

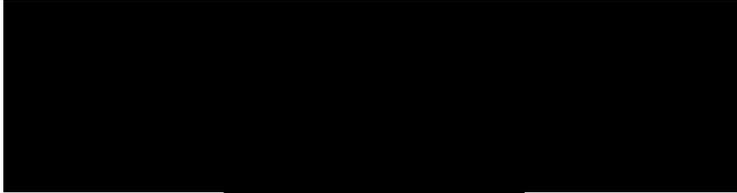
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



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

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



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FILE: [Redacted] Office: VERMONT SERVICE CENTER
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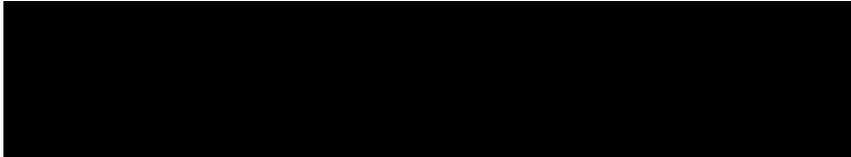
Date: **FEB 24 2009**

IN RE:



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)

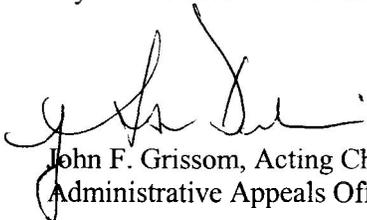
ON BEHALF OF PETITIONER:



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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 on the basis of his determination that the petitioner had failed to establish: (1) that she shared a joint residence with her husband; and (2) that she entered into marriage with her husband in good faith.

Counsel submitted a timely appeal on July 25, 2007.

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .
- (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 of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of the People's Republic of China who married T-N-¹ a United States citizen, on April 2, 2001 in China. T-N- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on May 10, 2001, and it was approved later that year. The petitioner entered the United States as a conditional permanent resident of the United States on March 21, 2003.

¹ Name withheld to protect individual's identity.

The petitioner filed the instant Form I-360 on June 14, 2006. On January 8, 2007, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner shared a joint residence with T-N-; and that she married T-N- in good faith. On March 7, 2007, counsel requested additional time in which to respond to the director's request. The director issued a notice of intent to deny (NOID), for the same reasons as set forth in the request for additional evidence, on April 19, 2007. Counsel responded to the NOID on May 8, 2007, and submitted additional evidence.

After considering the evidence of record, the director denied the petition on June 26, 2007.

On appeal, counsel submits a brief. Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition.

Joint Residence

The first issue on appeal is whether the petitioner has established that she shared a joint residence with T-N-. As proof that she shared a joint residence with T-N-, the petitioner submitted a copy of the couple's 2004 joint tax return; copies of bank statements from 2004 and 2005; copies of cell phone billing statements from 2004 and 2005; materials from Metropolitan Life indicating that the petitioner purchased a life insurance policy in December 2004; photographs of the petitioner and T-N-; and affidavits from friends and family members.

The AAO turns first to the director's statement in his denial that "review of the record shows that [T-N-] was not residing at the address you claim you and he shared in New York." Although the AAO agrees with most of the director's reasoning in finding that the petitioner failed to establish that she shared a joint residence with the petitioner, it disagrees with this statement. The record contains several items that indicate that T-N- lived at [REDACTED] in Brooklyn, New York. For example, the AAO notes that T-N-'s Forms W-2 from 1999, 2000, and 2001, which were issued before he and the petitioner allegedly began sharing a residence, identify T-N-'s address as [REDACTED]. The record, therefore, indicates that T-N- did in fact live at the [REDACTED] address at some point. The AAO, therefore, withdraws that comment.

However, although the record does indicate that T-N- did live at the 716 52nd Street residence for a period of time, the petitioner has failed to establish that they shared the residence. In his January 8, 2007 request for additional evidence, the director noted that the 2004 joint tax return was signed on February 28, 2005, nine months after the petitioner claims the couple separated in May 2004; that the two cell phone billing statements, which cover the periods from December 3, 2005 through January 2, 2005, and January 3, 2005 through February 2, 2005, are from seven and eight months after the petitioner claims the couple separated in May 2004; that the December 29, 2004 letter from Metropolitan Life, which was sent seven months after the couple separated, was addressed to the petitioner only; and that the photographs of record indicated only that the petitioner and T-N- were together on three separate occasions. As such, the director found that none of these items establish that the petitioner and T-N- shared a joint residence. The AAO agrees with the director's analysis.

In response to the director's request for additional evidence and NOID, the petitioner submitted several affidavits. In her April 27, 2007 affidavit, the petitioner stated, with regard to joint residence, that she was unable to submit the documentation suggested by the director (joint leases, insurance policies showing a common address, utility invoices, banks statements, etc.) in his request for additional evidence because T-N- kept all information regarding their joint residence to himself, and that she never thought such documentation would be important since she did not know T-N- would abuse her. She also states that after she separated from T-N- she moved to Ohio but remained in touch with him. He informed the petitioner that he was moving out of the [REDACTED] address, and told the petitioner that she could move in if she wished. She stated that T-N- moved out of the residence in August 2004, and that she moved back in, in September 2004. The petitioner stated that she and T-N- had a joint banking account, but that he did not provide her with the account information. However, she did submit a Form 1098 from 2004, naming both the petitioner and T-N-, and using the [REDACTED] address, which states that they earned 22 cents in interest on a savings account in 2004. She stated that she obtained the cell phone before she and T-N- separated, but that she cannot find any of the billing statements from the period during which she and T-N- lived together. The petitioner also submitted several affidavits from friends and family members stating that the petitioner and T-N- shared a joint residence, as well as additional photographs of the couple.

