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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 05 156 52952

Office: VERMONT SERVICE CENTER

Date: **MAR 06 2009**

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:

SELF-REPRESENTED

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).

*[Handwritten signature]*

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 United States (U.S.) citizen husband in good faith.

On appeal, the petitioner submits an additional statement.

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 Peru who states on the instant Form I-360 that she entered the U.S. on November 13, 1993. On May 1, 1996, the petitioner married T-M-<sup>1</sup>, a U.S. citizen, in New York. T-M- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on July 14, 1997. T-M- filed a second Form I-130 on the petitioner's behalf on November 19, 1997, action upon which was terminated after the petitioner filed her first Form I-360 on April 5, 1999.<sup>2</sup> The petitioner's first Form I-360 was denied for lack of (then requisite) extreme hardship as well as failure to establish the requisite battery or extreme cruelty and good-faith entry into the marriage. The AAO dismissed the petitioner's appeal on August 2, 2001. The petitioner filed a second Form I-360 on September 4, 2001, which was denied for lack of the requisite good moral character and good-faith entry into the marriage.<sup>3</sup> The petitioner's untimely appeal was rejected.

The petitioner filed this Form I-360 on May 9, 2005. On November 21, 2005, the director issued a Request for Evidence (RFE) of the petitioner's residence with, and good faith in marrying, her husband. The petitioner did not respond to the RFE. On November 7, 2006, the director issued a Notice of Intent

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

<sup>2</sup> Receipt number EAC 99 131 53387.

<sup>3</sup> Receipt number SRC 01 262 57525.

to Deny (NOID) the petition for failure to establish the requisite good-faith and joint residence. The petitioner responded to the NOID with further evidence, which the director found sufficient to establish the petitioner's residence with her husband, but insufficient to establish her good faith in entering their marriage. The director denied the petition on March 14, 2007 and the petitioner timely appealed.

On appeal, the petitioner states that she does "not know what else to do or say" because she "submitted every piece of evidence [she] had with [her] first application in April of (1999)." The petitioner asserts that she married her husband in good faith, but he would not allow her to document their marriage and residence. The petitioner's statements on appeal do not overcome the ground for denial and the appeal will be dismissed. Beyond the decision of the director, the petitioner has also failed to establish that she resided with her husband. Accordingly, the petition will be denied on that additional ground.

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).

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

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

- The petitioner's undated statement, May 10, 1999 statement and September 17, 1999 letter, submitted below and her undated statement submitted on appeal;
- March 12, 1999 and second, undated affidavit of the petitioner's brother, [REDACTED];
- August 26, 1999 statement of the petitioner's daughter, [REDACTED];
- Undated affidavit of the petitioner's sister, [REDACTED];
- December 6, 2006 affidavit of [REDACTED];
- May 24, 1999 unsigned declaration of the petitioner's former coworker, [REDACTED];
- May 20, 2004 affidavit of the petitioner granting power of attorney to her husband to request police reports under her name;
- Unsigned copy of the petitioner's 1998 federal income tax return marked as married filing separately;
- Copies of rent receipts made out to the petitioner and her husband for a residence at [REDACTED] and dated each month between February and July 1996;
- The petitioner's Form G-325A signed by the petitioner on November 7, 1997; and
- Photocopies of photographs of the petitioner and her husband at their wedding and on one or two other, unspecified occasions.

In her May 10, 1999 statement, the petitioner briefly reported that she met her husband at her brother's house one year before they were married and that in the beginning, their marriage "was something very beautiful because he was very nice" until he became abusive. The petitioner did not further describe how she met her husband, their courtship, wedding, shared residence and experiences, apart from the abuse. In her September 17, 1999 letter, the petitioner again stated that her relationship with her husband was good at the beginning and explains that she and her husband never shared a bank account. The petitioner provided no further, relevant details. In her undated statement, the petitioner explained that she met her husband at her brother's birthday party in January 1995, that they danced all night, her husband called her the next day and they began a friendship that "grew into love." The petitioner stated that they had a small wedding with only immediate family and close friends. The petitioner described her married life as "wonderful" until she found her husband injecting himself with drugs in July 1997. Again, the petitioner did not further describe how she met her husband, their courtship, wedding, shared residence and experiences (apart from the abuse). On appeal, the petitioner asserts that when she fell in love with her husband, she "honestly thought [she] had found a decent and honest man who could help [her] raise [her] children." The petitioner states that "establishing that our marriage was based on good faith [] was not important to [her husband]." The petitioner's brief statements lack detailed, probative information sufficient to demonstrate that she married her husband in good faith.

