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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

B4

APR 24 2009

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
EAC 06 134 51205

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)

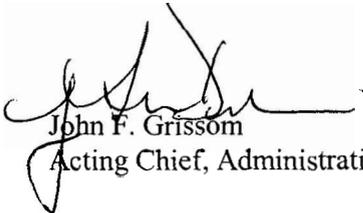
ON BEHALF OF PETITIONER:

[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 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.

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 additional evidence.

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:

(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 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.

* * *

(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 case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of China who entered the United States on December 5, 2000 as a nonimmigrant visitor (B-1) with authorization to remain in the United States until January 4, 2001. On April 7, 2005,

the petitioner married S-D-¹, a U.S. citizen, in California. S-D- subsequently 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 Adjust Status, both of which remain pending.

The petitioner filed this Form I-360 on March 28, 2006. On August 2, 2006, the director issued a Request for Evidence (RFE) of the petitioner's good faith in marrying her spouse. The petitioner, through counsel, requested additional time to respond. On October 16, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good-faith entry into the marriage, acknowledged counsel's request and granted the petitioner 60 days to respond. The petitioner, through counsel, timely submitted additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on February 16, 2007 on the ground cited in the NOID and counsel timely appealed.

On September 8, 2008 the AAO notified the petitioner of derogatory information upon which it intended to dismiss her appeal. The AAO noted that the petitioner had divorced her first husband in 1999, but was issued a passport over a year later that stated she was married. The AAO further informed the petitioner that her second husband, S-D-, had previously filed Form I-130 petitions for three other women, who he married in China between March and July 2004. One of the petitions was filed during the time the petitioner claimed to have resided with S-D-. Finally, the AAO noted that the petitioner had not submitted sufficient evidence of her good moral character. On October 9, 2008, the petitioner, through counsel, responded to the AAO's notice with additional evidence.

While the evidence submitted on appeal establishes the petitioner's good moral character, we concur with the director's determination that the petitioner has failed to demonstrate that she married S-D- in good faith. Beyond the director's decision, the petitioner has also not established that S-D- subjected her to battery or extreme cruelty during their relationship.

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 S-D- in good faith:

¹ Name withheld to protect individual's identity.

- The petitioner's March 22 and December 8, 2006 affidavits
- Affidavits of the petitioner's friends, [REDACTED] and [REDACTED]
Copy of an October 7, 2005 Sunnyvale, California Public Safety Department Runaway Missing Person Report filed by the petitioner regarding her husband;
Copy of an advertisement in a Chinese language newspaper for information about the petitioner's missing husband;
- The petitioner's original passport and household register from China, submitted on appeal;
- A September 17, 2008 notarial certificate of the Gaoyu Police Station, Mingshan Branch, Benxi Public Security Bureau, Liaoning Province, China, submitted on appeal, which certifies that the petitioner was divorced in 1999, but the change was not reported to the local authorities; and
Copies of two photographs of the petitioner and S-D- at their wedding.

In her first affidavit, the petitioner stated that in late 2004, her friend [REDACTED] introduced her to S-D-. After they met, the petitioner recounted that S-D- visited her every weekend. The petitioner stated that they became intimate and after about six months, she told S-D- about her divorce, but he did not mind and told her that he wanted to settle down. The petitioner reported that S-D- spoke to her parents and children in China on the telephone and they were married on April 7, 2005. The petitioner explained that they did not have money for a wedding feast, so they had a dinner with some friends at home. The petitioner stated that S-D- moved in with her after their marriage and commuted to his job in San Francisco. The petitioner recounted that S-D- paid for rent, food and other expenses for only the first two months. The petitioner explained that S-D- began "skipping home" a month after their marriage and disappeared in July 2005. The petitioner recounted that she filed a missing person's report and published a missing person's advertisement because she was afraid that S-D- might be at risk due to his gambling debts.

