
F Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien 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 an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(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 clause (ii) or (iii) of subparagraph (B), 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 of Homeland Security].

In this case, the director initially denied the petition on December 30, 2005 for failure to establish the requisite joint residence and good-faith entry into the marriage. In our September 1, 2006 decision on appeal, we concurred with the director's determinations but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on October 31, 2006 which informed the petitioner, through counsel, that she had failed to establish that she entered into marriage with her husband in good faith and resided with him. The petitioner timely responded to the NOID with additional testimonial evidence, which the director determined did not establish the petitioner's eligibility. On March 9, 2007, the director denied the petition on the grounds cited in the NOID and certified his decision to the AAO for review.

The relevant evidence submitted below was discussed in our prior decision, incorporated here by reference. Accordingly, we will only address the evidence submitted after that decision was issued. In response to the NOID, the petitioner submitted her own letter dated December 4, 2006 and three letters from four of her relatives. In her December 4, 2006 letter, the petitioner states that she and her husband decided to marry after meeting several times; that many people, including their relatives, were present at their wedding and that she received many wedding gifts. The petitioner states that after her marriage,

she lived with her husband, his parents and his brother and sister. The petitioner reports that she and her husband went to dinner with friends and family, “went to temple so many times and people there knew [them] as husband/wife,” and that her uncle and aunt visited the former couple after their marriage. The petitioner states that her “marriage was pure, true and was filled with lot people [sic] blessings.” The petitioner does not further describe the former couple’s courtship, wedding or shared residence and experiences in any probative detail. The petitioner also fails to explain the discrepancy previously cited by both the director and the AAO regarding her address during her marriage, listed on her Form I-360 as her purported marital residence in California, but listed as a residence in Missouri on her previously filed Form I-485, Application to Adjust Status, and Form G-325A, Biographic Information, both of which were signed by the petitioner after her marriage and during her claimed residence with her husband. As it lacks detailed, relevant information and fails to resolve a previously identified discrepancy, the petitioner’s December 4, 2006 letter is of little probative value.

The petitioner’s brother states that the petitioner used to call him at least twice a week after her marriage and “she was really happy,” until she began having marital problems about five months after her wedding. The petitioner’s uncle [REDACTED], merely states the date of the petitioner’s marriage, the name of her husband and remarks that the former couple was “very happy.” [REDACTED] lists his address in Missouri and indicates that his impressions are based on telephone calls with the petitioner when she was in California. [REDACTED] and [REDACTED] simply state that the petitioner was married to her husband, lived with him in California and used to call them once or twice a week. None of these affiants indicate that they attended the former couple’s wedding or ever visited them. They also fail to state the petitioner’s residential address during her marriage or provide any further, probative details regarding her entry into her marriage in good faith and her residence with her husband.

Upon review, we concur with the director’s determination. The evidence submitted in response to the NOID fails to provide detailed, probative information sufficient to establish the requisite joint residence and good-faith entry into the marriage.

On certification, counsel cites four alleged errors in the director’s decision. Counsel’s claims are without merit. First, counsel asserts that the director did not address the petitioner’s first two statements and her photographs in his March 9, 2007 decision. The statements and photographs were submitted below and fully addressed in the prior decision of the AAO. As that decision was a matter of record, the director focused his discussion in his March 9, 2007 decision on the evidence submitted in response to the NOID. We find no error in the director’s decision not to repeat the discussion of the petitioner’s prior statements and photographs in the interest of administrative economy.

Second, counsel asserts that the director inappropriately cited the petitioner’s listing of her residential address in Missouri on her Forms I-485 and G-325A and did not reference the address listed by the petitioner’s husband in the Form I-130, Petition for Alien Relative, that he filed on her behalf. The Form I-130 does not support the petitioner’s claim because the petitioner’s husband listed the purported marital residence in California as his own address, but listed the petitioner’s Missouri residence as her address. Counsel intimates that the petitioner’s address as listed on the Forms I-485 and G-325A

should be disregarded because the forms were “prepared by some lawyer in St. Louis, Missouri.” The unsupported assertions of counsel do not constitute evidence and cannot satisfy the petitioner’s burden of proof. *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). Although she was twice advised of the inconsistency in the record, the petitioner herself does not attribute the discrepancy to her prior attorney or provide any other explanation.

Third, counsel claims that the director’s determination that the petitioner demonstrated her husband’s battery or extreme cruelty is inconsistent with his conclusion that she did not establish that she resided with her husband or entered into their marriage in good faith because “all of [the abuse] occurred in the abuser[’]s family home where the Petitioner and the abuser resided as husband and wife.” We find no inconsistency in the director’s decision. The evidence submitted to establish these three, separate eligibility requirements was not identical. The director correctly determined that the petitioner had established her husband’s battery or extreme cruelty by a preponderance of the evidence, but had failed to meet her burden of proof to establish her residence with her husband and her good-faith entry into their marriage.

Finally, counsel asserts that the director’s decision was based on an affidavit of the petitioner’s husband in which he withdrew his Form I-130 filed on the petitioner’s behalf. All Citizenship and Immigration Services (CIS) adjudicators are aware of the confidentiality provisions of section 384 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996). We find no evidence in the record that the director relied upon the affidavit of the petitioner’s husband in denying the petition. Contrary to counsel’s assertion, the regulation regarding the use of derogatory evidence unknown to the petitioner at 8 C.F.R. § 103.2(b)(16)(i) is inapplicable to these proceedings because the director did not base his decision on the petitioner’s husband’s affidavit.

The petitioner has failed to demonstrate by a preponderance of the evidence that she entered into marriage with her husband in good faith and resided with him, as required by sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(a)(iii)(II)(dd) of the Act. Counsel’s claims on certification fail to overcome the grounds for denial. Accordingly, the March 9, 2007 decision of the director denying the petition is affirmed. The petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The denial of the petition will be affirmed for the reasons discussed above, with each considered as an independent and alternative 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. The petitioner has not sustained that burden.

ORDER: The director’s decision of March 9, 2007 is affirmed. The petition is denied.