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



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

APR 21 2009

FILE:

EAC 06 141 50566

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

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:

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, 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 married her husband in good faith.

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

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:

(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 filed 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.

(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 Cambodia who was admitted into the United States on June 14, 2005 as a B-2 nonimmigrant for pleasure. On July 11, 2005, the petitioner married R-R-¹, a U.S. citizen, in Lowell, Massachusetts. On October 6, 2005, R-R- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On April 8, 2006, the petitioner, through counsel, requested that the Form I-360 be substituted for the Form I-130. The I-130 and I-485 forms remain pending.

The petitioner filed the instant Form I-360 on April 10, 2006. On August 31, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good-faith entry into the marriage. The petitioner, through counsel, requested additional time to respond. On December 5, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite qualifying relationship and good-faith entry into the marriage. The petitioner, through counsel, responded to the NOID with additional evidence. On April 4, 2007, the director denied the petition because the petitioner did not establish that she married her husband in good faith. Counsel timely appealed.

On appeal, counsel asserts that the credible evidence in its entirety shows that the petitioner married her husband in good faith.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's claim that she married her husband in good faith:

- The petitioner's affidavit dated February 2, 2007;

¹ Name withheld to protect individual's identity.

- The April 5, 2006 report of the preliminary forensic psychiatric examination of the petitioner by [REDACTED]
- The November 5, 2006 affidavit from [REDACTED] Photographs of the petitioner and her husband;
- A credit union account statement, dated February 4, 2006, and credit union ID cards; and
- Counsel's opinion statement.

In her February 2, 2007 affidavit, the petitioner states that when she went to Lowell, Massachusetts as a tourist, she stayed at the house of a distant relative, [REDACTED]. She also states that R-R- was doing repair work at [REDACTED]'s house and that, according to [REDACTED], R-R- was looking for an Asian wife, preferably Cambodian. The petitioner explains that later she found out that R-R- and [REDACTED] had discussed her and already planned for her arrival. The petitioner states that she, R-R-, and [REDACTED] went out several times to a restaurant, with [REDACTED] serving as the translator, and she and R-R- went out several times to the China Buffet. The petitioner also states that after about three days, R-R- asked her to marry him, and after the third time, she agreed. The petitioner explains that she moved in with R-R- after their civil ceremony and a week later, they went the "Old Temple" and had their union blessed. The petitioner states that she and R-R- lived in a three bedroom house with R-R-'s mother and sometimes his sister. The petitioner explains that at first her relationship was good but it quickly became unhappy, that she was being hurt and was afraid, and that she left in February 2006.

The record also contains an affidavit from [REDACTED] dated November 5, 2006, who states that she became acquainted with the petitioner when she first arrived in the United States and rented a room in her house, and that the petitioner had heard about the room through a mutual acquaintance. [REDACTED] also states that while the petitioner was staying at her house, R-R- was working on a three-week project in her house and noticed the petitioner. [REDACTED] explains that R-R- had previously mentioned to her that he was looking for a wife, preferably Asian or Cambodian, so she introduced him to the petitioner and interpreted for them on a number of occasions. [REDACTED] states that she was pleased when they decided to get married because the petitioner would be able to stay in the United States. [REDACTED] also states that she visited the petitioner and R-R- at their "[REDACTED]" home about four or five times and that they acted like a married couple, "sitting close to each other, touching and, on occasion, kissing." [REDACTED] states that in February 2006, the petitioner became unhappy and moved back in with her and that the petitioner "seems not to want to talk about what happened between her and R-R-."

The record also contains a report of a preliminary forensic psychiatric examination, dated April 5, 2006, from [REDACTED]. Dr. [REDACTED] states that the petitioner was referred to her by counsel, and that she bases her report on a preliminary forensic psychiatric examination of unspecified length, and conducted on an unspecified date. [REDACTED] also indicates that her evaluation was conducted with the assistance of a translator who is counsel's employee. [REDACTED] states that, while in Cambodia, the petitioner socialized with a friend who had a niece living in the United States, and that the friend encouraged the petitioner to visit the United States, and offered to the petitioner an opportunity to stay with her niece. [REDACTED] states that after the petitioner's subsequent marriage to and abuse from her

U.S. citizen husband, the petitioner “ran away from the apartment that she shared with her husband and revealed to an acquaintance what she was enduring at the hands of her husband.”