In her second affidavit, submitted in response to the NOID, the petitioner asserted that after she met S-D-, she "thought [she] had finally found a reliable man who treasured [her] and would share his life with [her]." The petitioner recounted that she complied with all of S-D-'s requests and tolerated his mistreatment because she "was afraid of losing [S-D-] and failing another marriage." The petitioner explained that she and her husband lived together for only three months; that they had little money, owned no property and did not have joint tax returns, insurance policies or bank accounts. The petitioner did not, however, further describe how she met her husband, their courtship, wedding, shared residence and experiences, apart from the alleged abuse. The petitioner's statements lack probative detail and substantive information sufficient to demonstrate that she entered the marriage in good faith.

The testimony of the petitioner's friends also fails to establish her claim. [REDACTED] stated that she went to the petitioner's wedding celebration and that the petitioner and S-D- "looked happy together," but [REDACTED] provides no further, detailed and relevant information. [REDACTED] stated that she had dinner with the petitioner and her husband an unspecified number of times during their courtship and that she attended their wedding celebration. [REDACTED] reported that the petitioner was happy about her marriage, but she provides no further, relevant information. [REDACTED] stated that the petitioner subtlet a

room in his apartment and introduced him to S-D- in late 2004. [REDACTED] reported often seeing them looking happy together. After their marriage, [REDACTED] confirmed that S-D- moved in with the petitioner. While [REDACTED] attests to the petitioner's residence with her husband, [REDACTED] does not provide detailed, probative information regarding the petitioner's intentions and behavior towards her husband during their courtship or after their marriage.

The remaining, relevant evidence also does not demonstrate that the petitioner entered the marriage in good faith. The missing person's report and advertisement show that the petitioner looked for her husband after he disappeared, but those documents alone do not demonstrate that she entered into the marriage in good faith. The missing person's advertisement is undated. The petitioner stated that her husband disappeared in July 2005. Yet, the petitioner did not file the missing person's report until October 7, 2005, after having been notified that her adjustment application was relocated for further processing. Accordingly, it is unclear what the petitioner's specific motivations were in searching for her husband after his disappearance.

The evidence submitted on appeal also confirms that the petitioner did not report her divorce from her first husband in China to the local authorities with jurisdiction over her household register. Counsel states that the petitioner's passport indicated that she was married because she used her original household register to obtain the passport. Counsel asserts that in China, "it is not mandatory that a person to have [sic] his/her new marital status changed on the household registry." Counsel's assertion is contradicted by the petitioner's household registry, which states that "in case of a change in the household size and any other personal data, the household member should bring the register to the household registry office to have the change registered."² The record thus shows that the petitioner could have, but chose not to, change her household register to reflect her divorce. Regardless of the petitioner's failure to change her household register, the record (as supplemented on appeal) shows that she was divorced from her first husband at the time she married S-D-. While U.S. Citizenship and Immigration Services (USCIS) records show that S-D- committed bigamy, the petitioner has demonstrated that she believed she was entering a valid marriage with S-D- and that an actual marriage ceremony was conducted.

The validity of the petitioner's qualifying relationship with S-D- does not, however, establish that she entered into that relationship in good faith. The preponderance of the relevant evidence does not demonstrate that she married S-D- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

Beyond the director's decision, the record also does not establish the requisite battery or extreme

² This quotation is from the AAO's translation of the fourth paragraph on the first page of the petitioner's household register. The AAO's translation differs slightly from that submitted by the petitioner.

cruelty. The record contains the following evidence relevant to this issue:

- The petitioner's March 22 and December 8, 2006 affidavits
- Affidavits of the petitioner's friends, [REDACTED] and [REDACTED]
- Psychiatric Evaluation of the petitioner by [REDACTED] and [REDACTED]
- Copy of an October 7, 2005 Sunnyvale, California Public Safety Department Runaway Missing Person Report filed by the petitioner regarding her husband; and
- Copy of an advertisement in a Chinese language newspaper for information about the petitioner's missing husband.

