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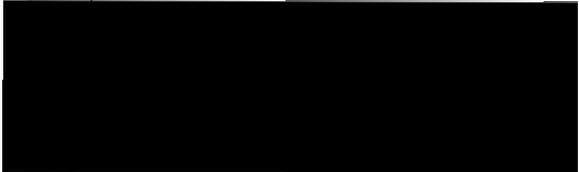
Office: VERMONT SERVICE CENTER

Date:

JAN 30 2007

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:



PUBLIC COPY

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

The petitioner seeks immigrant 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 spouse and that she entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

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 . . . , 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.

According to the evidence contained in the record, the petitioner entered the United States on March 13, 2004 as K-1 nonimmigrant. The petitioner married C-C-¹, a United States citizen, in Los Angeles, California on March 26, 2004. The petitioner filed the instant Form I-360 self-petition on September 15, 2005. On December 1, 2005, the director requested the petitioner to submit further evidence that, *inter alia*, she resided with her spouse and entered into the marriage in good faith. The petitioner responded to the request on January 26, 2005. On April 20, 2006, the director issued a Notice of Intent to Deny (NOID) notifying the petitioner that the evidence submitted failed to establish that she resided with her spouse and that she entered into the marriage in good faith. The petitioner responded to the NOID on June 15, 2006. After considering the evidence in the record, including the evidence submitted in response to the RFE and the NOID, the director denied the petition on October 5, 2006, finding that the petitioner failed to establish that she resided with her spouse and that she entered into the marriage in good faith. The petitioner, through counsel, filed a timely appeal and brief.

Counsel's appeal is predicated upon the argument that the director based his decision on an "erroneous, incomplete and distorted analysis" of the evidence. Upon review, we are not persuaded by counsel's arguments. As will be discussed, the petitioner has failed to overcome the findings of the director.

The Petitioner's Claimed Residence With Her Spouse

On the Form I-360, the petitioner indicated that she resided with her spouse from March 2004 until the present [September 15, 2005, the date of filing]." While the petitioner also submitted affidavits from a friend and a family member, the affidavits did not provide any information regarding the petitioner's claimed residence with her spouse. As documentary evidence, the petitioner submitted several Bank of America statements, ranging in date from March 2004 to May 2005, sent to the petitioner and her spouse at the claimed address. Although the petitioner also submitted an AT&T statement January to February 2005, the statement is in the petitioner's name only and is dated nearly a year after the petitioner claims to have stopped residing with her spouse. As such, it adds no evidentiary value to the petitioner's claim of a joint residence.

In response to the director's RFE, the petitioner submitted a personal statement, a lease, and additional affidavits. In her personal statement, the petitioner explains that although her husband "lives in a senior apartment in Norwalk," he comes to live with her "a few days per week." Despite her indication on the Form

¹ Name withheld to protect individual's identity.

I-360 that she continued to reside with her spouse up to the time of filing her petition, the petitioner's statement indicates that after an argument in May 2004, she has not seen her spouse and does not know his whereabouts. The affidavits submitted on the petitioner's behalf do not provide any additional probative details regarding the petitioner's claimed residence with her spouse. The affidavit from [REDACTED] indicates that she has "personal knowledge" that they are husband and wife, while the affidavit from [REDACTED] indicates that the petitioner and her spouse "lived next door." [REDACTED] does not provide any dates of their purported residence or discuss any other details related to their residence together.

In response to the director's NOID, the petitioner submitted a second personal statement and two additional affidavits. In her second statement, the petitioner explains why she and her spouse did not live together on a full-time basis. The petitioner states:

It is correct that [C-C-] lived in a senior apartment in Norwalk. Because C-C- only had a small one-bedroom senior apartment and I came to the U.S. with my son . . . the apartment was too small for three of us. After discussed [sic] with [C-C-], we felt that the best solution was to rent a house so that three of us can live together. Therefore, we rented a house

From mid-March to early May 2004, [C-C-] lived with me and my son in this house . . . most of the time.

