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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

[REDACTED]  
EAC 07 005 50491

Office: VERMONT SERVICE CENTER

Date:

APR 03 2009

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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom  
Acting 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 appeal will be dismissed.

The petitioner seeks immigrant classification under 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 because the petitioner did not establish that she entered into marriage with her U.S. citizen husband in good faith.

On appeal, counsel submits a brief and copies of documents previously filed.

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).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) 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 explicated 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.

\* \* \*

(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 explicated 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Argentina who entered the United States on October 21, 1998. On February 27, 2004, the petitioner divorced her first husband and on March 12, 2004, she married C-R<sup>1</sup>, a U.S. citizen, in Florida. C-R- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on March 4, 2006, as was the petitioner's concurrently filed Form I-485, Application to Adjust Status.

The petitioner filed this Form I-360 on October 2, 2006. On May 11, 2007, the director issued a Request for Evidence (RFE) of the petitioner's good-faith marriage to and residence with her husband as well as his battery or extreme cruelty. The petitioner, through counsel, requested additional time to respond. On August 3, 2007, the director issued a Notice of Intent to Deny (NOID) the petition on the grounds cited in the RFE. The director denied the petitioner's request for additional time to respond to the RFE, but granted her 33 days to respond to the NOID. The petitioner timely responded to the NOID with further evidence, which the director found sufficient to establish the requisite joint residence and battery or extreme cruelty, but insufficient to demonstrate the petitioner's good faith in entering the marriage. The director denied the petition on the latter ground on October 11, 2007 and counsel timely appealed.

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<sup>1</sup> Name withheld to protect individual's identity.

On appeal, counsel claims that the petitioner credibly explained certain inconsistencies cited by the director and that the petitioner met her burden of proof to establish her good-faith marriage to her spouse. We concur with the director's determination. Counsel's claims on appeal fail to overcome the ground for denial. In addition, beyond the decision of the director, the petitioner has failed to demonstrate that she resided with her husband.

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). The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *See Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Manufacturing Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990).

#### *Entry into the Marriage in Good Faith*

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with C-R- in good faith:

- The petitioner's September 18, 2006 and August 6, 2007 statements;
- Letters of the petitioner's daughter and son;
- Letter of the petitioner's landlord, [REDACTED];
- Copy of a residential lease;
- Copies of two revocable, payable-on-death bank account agreements dated February 27, 2006, which name the petitioner's husband as the beneficiary of her accounts upon her death;
- Copy of the 2004 federal income tax return of the petitioner's husband;
- Copy of the final judgment of dissolution of the petitioner's prior marriage;
- Copy of the marriage certificate of the petitioner and her husband; and
- Photocopies of photographs of the petitioner and her husband on their wedding day.

In her first statement, the petitioner recounted that she met her husband at the end of 2003 through a friend, that they began going out as friends and that her husband asked her children for permission to be her boyfriend on Christmas Eve in 2003. The petitioner explained that she had been single for approximately four years and felt flattered by her husband's behavior. The petitioner stated that they began living together in January 2004 when her husband moved into her home. At the end of February 2004, the petitioner recounted that her husband proposed, she accepted and they were married at the courthouse within a couple of weeks. The petitioner briefly stated that they had a dinner at home with their children on their wedding day, but she did not further describe their nuptials. The petitioner recounted that she became pregnant on July 28, 2004 and shortly thereafter her husband became abusive. The petitioner stated that she had a miscarriage in September and her husband left her in

October. She explained that she reconciled with her husband upon his return in May 2005 because she loved him.

In her second statement, the petitioner recounted that her husband “didn’t want to appear anywhere and he wanted everything in [her] name;” that neither she nor her husband wanted him to be on her bank accounts and that he convinced her that he would give her cash to pay their bills. The petitioner further explained that she never worried about keeping documents because she never thought that she would have to prove her love for her husband and so she did not have “any more proof to submit.” The petitioner did not, however, further describe her and her husband’s courtship, wedding, shared residence or any of their shared experiences, apart from the abuse. The petitioner’s testimony alone is insufficient to establish her good faith in entering the marriage.

