

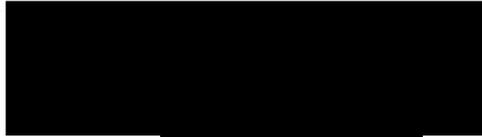
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U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC 05 094 52695

Office: VERMONT SERVICE CENTER

Date: JUL 25 2006

IN RE:

Petitioner:



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:

SELF-REPRESENTED

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 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 abusive U.S. citizen husband or that she entered into their marriage in good faith.

On appeal, the petitioner submits additional evidence.

An immigration service provider prepared the petition and the appeal. Although a Form G-28, Notice of Entry of Appearance by an Attorney or Representative accompany the petition, the immigration service provider has not established that she is a licensed attorney or an accredited representative authorized to undertake representations on the petitioner's behalf. *See* 8 C.F.R. § 292.1. Accordingly, the assertions of the immigration service provider will not be considered in this proceeding.

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:

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 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 Peru who entered the United States on April 10, 2000 as a nonimmigrant visitor (B-2). On May 26, 2004, the petitioner married [REDACTED] a U.S. citizen, in New Jersey. On February 15, 2005, the petitioner filed this Form I-360. On February 22, 2005, the director issued a notice requesting evidence that the petitioner married [REDACTED] in good faith. The petitioner responded with evidence on April 18, 2005. On July 16, 2005, the director requested, *inter alia*, further evidence of the petitioner's good faith marriage to [REDACTED] and her residence with him. The petitioner submitted additional evidence on September 19, 2005. On October 19, 2005, the director denied the petition because the record failed to establish the requisite good faith marriage and joint residence. The petitioner timely appealed.

We concur with the director's determinations and find that the evidence submitted on appeal does not overcome the 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 her Form I-360, the petitioner states that she lived with [REDACTED] from May 26 to October 1, 2004 and that their last joint address was [REDACTED] in Elizabeth, New Jersey. However, the petitioner initially submitted no supporting evidence of the former couple's

joint residence at this or any other address. In response to the director's February 15, 2005 request, the petitioner submitted documents addressed to herself and her daughter at the [REDACTED] address, which are dated between June 22, 2004 and February 17, 2005. The petitioner submitted documents addressed to [REDACTED] at the [REDACTED] address and at another address in Elizabeth, New Jersey. These documents are dated between January 27 and March 10, 2005, from three to five months after the petitioner states that she and [REDACTED] separated. The petitioner also submitted two police reports dated August 10 and August 27, 2004, which state [REDACTED] in Elizabeth, New Jersey as [REDACTED] address. In response to the director's July 16, 2005 request for additional evidence, the petitioner submitted a copy of her 2003 income tax return and additional documents dated between August 4, 2004 and February 1, 2006, all of which identify the [REDACTED] address as her residence. The petitioner submitted no documents jointly addressed to her and [REDACTED] at any address during the time she claims to have lived with him. We agree with the director's conclusion that the evidence submitted below does not establish that the petitioner resided with [REDACTED] and we do not repeat the director's discussion here.

On appeal, the petitioner submits an arrest warrant notice addressed to [REDACTED] at the [REDACTED] address which is dated October 5, 2005, over a year after the petitioner states that she and [REDACTED] separated. The petitioner also submits an affidavit from [REDACTED] who states that she lives at [REDACTED] and that she has rented the petitioner an apartment in her house for an unspecified period of time. [REDACTED] does not state that [REDACTED] ever resided with the petitioner in the petitioner's apartment.

The petitioner also submits a psychological report from [REDACTED] that is dated December 2, 2005. [REDACTED] states that the petitioner explained that she refused to move to [REDACTED] apartment because she was concerned about the negative influences of his sons on her daughter. The petitioner told [REDACTED] that [REDACTED] moved into the petitioner's apartment at [REDACTED] Avenue, but continued to see his sons at their apartment. The petitioner did not submit her own affidavit or any other evidence to corroborate the once removed statements made in [REDACTED] report. While the brevity of the petitioner's alleged residence with [REDACTED] may explain her lack of joint residential documentation, the petitioner did not submit any testimonial evidence from herself or other individuals. 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 [REDACTED] as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### *Good Faith Marriage*

The petitioner initially submitted no evidence of her good faith marriage to [REDACTED]. In response to the director's February 22, 2005 request, the petitioner submitted copies of photographs of herself and [REDACTED] at their wedding and on other unidentified occasions. The petitioner also submitted affidavits from [REDACTED] and [REDACTED]. The affiants state that they

have personal knowledge of the petitioner's marital relationship with [REDACTED] but provide no details regarding the former couple's relationship or the petitioner's good faith in marrying Mr. [REDACTED]. Moreover, these affidavits repeat the majority of their text verbatim. This repetition indicates that the language is not the affiants' own and further detracts from their probative value. In response to the director's July 16, 2005 request for additional evidence, the petitioner submitted a compact disc with pictures from the former couple's wedding.

We concur with the director's determination that the evidence submitted below does not establish the petitioner's good faith entry into marriage with [REDACTED] and we do not repeat the director's discussion here. On appeal, the petitioner submits copies of "BJ's" membership cards for herself and [REDACTED] that show they have been members since an unspecified date in 2004 and a compact disc which shows the petitioner and [REDACTED] together at an unidentified social gathering. The petitioner also submits the aforementioned report by [REDACTED] in her report [REDACTED] describes how the petitioner met [REDACTED] their courtship and the pleasant, first few months of their marriage, as related to her by the petitioner. However, the record is devoid of any corroborative evidence of this once-removed description of the petitioner's relationship with [REDACTED]. The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). 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 does not demonstrate that the petitioner married [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The evidence does not establish the petitioner's eligibility 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 NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID 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 NOID, 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.