His plan was to eventually give up the senior apartment at Norwalk and live with us permanently . . . Unfortunately he soon treated me badly . . . and our relationship broke up quickly.

The affidavits submitted in response to the director's NOID indicate that "during March and May 2004" the petitioner and her spouse resided together. One affidavit indicates that the affiants saw the petitioner's spouse playing basketball with the petitioner's spouse and jogging with the petitioner.

In his decision, the director found the testimonial evidence in the record to be contradictory and, therefore, not credible. On appeal, counsel argues that the director "did not fairly consider[] the actual contents" and "ignores the actual language" contained in the petitioner's statements. Upon review, we do not find that there are any inconsistencies in the petitioner's statements. Contrary to the director's determination, while not identical, the statements do not contain discrepant claims or information. We, therefore, withdraw the director's findings in this regard.

As it relates to the petitioner's actual residence with her spouse, counsel affirms the fact that the petitioner's living arrangement "involved two apartments in which the petitioner and her husband lived together only part of the week." Counsel argues that while the petitioner did not reside with her spouse "full-time . . . the regulations do not state that residing together seven days a week is a mandatory requirement." We agree with counsel that the regulations do not provide a formula for determining affirmatively that a petitioner has resided with his or her spouse. However, after reviewing the facts and evidence submitted, we are not satisfied that, in this instance, the petitioner has established that she did, in fact, reside with her spouse. While counsel contends that their living arrangement "was only intended to be temporary" we find little evidence to establish this contention. The petitioner has failed to provide evidence such as utility bills to establish that she intended to reside with the petitioner and to share responsibility with him at the claimed residence. Other than a single bank statement issued to her spouse during the time in which she claims to have this "arrangement," the petitioner has not submitted any documents issued to the petitioner's spouse at the claimed

residence or any other evidence which establishes that he physically resided there even on a part-time basis. While the short duration of the petitioner's relationship might explain the lack of documentation, the testimonial evidence fails to establish that the petitioner resided with her husband. In her affidavits, the petitioner does not provide any probative information about their purported joint residence. For example, the petitioner does not describe their residence, their general daily or weekly schedules and routines, or any of her spouse's or the former couple's jointly owned belongings or shared activities at home. While the affiants indicate that they witnessed the petitioner and her spouse at the claimed residence together and generally state that they lived together during "March and May," they offer no further information. Accordingly, the petitioner has failed to establish that she resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

With the initial filing, the petitioner submitted affidavits indicating the affiants "personal knowledge" that the petitioner and her spouse were husband and wife. The affiants provided no details regarding how the petitioner met her spouse, their courtship, or their relationship together after their marriage. As previously discussed, the petitioner also submitted a statement from AT&T and several Bank of America bank statements. Given that the statement from AT&T is in the petitioner's name only, it offers no probative value of shared responsibilities. Similarly, while the statements from the Bank of America demonstrate that the petitioner and her spouse opened a joint account together, the petitioner has failed to submit evidence such as cancelled checks to show that both she and her spouse accessed the account. The record remains devoid of any other evidence, such as life, health, or car insurance coverage, utility bills, or other documents which show that the petitioner and her spouse shared financial assets and responsibilities.

The petitioner also submitted several photocopies of undated, uncaptioned photographs. While the photographs document the fact that the petitioner and her spouse were together at a particular place and time, they do not establish the petitioner's intent at the time of her marriage. Regardless, the petitioner does not provide any description of the photographs, the significance of the event documented, and their relevance to her claim of a good faith marriage.

The petitioner offered the following information in the personal statement provided in response to the RFE:

My cousin introduced [C-C-] to me while he was visiting China in November 2002. We started courtship since then. When [C-C-] returned to the United States, we maintained contacts through email and telephone. He proposed to marry me and sponsor me to come to the United States on March 13, 2004. We got married on March 26, 2004.

The petitioner does not further discuss how she met her spouse, time spent together during their courtship, wedding, or any of their shared experiences, apart from the claimed abuse. While the petitioner also submitted additional affidavits in response to the RFE, the affidavits make the same general claim as the previous affidavits that the affiants have "personal knowledge" that the petitioner and her spouse were husband and wife.