The director found this evidence insufficient in his denial. With regard to the affidavits from friends and family members, the director noted that affidavits were nearly identical to one another and, further, that none of the affiants personally witnessed the petitioner and T-N- sharing a joint residence. The director, therefore, discounted the evidentiary weight of the affidavits. With regard to the life insurance policy, the director noted, again, that the policy was purchased after the couple separated, and is therefore not evidence that they shared a joint residence. Finally, the director stated, with regard to the photographs, that they are simply evidence that the petitioner were married, and that they spent time together in China in 2001, and are therefore not evidence of a shared joint residence.

In his August 8, 2007 appellate brief, counsel contends that the director erred in finding that the petitioner had not established that she shared a joint residence with T-N-. Counsel states that the limited availability of documents which would establish that the petitioner shared a joint residence with T-N- is due to the T-N-'s practice of withholding documents from the petitioner. According to counsel, the petitioner's submissions are, as a whole, "a strong support and detailed explanation" of a joint shared residence. Counsel contends that the fact that the petitioner bought a life insurance policy naming T-N- as a beneficiary is not a valid basis for denying the petition. With regard to the affidavits from friends and family, counsel states that while it is true the affiants did not witness the petitioner and T-N- sharing a joint residence, the information they provided was consistent with the petitioner's affidavit.

Upon review, the AAO agrees with the director's decision to deny the petition on this ground. The AAO agrees with the director's decision to discount the evidentiary weight of the affidavits from friends and family. As noted by the director, the wording of the affidavits is nearly identical: the affidavits of [REDACTED] and Y [REDACTED] are identical to one another, and the affidavits of

[REDACTED] and [REDACTED] are identical to one another. This raises questions as to who actually wrote the affidavits, and the director acted correctly in disregarding them. The AAO also agrees with the determination of the director with regard to the photographs of record; the photographs do not establish that T-N- and the petitioner shared a joint residence.

Counsel's comments regarding the life insurance policy are misplaced; counsel has misunderstood the basis of the director's denial of the petition. That the life insurance policy was purchased after the couple separated is not the basis of the director's denial of the petition. Rather, the director's comments with regard to the life insurance policy were intended to inform the petitioner that, since the policy was purchased after the couple separated, the policy is not evidence of a joint shared residence.

Finally, the AAO turns to counsel's assertions with regard to the lack of documentary evidence of the couple's shared joint residence. As noted earlier, counsel stated that the petitioner's submissions are, when taken together, "strong support and detailed explanation" of a joint shared residence. The AAO disagrees. First, the AAO notes that the evidentiary weight of every piece of evidence submitted by the petitioner in support of her contention that she shared a joint residence with the petitioner has been discounted. Further, the AAO reminds counsel and the petitioner that the petition was not denied due to the lack of specific documents. Rather, the petition was denied because there is no evidence that the petitioner and T-N- shared a joint residence. The AAO acknowledges that it is often difficult to obtain proof of such joint shared residence. In such cases, the petitioner's affidavits alone can serve as evidence of a shared joint residence. However, in this particular case, the petitioner's explanation as to why evidence of their shared joint residence is unavailable – that T-N- "withheld" such evidence – is insufficient.

For example, although the petitioner states that she and the petitioner had a joint bank account, she submits no corroborating evidence. Although she states that T-N- did not wish to provide her with the account information, it is unclear to the AAO why, if it was a joint account, the petitioner could not herself obtain back copies of statements issued while the couple was sharing a joint residence, or at minimum obtain verification from the bank that such an account existed.

With regard to the cell phone billing statements, she states that although she opened the account before she and the petitioner separated, she cannot find any billing statements from that period. It is unclear to the AAO why, since both names are listed on the account, the petitioner cannot contact the phone company herself and ask for back copies of statements that were issued while the couple was sharing a joint residence, or at minimum obtain a letter or other information from the company that the account existed while the couple was sharing a joint residence.

It is also unclear to the AAO why the petitioner cannot obtain copies of the couple's income tax filings for 2003, as that document would presumably display their shared address. If the tax return was jointly filed, the petitioner should be able to obtain a summary of the tax return from the Internal Revenue Service. Also, the AAO notes that the couple used a professional tax filing service to prepare their 2004 return; if they used a filing service to prepare their 2003 return, the petitioner may be able to

obtain a copy from that filing service. Even if neither of these strategies had worked, it is unclear to the AAO why the petitioner would not have been able to obtain her 2003 W-2 from her former employer. That document would have at least established that the petitioner lived at the 716 52nd Street address at some point during the period claimed by the petitioner.

