

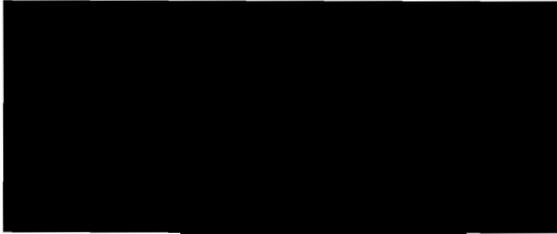
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
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U.S. Citizenship
and Immigration
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FILE: [Redacted]
EAC 05 229 52196

Office: VERMONT SERVICE CENTER

Date: **MAR 21 2008**

IN RE: Petitioner:



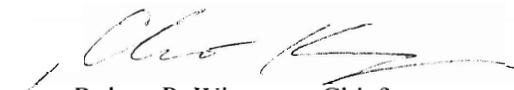
PETITION: Petition for Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


for 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 petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The March 29, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (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 or a child of 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 further 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 of Homeland Security].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. The director initially denied the petition on January 6, 2006, finding that the petitioner failed to establish that she resided with her spouse and that she entered into her marriage in good faith. On appeal, the AAO concurred with the determinations of the director but remanded the case on October 5, 2006 because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Upon remand, the director issued a NOID on December 4, 2006, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to establish her claim of residence and good faith marriage. The petitioner, through counsel, timely responded to the director's NOID by submitting a letter and additional statements in support of the petitioner's claims. On March 29, 2007, after considering the evidence submitted in response to the NOID, the director found that the petitioner failed to establish her claim of residence and good faith marriage. The director's discussion will not be repeated here. The director certified his decision to the AAO for review and notified the petitioner, through counsel, that she could submit a brief to the AAO within 30 days of service of the director's decision. No further submission has been received. As such, the record is considered to be complete as it now stands.

The relevant evidence submitted below was fully addressed in our prior decision, incorporated here by reference. Accordingly, we will only address the material submitted since that decision was issued which consists of:

- An undated, translated statement from the petitioner
- An undated, translated statement from the petitioner's friend, [REDACTED]
- An undated, translated statement from the petitioner's father

An undated, translated statement from the petitioner's brother
A statement dated January 23, 2007 from the petitioner's friend,

Good Faith Marriage

In her statement, the petitioner again indicates that she met her spouse in China through a friend. She then generally describes going out to dinner, swimming, going to temple and to visit the petitioner's relatives. The petitioner states that she "admired" her spouse and found him to be "careful and thoughtful" and "patient and responsible." The petitioner indicates that:

After careful considerations, I took him to meet my parents and family. I asked my parents' opinion. My father thought he was an honest and steady man so he did not oppose. So I agreed to marry him.

During their more than two-year separation after her spouse returned to the United States after their marriage, the petitioner generally states that they would call each other but does not provide any other evidence of their relationship during this time. The petitioner indicates that her spouse came back to China in July 2004 for two weeks and states that they went to a hotel, visited their families and went sightseeing.

The statement from [REDACTED] describes being present when the petitioner went on her first date with her spouse. [REDACTED] states that the petitioner asked [REDACTED]'s opinion after the petitioner's spouse proposed to the petitioner. [REDACTED] states the petitioner did not mind that her spouse was older than she was and that the petitioner thought her spouse was "mature and secure." During their separation after their marriage, [REDACTED] claims that the petitioner and her spouse would call each other "once or twice every week for "more than an hour or two." [REDACTED] also discusses the petitioner's spouse's trip back to China to visit the petitioner. She confirms that although the petitioner and her spouse stayed in a hotel, she was able to have dinner, chat with them and see that they got "along very well with each other."

The statements from the petitioner's father and brother describe their impressions upon meeting the petitioner's spouse and their hope that he would take care of the petitioner. However, neither statement provides any probative details about the petitioner's relationship with her spouse or reasons for marrying him other than to state that she did not mind their age difference and found her spouse to be "kind" and "nice" to her.

The remaining statement from [REDACTED] does not provide any probative details about the relationship of the petitioner and her spouse prior to their marriage. In fact, from her statement, it appears that [REDACTED] did not meet the petitioner until after she had arrived in the United States, more than two years after their marriage. [REDACTED] describes seeing the petitioner at the home of her in-law's "a few times" and states that they had dinner and "many conversations" but provides no description of the petitioner's relationship with her spouse or other testimony to establish the petitioner's good faith marriage.

As discussed above, we find the statements submitted by the petitioner and on her behalf lack sufficient probative detail to establish the petitioner's feelings for her spouse and intent in marrying him. The general statements provided fail to demonstrate that the petitioner intended to establish a life with her spouse at the time of their marriage and that she entered into her marriage in good faith.

Residence

The statements submitted by the petitioner's father and brother provide no probative details regarding the petitioner's residence with her spouse. Similarly, although the petitioner and [REDACTED] indicate that the petitioner and her spouse stayed in a hotel together during his trip China after their marriage, we do not find this claim sufficiently establishes a residence together. In fact, in her statement, the petitioner indicates that although she actually "lived at [her] good friend [REDACTED]'s place," when her spouse came to visit they went to a hotel. Finally, in her statement, [REDACTED] claims that she knew that the petitioner resided with her spouse because she has a close relationship with the petitioner's mother-in-law. [REDACTED] states that the petitioner's mother-in-law lived with the petitioner's spouse until the petitioner arrived in the United States, at which time the mother-in-law moved in with [REDACTED]'s sister. Although [REDACTED] describes visiting the petitioner at [REDACTED]'s sister's house, she does not indicate that she ever went to the petitioner's home or provide other probative details to establish the petitioner's residence with her spouse.

Accordingly, we concur with the findings of the director that the petitioner has not established that she resided with her spouse and that she entered into her marriage in good faith. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, 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. Here, that burden has not been met. Accordingly, the March 29, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The March 29, 2007 decision of the director is affirmed.