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U.S. Department of Homeland Security
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Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

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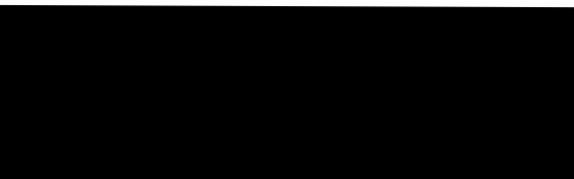
Office: VERMONT SERVICE CENTER

Date: SEP 01 2006

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant 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.

The director denied the petition, finding that the petitioner failed to establish that she resided with her husband¹ and that she entered into their marriage in good faith.

The petitioner, through counsel, timely appealed.

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).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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.

* * *

(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 contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

¹ In his October 27, 2005 response to the director's request for additional evidence, counsel submitted copies of documents filed in the dissolution of the petitioner's marriage case and stated that the proceedings were still pending with the Riverside County, Superior Court of California. On appeal, counsel does not state or submit evidence that the petitioner's marriage has been legally terminated. Accordingly, we refer to the petitioner's estranged spouse as her husband.

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 in the United States. One or more documents may also be submitted showing that the self-petitioner is residing in the United States when the self-petition is filed. Employment records, utility receipts, school records, hospital or medical records, birth certificates of children born in the United States, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 India who states on the Form I-360 that she entered the United States in December 1995. On March 29, 2002, the petitioner married J-P-,* a U.S. citizen, in Montclair, California. On April 4, 2005, the petitioner filed this Form I-360. On July 18, 2005, the director requested additional evidence of, *inter alia*, the petitioner's residence with, and good faith marriage to, her husband. The petitioner, through counsel, requested and was granted additional time to respond and submitted further evidence on October 27, 2005. On December 30, 2005, the director denied the petition because the record failed to establish the requisite joint residence and good faith marriage.

On the Form I-290B, Notice of Appeal, counsel stated that he would submit a brief and/or evidence to the AAO in 90 days. Counsel dated the appeal January 30, 2006. On August 8, 2006, the AAO informed counsel that it had not received anything further and requested counsel to send a copy of any brief and/or evidence submitted within five business days. On August 10, 2006, counsel informed the AAO that he did not file a brief or additional evidence and would rely on the evidence in record.

* Name withheld to protect individual's identity.

We concur with the director's determination that the present record fails to establish the requisite joint residence and good faith marriage. Counsel's claims on appeal do not overcome these grounds for denial. Nonetheless, the petition will be remanded 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).

Joint Residence

On the Form I-360, the petitioner states that she lived with her husband from March 2002 until April 2003 and that their last joint address was [REDACTED] Miraloma, California 91752. In her July 1, 2004 statement, the petitioner reports, "On March 29, 2002 we got married in Montclair, California and I moved in with him and his parents, as is customary in our culture." The petitioner provided no probative details about her residence with her husband. The [REDACTED] address is listed as the residence of the petitioner and her husband on their California License and Certificate of Confidential Marriage and is also listed as the petitioner's address on her California Identification Card, which appears to have been issued on February 20, 2003. However, on her Form I-485, Application to Adjust Status filed on July 24, 2002 and her corresponding Form G-325A, Biographic Information, signed on June 25, 2002, the petitioner stated her address as [REDACTED] in Saint Louis, Missouri.

In response to the director's July 18, 2005 Request for Evidence (RFE), the petitioner submitted copies of documents filed in the dissolution of marriage proceedings commenced by her husband on January 13, 2004. The dissolution petition and the petitioner's response both state the former couple's date of marriage as March 29, 2002 and their date of separation as April 29, 2003, but provide no information about either party's address during that time. Contrary to counsel's assertion on appeal, the dissolution documents provide no evidence of the petitioner's residence with her husband and in her second statement dated August 1, 2005, the petitioner does not discuss her alleged residence with her husband.

The RFE informed the petitioner of the specific types of documents she could submit to establish her residency with her husband pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(iii). In his October 25, 2005 letter, counsel states that the petitioner did not take evidence of the former couple's joint residency and that the evidence is in her husband's possession. Counsel's statement is not supported by any similar explanation by the petitioner. 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). In her statements, the petitioner does not explain the circumstances of her departure from her husband. The petitioner also provides no information that would explain the discrepancy in her marital address as listed on her Form I-360 and on her Form I-485 and Form G-325A. Apart from the aforementioned materials, the petitioner did not submit any other evidence of her residence with her husband of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii). Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The present record fails to establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

In her July 1, 2004 statement, the petitioner explains that she met her husband in 2001 when visiting California with her family. She states that her and her husband's families were friends, that she and her husband were immediately attracted to each other when they met and that for a week, her husband took her out and introduced her to his extended family and friends. The petitioner states that after she returned to her home in Missouri, she and her husband called each other every day and frequently corresponded by electronic mail. After two months, the petitioner states that her husband proposed marriage to her and that they got married on March 29, 2002 and she moved in with him and his parents. The petitioner does not further discuss their courtship, wedding, or any of their shared experiences, apart from her husband's abuse. In her August 1, 2005 statement, the petitioner confirms her previous description of how she met her husband, but does not provide any further information about their relationship and her purported good faith entry into their marriage.

The petitioner submitted copies of five photographs of her and her husband taken at their wedding and on one or two other unidentified occasions. The photographs confirm that a wedding took place and that the petitioner and her husband were together on at least one other occasion, but the pictures do not independently establish the petitioner's good faith in marrying her husband. The petitioner submitted no other relevant evidence. In his October 25, 2005 letter, counsel states that the petitioner did not take evidence of the former couple's shared life and that all such evidence is in her husband's possession. Again, counsel's statement is not supported by any similar explanation by the petitioner. 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. *Obaigbena*, 19 I&N Dec. at 534; *Laureano*, 19 I&N Dec. 1; *Ramirez-Sanchez*, 17 I&N Dec. at 506. The petitioner does not explain the circumstances of her departure from her husband or provide any explanation for the lack of documentary evidence of her good faith marriage. Although she is not required to do so, the petitioner does not explain why documentary or additional testimonial evidence does not exist or is unobtainable. *See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).* The petitioner's own testimony lacks sufficient, probative discussion of her courtship, wedding and shared marital experiences. Accordingly, the present record fails to establish the petitioner's good faith entry into marriage with her husband, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

On appeal, counsel contends that the director's decision was contrary to the regulations and did not comply with the any credible evidence standard. Counsel misreads the regulations. While the regulations require Citizenship and Immigration Services (CIS) to consider "any credible evidence relevant to the petition[.] [t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service." 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). We concur with the director's determinations and find that her assessment of the relevant evidence was in accordance with the regulations.

The present record does not demonstrate that the petitioner resided with her husband or entered into their marriage in good faith and she is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOI. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOI and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOI, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

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 director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.