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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



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



B9

FILE: [REDACTED]
EAC 08 247 50182

Office: VERMONT SERVICE CENTER

Date: **AUG 13 2010**

IN RE: Petitioner: [REDACTED]

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: [REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

On December 7, 2009, the director denied the petition, determining that the petitioner had not established: that she had resided with the United States citizen spouse; and that she had been subjected to battery or extreme cruelty perpetrated by her United States citizen spouse.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

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 of Homeland Security].

The eligibility requirements are further explained 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 . . . spouse, 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 guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Philippines. The petitioner married O-M-¹, the claimed abusive United States citizen spouse, on September 29, 2003 in the Philippines. She entered the United States on April 13, 2005 on a K-3 visa. On September 15, 2008, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

Joint Residence

In a September 11, 2008 personal statement in support of the Form I-360, the petitioner declared that when O-M- arrived in the Philippines on September 25, 2003 she picked him up at the airport and that they were married four days later and less than one month later O-M- returned to the United States. The petitioner further declared that when she arrived in the United States on April 13, 2005 she discovered that O-M- was residing with his ex-wife.

In a September 25, 2009, Notice of Intent to Deny (NOID), the petition, the director requested evidence that the petitioner had resided with O-M- during the marriage. In response, the petitioner provided her sister's October 19, 2009 affidavit. In the affidavit the petitioner's sister, [REDACTED], declared: that the petitioner and O-M- shared a "common residence from the time that he arrived in the Philippines on or about September 25, 2003 until he departed back to the United States in October 2003;" and that O-M- stated that "he didn't want to leave [the petitioner] and wanted to stay in the Philippines with her."

Counsel for the petitioner asserted that the petitioner and O-M- resided together at the petitioner's then principal place of residence during the short time that O-M- remained in the Philippines and that the petitioner and O-M- lived and spent their time together as husband and wife.

¹ Name withheld to protect the individual's identity.

Based on this information, the director determined that the petitioner had acknowledged that she had not resided with O-M- in the United States and found that the petitioner had not provided probative evidence that O-M- had relinquished his residence in the United States when he traveled to the Philippines. The director concluded that the petitioner had not established that the time O-M- spent in the Philippines met the definition of residence as described in section 101(a)(33) of the Act.

On appeal, counsel for the petitioner asserts that section 204(a)(1)(A)(iii)(II)(dd) of the Act does not require the joint residence to have occurred while in the United States. Counsel contends that after the couple's marriage and living together in the Philippines, the petitioner expected that she would live with O-M- upon her arrival in the United States as his K-3 sponsored spouse.

The AAO does not agree with the director that the joint residence must have occurred in the United States. To meet the requirements of section 204(a)(1)(A)(iii)(II)(dd) of the Act, a petitioner must establish that he or she "has resided with the . . . spouse." There is no indication in either the statute or the accompanying regulations that the residence must occur in the United States or last for a specified period of time; however, the petitioner must present probative evidence of the claimed joint residence during the marriage. The AAO has reviewed the only evidence submitted in support of the petitioner's claim that she resided with O-M- from September 25, 2003, four days prior to the marriage, to a date sometime in October when O-M- left the Philippines. This evidence consists of the petitioner's sister's [REDACTED] October 19, 2009 affidavit. Upon review of the affidavit, the AAO finds it general, non-descriptive, and insufficient to establish that the petitioner and O-M- resided together in the Philippines. The lack of probative testimonial evidence in the affidavit is insufficient to demonstrate that the petitioner and O-M- enjoyed a joint residence in the Philippines.

Moreover, while the petitioner does not claim that the couple established a joint residence in the United States, the petitioner's own testimonial evidence also fails to provide any probative information regarding the claimed joint residence in the Philippines. Neither the petitioner nor her affiant discusses the petitioner's residence with her spouse, such as a description of their dwelling and its location, their shared belongings or other information which would assist in demonstrating a joint residence. Upon review of the totality of the record, the AAO does not find that the petitioner established that she resided with O-M-.

Abuse

In support of the petition, the petitioner submitted her personal statement dated September 11, 2008. The petitioner declared: that when she arrived in San Francisco, California on her K-3 spousal visa, she expected that O-M- would be waiting for her; that instead her sister, [REDACTED], picked her up at the airport; and that [REDACTED] told the petitioner the next day that she had discovered that O-M- was living with his ex-wife. The petitioner described her disappointment and pain at O-M-'s abandonment, but indicated that she still wanted to try and work things out with him but he did not return her calls. The petitioner further described seeing O-M- with another woman who worked at the casino at which the petitioner worked, and the other woman telling her to stay away from O-M-.