The letters of the petitioner’s daughter and son focus on the abuse and provide no insight into the petitioner’s feelings and intentions in entering her marriage. The petitioner’s daughter stated that the first month that she and her husband, brother and mother lived with the petitioner’s husband, they “got along with each other perfectly” and that the petitioner loved her husband more than her daughter thought because she “kept going with this unhappy life” after her husband first abandoned her. Yet the petitioner’s daughter does not describe her mother’s relationship with her husband in any probative detail, apart from the abuse. The petitioner’s son confirms that his mother reconciled with her husband after his abandonment, but he also fails to provide any further, relevant information.

The remaining, relevant evidence also fails to establish the petitioner’s claim. The photographs picture the petitioner, her husband and other individuals at their wedding, but the photographs of this single event do not demonstrate that the petitioner entered the marriage in good faith. The revocable, payable-on-death account agreements are dated February 27, 2006, after the petitioner stated that she separated from her husband in July 2005. In addition, as noted by the director, the account agreements were made just days before the petitioner’s adjustment interview.

As will be further discussed below, the petitioner also did not demonstrate that she lived with her husband. The petitioner’s landlord stated that she was “quite familiar with her family,” but only mentioned the petitioner’s children, not her husband. The lease contains several inconsistencies (detailed below) which detract from its credibility. **The 2004 federal income tax return of the petitioner’s husband** also does not list their purported marital residence as his address.

In addition, the petitioner stated that she had been single for four years prior to meeting her husband, yet the judgment of dissolution of the petitioner’s prior marriage was entered on February 27, 2004, just two weeks before she married C-R- and states that both parties were resident in Florida. The petitioner did not discuss the circumstances leading to her divorce in either of her statements.

While the abuse, abandonment and criminal record of the petitioner’s husband may explain the petitioner’s lack of joint documentation with her husband, she has not provided detailed, probative testimony regarding their courtship, wedding, joint residence and any of their shared experiences, apart

from the abuse. The remaining, relevant evidence is inconsistent with the petitioner's statements or provides no probative information sufficient to establish her claim. Accordingly, the petitioner has not demonstrated that she entered into marriage with C-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Joint Residence*

Beyond the decision of the director, the record also fails to establish the requisite joint residence. The evidence listed in the preceding section is also relevant to this issue. On the Form I-360, the petitioner stated that she resided with her husband from January 2004 to July 2005 and that their last shared residence was at [REDACTED] in Greenacres, Florida. However, although the petitioner's landlord stated that she was "quite familiar with her family," she only mentioned the petitioner's children, not her husband. In addition, as noted by the director, the lease is signed by the petitioner and her husband but is dated August 25, 2005 after the stated lease term of August 20, 2004 to August 20, 2005 and after the petitioner stated that she separated from her husband. The lease also lists different addresses for the petitioner and her husband, stating the petitioner's address as [REDACTED] and her husband's address as [REDACTED]. An August 25, 2004 checklist is attached to the lease and while the checklist is initialed by the petitioner and her husband, it is followed by a sheet signed only by the petitioner's husband as the sole tenant. In her second statement, the petitioner claimed that she had lived at the [REDACTED] address since August 2004 and renewed the lease on August 2005 when it expired. The petitioner did not, however, address the inconsistencies in the lease or state that she and her husband signed an original lease in August 2004.

The petitioner's daughter indicated that she, her husband and her brother lived with the petitioner and her husband, but she did not provide the dates or address of their joint residence and did not further discuss her mother's marital living arrangements. The petitioner's son stated that he lived with his sister, his brother-in-law, his mother and her husband, but he also failed to provide any probative discussion of his mother's marital residence.

The remaining, relevant evidence also does not establish the petitioner's claim. The 2004 income tax return of the petitioner's husband was filed as head of household and lists his address in Illinois, not Florida where the petitioner stated they lived together from January through October 2004. The photographs also do not picture the petitioner and her husband in any residential setting. Finally, although the petitioner's bank forms list the same address for the petitioner and her husband, they are dated seven months after the petitioner stated that she and her husband ceased residing together.

The petitioner explained how her husband's abuse and other behavior prevented them from having any joint accounts. However, the petitioner did not provide detailed, probative testimony regarding her residence with her husband and did not sufficiently explain the inconsistencies between her claim and her landlord's letter as well as the discrepancies within the lease. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with C-R-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Conclusion*

The petitioner has not demonstrated that she entered into marriage with her husband in good faith and that she resided with him. The petitioner is consequently ineligible for immigrant classification pursuant to 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.