Nor is it clear to the AAO why she cannot obtain any information from the couple's landlord indicating that the couple shared the [REDACTED] address during the period claimed on the Form I-360.

For all of these reasons, the AAO does not accept as credible the assertion that the petitioner cannot obtain a single document issued during the time she states she and T-N- shared a joint residence that identifies both of them as living at the same address. While it may be the case that she cannot obtain any further documentation, the record fails to establish that she made any attempt to do so. The only evidence of record which indicates that the petitioner and T-N- shared a joint residence during the period of time claimed by the petitioner on the Form I-360 is the petitioner's own affidavit. In this particular case, the AAO finds the petitioner's affidavit alone insufficient to establish joint residence, as she has not offered an adequate explanation as to why she is unable to procure a single document that lists both her and her husband living at the same address during the time in which she claims they lived together. The petitioner has not established by a preponderance of the evidence that she shared a joint residence with T-N-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The director also found that the petitioner had failed to establish that she married T-N- in good faith. The AAO agrees. With regard to her intent upon entering into marriage with T-N-, the petitioner stated the following in her January 24, 2006 affidavit: that her aunt introduced her to T-N- in 2000; that the petitioner and T-N- kept in touch via telephone and letters; that T-N- mailed her money and gifts from the United States; that, after T-N- sent the petitioner a Christmas card in 2000, her family agreed to let her marry T-N-; that they married in Fujian Province in 2001; that T-N- remained in China for over a month after the couple was married; that T-N- told her that she would never have to worry about anything after she came to the United States; that, after he returned to the United States in 2001, T-N- and the petitioner remained in touch via letters and telephone calls; that they mailed gifts to each other; and that she was very happy to get her immigrant visa and come to the United States in 2003.

In her April 27, 2007 affidavit, the petitioner stated, with regard to her intent upon entering into marriage with T-N-, that she was very happy when she married T-N-; that she married T-N- because she thought that he would be the one she could turn to for life, and to form a happy family; that she married T-N- for love, and for the dream of a new life; that she married T-N- in good faith; and that, although she married T-N- in good faith, she is the victim of her marriage since T-N- has abused her.

In his August 8, 2007 appellate brief, counsel contends that the petitioner did in fact marry T-N- in good faith. Counsel points to the fact that the United States consulate in Guangzhou, China

approved the immigrant visa and states that that particular consulate “has a very strict and standard measure to review the immigration visa applications for the immigrants from China.”

As a preliminary matter, the AAO incorporates here its previous analysis with regard to the bank statements, phone bills, life insurance policy, photographs, and affidavits from friends and family members. For the same reasons that those documents failed to establish the petitioner’s shared joint residence with T-N-, they fail to establish that she married him in good faith. Although the petitioner states that she and T-N- sent letters to one another, none of those letters have been submitted into the record. With regard to the Christmas card that the petitioner claims T-N- mailed her in 2000, the AAO notes that there is nothing about this card to indicate that it was in fact sent when the petitioner claims it was sent.

The AAO rejects counsel’s assertion that it should sustain the appeal on the basis of the consulate’s approval of the immigrant visa in 2003. Approval of a Form I-130, Immigrant Petition for Alien Relative, is not prima facie evidence of the beneficiary’s good-faith entry into marriage with her husband under section 204(a)(1)(A)(iii) of the Act. In self-petitions under section 204(a)(1)(A)(iii) of the Act, the alien bears the burden of proof to establish that she or he entered into the marriage in good faith and the regulation specifically defines the term “good faith marriage” and what types of evidence will suffice to meet that eligibility criterion. 8 C.F.R. §§ 204.2(c)(1)(ix), (c)(2)(vii). Hence, the fact that a self-petitioner was the beneficiary of an approved Form I-130 filed by his or her spouse will not establish that the petitioner actually entered into the marriage in good faith. While evidence submitted with a Form I-130 petition filed on the petitioner’s behalf may be relevant to a determination of her good faith entry into the marriage, reliance on such evidence alone is unwarranted. Had Congress not intended for USCIS to inquire into the bona fides of the marriage, and rely solely upon the Department of State’s approval of the immigrant visa, it would not have enacted section 204(a)(1)(A)(iii) of the Act to require that petitioner make such a demonstration.

The information of record regarding the petitioner’s good faith entry into the marriage is very general in nature. The petitioner provides little information regarding the couple’s first impressions of each other; their courtship after T-N- arrived in China in 2001; or the types of activities they enjoyed together. In this particular case, the AAO finds the petitioner’s affidavit alone insufficient to establish good faith entry into the marriage. That the petitioner has not, as noted previously, offered an adequate explanation as to why she is unable to procure a single document that lists both her and her husband living at the same address during the time in which she claims they lived together, persuades the AAO further that it should not accept the petitioner’s testimony, alone. For all of these reasons, the AAO finds that the evidence of record fails to demonstrate that the petitioner entered into marriage with T-N- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The AAO agrees with the director’s determination that the petitioner has failed to establish that she and her husband shared a joint residence or that she entered into marriage with her husband in good

faith. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.