The record also included a client impact statement, dated August 25, 2008, prepared by [REDACTED], licensed professional counselor. [REDACTED] noted that she had met with the petitioner on August 7, 2008 and August 11, 2008 for two extensive and emotional clinical sessions. [REDACTED] provided the same information as set out in the petitioner's September 11, 2008 statement, diagnosed the petitioner with adjustment disorder with depression and anxiety, and opined that the petitioner "is the victim of emotional and psychological abandonment and willful deception by her husband." The record also included two affidavits; one from the petitioner's sister [REDACTED] dated July 9, 2008; and one from [REDACTED] dated June 20, 2008. Armina confirmed that O-M- did not meet the petitioner at the airport and that the petitioner was upset when she learned that O-M- was living with his ex-wife. [REDACTED] who indicated that he was O-M-'s friend and ex-roommate, stated that a couple of months after O-M- returned from the Philippines he moved out of their shared residence and he later learned that O-M- was living with his ex-wife.

In response to the director's NOID, counsel for the petitioner asserted that O-M- clearly established a pattern of mental control over the petitioner and that O-M-'s abandonment of the petitioner constitutes extreme cruelty. Counsel contended that the director's finding to the contrary contradicted the professional opinion of the petitioner's counselor and that the evidence submitted clearly showed an overall pattern of psychological abuse and exploitation and the extreme cruelty sustained by the victim.

Upon review, the director determined that the petitioner had not provided testimony establishing that she had been subjected to battery or extreme cruelty. On appeal, counsel for the petitioner asserts that the petitioner's abandonment by O-M- constitutes extreme cruelty and contends that O-M- controlled the petitioner by creating a false illusion that the couple would marry and start a new life together and this false illusion was created from the very first day the couple met. Counsel again references the opinion of [REDACTED], the petitioner's statement, and the affidavits submitted on her behalf. Counsel asserts that this evidence evinces a disturbing pattern of psychological abuse and exploitation and ultimately extreme cruelty. The AAO disagrees.

Upon review of the petitioner's statements, the AAO observes that the petitioner does not claim that she has been subjected to battery. As the director determined and counsel asserted, the petitioner's claim in this matter relates to the petitioner's spouse's abandonment of the marriage. Counsel contends that this abandonment, which was complicated by O-M-'s deception of the petitioner, is extreme cruelty. The AAO finds that O-M-'s actions of deceiving the petitioner and abandoning the marriage are not actions that rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The record does not include probative testimony that the petitioner was the actual victim of any act or threatened act of physical violence or extreme cruelty, that O-M-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. As noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather

than mere unkindness,” not “every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . .”

The AAO has reviewed [REDACTED] opinion regarding the petitioner’s distress at the deception and abandonment by O-M- of the marriage; however contrary to [REDACTED] opinion, the actions and deception of O-M- are not a form of extreme cruelty under the definition set out in the statute and regulations.

When evaluating the record as a whole, the AAO finds the record lacks information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The AAO does not find that abandonment, as described in this petition, establishes eligibility for this benefit. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide credible evidence that she has been subjected to battery or extreme cruelty perpetrated by her spouse in order to meet her burden of proof. In this matter, she has failed to do so. The petitioner in this matter has not provided sufficient probative evidence to establish that she was subjected to battery or extreme cruelty perpetrated by her former spouse.

Good Faith Entry into Marriage

Beyond the decision of the director, the AAO also finds that the petitioner has not established that she entered into the marriage in good faith. The petitioner provided general statements regarding how the couple met, the international telephone calls, O-M-’s marriage to another individual after he had asked to marry her in 1998, and O-M-’s subsequent divorce and re-start of the relationship in 2003. Although the petitioner professed her love and willingness to overlook O-M-’s “deception,” the AAO does not find sufficient probative testimonial evidence to determine that the petitioner entered into the marriage in good faith. The petitioner does not describe the couple’s interactions prior to the marriage or after the marriage in probative detail. The AAO has also reviewed the statements submitted on the petitioner’s behalf and does not find any probative details regarding the affiants’ observations of the petitioner’s allegedly good faith entry into the marriage.

While relevant, the petitioner’s admission to the United States as the nonimmigrant spouse of O-M- is not prima facie evidence of her good faith in entering their marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. See *INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, “the approved petition might not *standing alone* prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws.”) A finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage, to determine if this was a marriage of two people intending to share a life together. In this matter, the petitioner has failed to provide probative testimonial evidence establishing her good faith in entering into the marriage.

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The petition will be denied and the appeal dismissed for the above stated reasons. 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. Here that burden has not been met.

ORDER: The appeal is dismissed.