The statements of the petitioner's family and coworker are also insufficient to establish her claim. In his first letter, the petitioner's brother states that he was friends with the petitioner's husband, that the former couple dated after they met and that after their marriage, "[t]hey were living in good standard condition." In his second letter, the petitioner's brother states that he was present at the former couple's wedding and many family gatherings. [REDACTED] does not describe any of those gatherings in detail or provide any further, relevant information. The petitioner's sister states that she was also present at the former couple's wedding and her husband's birthday celebration. [REDACTED] states that the petitioner's husband treated the petitioner "very kindly," but she provides no further, relevant details. [REDACTED] also states that he was present at the petitioner's wedding and her husband's birthday celebration, but he also fails to provide any further, relevant and probative information. The petitioner's daughter states that, at the beginning, T-M- was nice to the petitioner, herself and her sister, but later changed. [REDACTED] provides no further, relevant information. [REDACTED] states that the petitioner and her husband began dating in 1996, got married a year later and lived together for two years before the petitioner's husband became abusive. [REDACTED] provides no further, relevant and detailed information.

The remaining, relevant evidence also fails to demonstrate that the petitioner entered into her marriage in good faith. The petitioner's grant of power of attorney to her husband is dated six years after she states that she separated from him and was executed to obtain police reports for her, not to impart any financial or other significant marital responsibility to him. The petitioner's tax return is marked as married filing separately and does not indicate that the former couple shared financial assets or liabilities. Three of the rent receipts are jointly made out to the petitioner and her husband, but they list a residence where the petitioner does not state that she ever lived with her husband, a discrepancy that will be further discussed in the following section. Finally, the photographs show that the petitioner and

her husband were pictured together at their wedding and on one or two other, unspecified occasions, but the photographs alone do not demonstrate that the petitioner entered into the marriage in good faith.

On appeal, the petitioner asserts, “my husband knew exactly what he was doing and establishing that our marriage was based on good faith, was not important to him.” Yet the petitioner does not explain her husband’s specific actions or inactions or her inability to provide detailed and probative testimony from herself, her family or other individuals with knowledge of her relationship. The preponderance of 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.

### *Joint Residence*

Beyond the director’s decision, the petitioner has failed to establish that she resided with her husband. On her first Form I-360, the petitioner stated that she resided with her husband from December 4, 1995 to an unspecified date and that their last shared residence was at [REDACTED] in Elizabeth, New Jersey. On her second Form I-360, the petitioner stated that she resided with her husband from June 1995 to June 1998 and that their last shared residence was on [REDACTED]. On the present Form I-360, the petitioner states that she resided with her husband from January 1995 to May 1998, but she lists no address as their last shared residence. The petitioner does not explain the discrepancies in the dates of her claimed residence with her husband as she reported on her Forms I-360.

The evidence listed in the preceding section is also relevant to the petitioner’s alleged residence with her husband. In her statements, the petitioner does not state the dates or addresses of her residence with her husband and does not describe their living arrangements in any probative detail. The petitioner’s brother states that he attended many family gatherings with the petitioner and her husband because he lived close to them, but [REDACTED] does not state the address of the former couple’s joint residence(s) or describe their living arrangements in any probative detail. The petitioner’s sister, [REDACTED] and [REDACTED] both state that they attended the birthday celebration of the petitioner’s husband, but they do not state that the celebration was held at the former couple’s home or describe the allegedly joint residence in detail. The petitioner’s former coworker, [REDACTED] does not indicate that she ever visited the petitioner at her home and does not discuss the former couple’s living arrangements.

As previously noted, the rent receipts do not indicate that the petitioner actually resided with her husband. The receipts are dated between February and July 1996 for a residence at [REDACTED]. Neither the dates nor the address on the receipts correspond to any other relevant evidence in the record. On her November 7, 1997 Form G-325A, the petitioner stated that she lived at [REDACTED] from April 1995 to April 1996 and at [REDACTED] from May 1996 to November 1997. On the petitioner’s first two Form I-360s she listed the [REDACTED] and the [REDACTED] addresses as the former couple’s last joint residences, but she listed no joint address on the present Form I-360 and she does not mention the [REDACTED] address in any of her statements.

The remaining, relevant evidence also does not establish the petitioner's claim. The petitioner's 1998 tax return is marked married filing separately and lists an address for the petitioner that is not among those where she claimed to reside with her husband. Finally, none of the photographs picture the petitioner and her husband in a residential setting.

On appeal, the petitioner asserts that she could not produce much evidence of her residence with her husband "because he would not allow it. His excuse was that [she] was illegal and [she] wasn't going to get him in trouble." The petitioner does not, however, provide any further, detailed and probative testimony regarding her claimed residence with her husband.

The petitioner has provided no statement of the dates and addresses of her claimed residence with her husband. The statements of her family and coworker provide no detailed or probative information to support her claim and the remaining, relevant evidence fails to show the requisite joint residence. In sum, the relevant evidence does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The petitioner has not demonstrated that she entered into marriage with her husband in good faith and 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.