In response to the NOID, counsel states, in part, that the photographs of the couple together show that the couple took the unusual step of “tak[ing] a picture of the blessing of the union at the Temple.” Counsel concludes, “[I]t does not appear that the idea was based on circumventing the Immigration Law and delivering a[n] Immigration Benefit. Reading the affidavit of [REDACTED] with the affidavit of the [petitioner], along with the Evaluator’s report, one might instead be drawn to [R-R-’s] being desirous of a pliant and compliant woman. The affidavits clearly speak of an introduction, a courtship and growing fondness followed by a marriage and a being together.”

The petitioner claims that she and her husband lived together from the date of their marriage on July 11, 2005 through February 28, 2006. The record, however, contains only minimal joint documentation, including a February 4, 2006 credit union statement and corresponding ID cards, reflecting that a savings account and checking account were opened concurrently on January 7, 2006, with a \$25 deposit and a \$100 deposit, respectively. It is noted that the credit account statement is dated shortly before the petitioner allegedly ceased living with R-R- and reflects only one transaction after the initial deposits. The photographs of the petitioner and R-R- confirm that they were pictured together, but these documents alone do not establish the petitioner’s good-faith entry into the marriage. It is also noted that the petitioner states in her February 2, 2007 affidavit that she and [REDACTED] were distant relatives. This conflicts with the information that the petitioner reported to [REDACTED] that [REDACTED] was the niece of the petitioner’s friend in Cambodia. The record contains no explanation for this inconsistency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988).

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the petitioner has not resolved the deficiencies and inconsistency discussed above. Moreover, the lack of probative detail and substantive information in the petitioner’s testimony regarding her shared residence and experiences with R-R- significantly detracts from the credibility of her claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

We do not agree with the director’s finding that the petitioner has demonstrated that she had a qualifying relationship as the spouse of a United States citizen and that she was eligible for immediate relative classification based upon that relationship. Concerning the petitioner’s termination of her previous marriage, the record contains no documentation indicating that a legal

marriage ceremony was performed between the petitioner and [REDACTED] and subsequently registered with the proper authority with jurisdiction over their residence in Kampong Thom, Cambodia. Instead, the director accepted the petitioner's contention that she and [REDACTED] did not have their union blessed by the "Monk or Ajar" or registered with the civil authorities. As supporting documentation that the petitioner was not legally married in Cambodia, based on her union with [REDACTED] in 1980, counsel submits excerpts from the publication *The Law of Marriage and the Family in the Kingdom of Cambodia*, [REDACTED] University of San Francisco School of Law with funds provided by USAID, which states, in part:

Cambodia has been influenced by the French tradition and thus, at least for marriages which have occurred since the promulgation of the Cambodian Family Law in 1989, does not officially recognize a union where there has been no civil marriage ceremony."

Counsel states: "As Massachusetts does recognize Common Law Marriages that are valid where they are formed, the question rises on whether or not Cambodia recognizes Common Law Marriage. Cambodia does not recognize Common Law Marriage, thus, this union **would not be recognized as a marriage.**" Counsel concludes: "[T]he union of [REDACTED] and [the petitioner] did not form a marriage which would be recognized today in Massachusetts" Counsel's opinion is acknowledged. The record, however, does not contain any corroborating evidence to support the petitioner's claim that she and [REDACTED] were not legally married, such as a letter from the appropriate civil authorities with jurisdiction over their residence in [REDACTED] Cambodia, that no record of a civil marriage ceremony between the petitioner and [REDACTED] exists. The petitioner also has not submitted the birth certificate of her child with [REDACTED] - [REDACTED] - or the birth certificates of her three adopted children, [REDACTED], and [REDACTED]. The record contains no explanation for these deficiencies. 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).

Beyond the decision of the director, we find that the petitioner failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. Again, the record contains deficient and inconsistent information regarding the petitioner's claim that she married her husband in good faith, that she had a qualifying relationship as the spouse of a United States citizen and that she was eligible for immediate relative classification based upon that relationship. In addition, in her preliminary forensic psychiatric examination report, [REDACTED] reports abusive behaviors of the petitioner's husband that the petitioner herself does not discuss in her affidavit. Moreover, [REDACTED] states that after the petitioner's subsequent marriage to and abuse from her U.S. citizen husband, the petitioner "ran away from the apartment that she shared with her husband and revealed to an acquaintance what she was enduring at the hands of her husband." However, there is no statement from that acquaintance to corroborate the petitioner's claim. It is noted that [REDACTED] states in her affidavit that the petitioner became unhappy and moved back in with her and that the petitioner "seems

not to want to talk about what happened between her and R-R.” Again, the record contains no explanation for these inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988). The relevant evidence fails to demonstrate that the petitioner’s husband subjected her to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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 also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the reasons stated above, 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.