In the statement submitted by the petitioner in response to the director's NOID, the petitioner states:

I can tell you from the bottom of my heart that [C-C-] and I did marry in good faith. I first met [C-C-] in the year 2002 when he visited me in China with my cousin. We spent a lot of time together and we both felt good about each other. [C-C-] also met my son at

that visit. After [C-C-] returned to the U.S., we communicated via emails, letters and phone calls before my son and I came to the U.S. in 2004 to join him . . . On the phone calls, he taught me English and I taught him Chinese. We loved each other very much.

As you may know, in China, men do not like to marry divorced woman [sic] with kid(s) from her previous marriage. I was delighted to see that this was totally not an issue for [C-C-]. He indicated in many occasions before we came to the U.S. that he not only loved me, but also love my son. I was so excited about this and I thought I had found a wonderful man. I was dreaming for a wonderful new life with him and we did marry in good faith.

While the petitioner submitted numerous copies of letters from [C-C-] to the petitioner prior to their marriage, the petitioner did not submit any correspondence written by her to her spouse. The petitioner also submitted additional affidavits. However, the affidavits submitted on the petitioner's behalf in response to the NOID offer no specific details about the petitioner's relationship with her spouse prior to their marriage or any other information that establish that she entered into her marriage in good faith.

On appeal, counsel argues that a "marriage meets the good faith requirement as long as the petitioner did not enter into it for the primary purpose of circumventing the immigration laws" and states that the director's decision concluded with the finding that "the marriage was not entered into in good faith by the petitioner." Counsel appears to have misinterpreted both the regulation and the director's decision. opposing counsel's assertion that the director found the petitioner "never intended a bona fide marriage," there was no finding of a sham marriage in the director's decision. Rather, the director found that the petitioner had failed to establish that she entered into the marriage in good faith. The fact that a petitioner fails to establish a good faith marriage and to produce affirmative evidence of the bona fides of the marriage, by itself, is not sufficient to establish that the marriage is a sham marriage and was entered into in order to evade the immigration laws. *Compare* 8 C.F.R. § 204.2(a)(1)(iii)(B), and (D), *with* 8 C.F.R. § 204.2(a)(1)(ii)." The regulations do not place the burden on the Service to establish that the marriage was entered into for mala fide reasons as argued by counsel, but rather on the petitioner to establish that the marriage was entered into in good faith.

The key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). As discussed above, the sole testimonial evidence of the petitioner's intent consists of the petitioner's statements. The affidavits submitted on the petitioner's behalf and the correspondence from the petitioner's spouse during their courtship provides little probative value regarding the petitioner's good faith intent. The sole documentary evidence consists of evidence that the petitioner and her spouse had a joint bank account together. However, the record did not contain any evidence to establish that the petitioner's spouse ever accessed this account. Accordingly, we do not find the evidence in the record carries sufficient weight to establish the petitioner's claim that she entered into the marriage in good faith. Accordingly, the petitioner has failed to establish that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the director's decision, we find that the petitioner has failed to establish that she has been battered by or subjected to extreme cruelty by her spouse. The sole evidence of the claimed abuse consists of the petitioner's personal statement and psychological evaluation. The psychological evaluation indicates generally that the petitioner's spouse became "jealous and emotional," that he "yells and screams for no apparent reason," and "calls her names and belittles her." The evaluation further indicates that he "reviews the cellular phone statement," "complains" about the petitioner, and that when she "talks back," he "threatens

not to sponsor her application for green card.” In her initial statement, the petitioner claimed that her spouse’s personality changed after they were married and then repeated the statements made in the psychological evaluation. The general claims contained in the evaluation and the petitioner’s statement fail to establish that the petitioner was physically abused or that she was in fear of her spouse. Further, they fail to provide examples of actions that rise to the level of those 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. Accordingly, the petitioner has failed to establish that she was battered by or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. We, therefore, withdraw the director’s findings in this regard.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.

ORDER: The appeal is dismissed.