In her first affidavit, the petitioner stated that shortly after their marriage, her husband quit his job, stayed up late at night, would not get up until noon and smoked nonstop while watching the television at maximum volume. The petitioner also recounted that her husband demanded sex and that she perform certain actions that she had never done before and that she disliked. The petitioner stated that her husband "would become angry and curse [her] if [she] refused him." A month after their marriage, the petitioner stated that her husband began leaving home for days at a time and told her she did not satisfy him in bed, that she was useless, ugly, too old and that he regretted marrying her. The petitioner further recounted that her husband stopped paying rent and other expenses two months after their marriage and once kicked her leg when she refused to give him money for gambling. The petitioner also described how she became sick after her husband's disappearance.

In her second affidavit, the petitioner reiterates that her husband insulted her and did not appreciate her even though she tried to please him. The petitioner explained that she was so upset after her husband's disappearance that she lost her job. The petitioner did not describe any specific incident of abuse in probative detail and her general statements are insufficient to demonstrate that her S-D- battered or subjected her to extreme cruelty during their marriage.

The testimony of the petitioner's friends also lacks detailed, substantive information sufficient to establish her claim. [REDACTED] confirmed that the petitioner was miserable and depressed after her marriage and that she told [REDACTED] that her husband did not work, often came home drunk and disappeared for days. [REDACTED] similarly stated that the petitioner was unhappy after her marriage and told [REDACTED] that her husband did not work, came home drunk and eventually disappeared. [REDACTED] stated that he heard the petitioner's husband yelling at her using foul language and that the petitioner's husband watched television and smoked in the apartment or came home late and drunk. [REDACTED] also confirmed that the petitioner was very sad and depressed after her husband disappeared. However, none of the petitioner's friends, described any incident of abuse in probative detail.

While we do not question their expertise, [REDACTED] and [REDACTED] also fail to establish the requisite battery or extreme cruelty with their psychiatric evaluation of the petitioner. The evaluation is based on a single meeting with the petitioner on November 4, 2006, over a year after the petitioner stated that her husband disappeared. [REDACTED] and [REDACTED] diagnosed the petitioner with severe depression and post-traumatic stress disorder. They further stated that the petitioner's husband sometimes became "angry

for no apparent reason and [would] yell at her, and even hitting her” and that her husband “also attacked her physically, verbally and sexually abused her.” [REDACTED] and [REDACTED] did not describe any such attacks in detail.

The petitioner herself also did not discuss specific incidents of such abuse in probative detail. The petitioner stated that her husband once “kicked” her leg when she refused to give him money for gambling, but the petitioner did not discuss that incident in detail and recounted no other incidents of “hitting” or physical attacks, as reported in the psychiatric evaluation. The petitioner’s testimony regarding her sexual relationship with her husband is equivocal. The petitioner stated that her husband demanded sex after she had fallen asleep and insisted that she do a certain act that she did not like and had not done before. However, the petitioner also reported that she refused her husband at times and did not always comply with his demands. The petitioner’s testimony regarding her husband’s insults also does not indicate that his comments constituted verbal abuse. The petitioner stated that after she confronted him about his absences from their home, her husband called her “too old,” “ugly,” “stupid” and “useless” and that he regretted marrying her. The relevant evidence does not indicate that the petitioner’s husband routinely verbally assaulted her or that his insults were part of a cycle of physical, psychological or sexual violence. The inconsistency between the psychiatric evaluation and the petitioner’s testimony regarding the forms of alleged abuse further detracts from the credibility of her claims.

The missing persons report and advertisement confirm that the petitioner searched for her husband after his disappearance, but the record does not demonstrate that his abandonment of the petitioner constituted extreme cruelty. The relevant testimony indicates that the petitioner and her husband had a short, troubled relationship during which the petitioner’s husband mistreated her and that the petitioner’s intended marriage ended when he disappeared. The preponderance of the relevant evidence does not, however, establish that the petitioner’s husband battered or subjected her to extreme cruelty during their relationship, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has not demonstrated that she entered into her intended marriage with S-D- in good faith and that he subjected her to battery or extreme cruelty during their relationship. 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.