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U.S. Citizenship
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Services

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FILE:

[REDACTED]
EAC 06 150 50022

Office: VERMONT SERVICE CENTER

Date:

MAR 06 2009

IN RE:

Petitioner: [REDACTED]

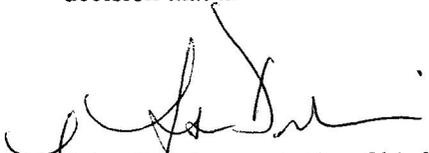
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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 P.R. China who was admitted into the United States as a K-1 fiancée on February 15, 2005. On February 23, 2005, the petitioner married J-Z¹, a U.S. citizen, in Oakland, California. On April 22, 2005, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which was denied on November 21, 2005, due to abandonment. On December 13, 2005, the petitioner, through counsel, filed a Motion to Reopen the denial of the petitioner's I-485 application. The motion was granted on June 21, 2006. The petitioner's I-485 application is still pending.

The petitioner filed the instant Form I-360 on April 20, 2006. On September 13, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite qualifying relationship, joint residency, good moral character, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner, through counsel, requested additional time to respond, and subsequently timely responded to the NOID with additional evidence. On December 21, 2006, 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 states that the petitioner has submitted relevant, material evidence in compliance with the standards of 8 C.F.R. § 204.2(a)(1)(i)(B). Counsel also states: “[V]iewed with other evidence in the record, [the] petitioner’s affidavits are detailed, consistent, and credible. On the whole, sufficient evidence would establish [that the] petitioner had entered into the marriage on good faith.”

Good Faith Entry into Marriage

In her March 30, 2006 affidavit, the petitioner states that she married her husband in good faith and explains that she was studying in New Zealand when her aunt from Oakland, California asked her if she

¹ Name withheld to protect individual’s identity.

was interested in meeting J-Z-, who was single and shared a similar cultural background with her. The petitioner reports that in May 2003, J-Z- visited her in New Zealand for one week and proposed marriage to her before he returned to the United States, and that, upon return to the United States, he filed a fiancée petition on her behalf. The petitioner states that in February 2005, she arrived in the United States with a fiancée visa, was married to J-Z- about a week later at the City Hall in Oakland, California, and celebrated their marriage that same evening at a Chinese restaurant with their relatives. The petitioner reports that she and her husband were happy for the first two months of their marriage, that she lived with her husband, mother-in-law, and brother-in-law in a one-bedroom apartment, and that his mother was upset with her and belittled her because she was not working. The petitioner states that her husband became irritated with her at the end of his work day when she tried to “engage him in a long conversation” and also was very stingy with his money, allowing her only a small allowance of less than \$100 for the entire six months that she lived with him. The petitioner also states that he bought “about-to-rot” fruit for her and never took her out to eat, that he told her she ate like a pig, and that he was jealous and accusatory when she talked too long to his friends. The petitioner reports that she was unable to find a job, other than restaurant work, without a work permit, and that J-Z-’s mother treated her so badly that she went to the library and to her aunt’s house during the day. The petitioner also reports that J-Z- demanded sex that she considered abnormal, hurt her physically, and would “drag” her hair and pinch her hard. The petitioner states that she was ashamed to talk to anyone about her husband’s behavior and that she was afraid to eat in front of him and his mother because she was not working and earning money. The petitioner reports that one evening after she returned home late from visiting her aunt, her husband threw her drinking cup on the floor, accused her of sleeping with other men, called her names, cursed her, pinched her, and did not allow her to sleep. She also reports that her husband pushed her down and twisted her arms painfully behind her back when she grabbed his cell phone away from him while he was talking to another woman. She states that she was afraid to stay with her husband and his mother and went to the library everyday and after the library closed, she walked aimlessly in Chinatown, that she was unable to sleep at night, and that when she finally did fall asleep, she suffered from endless bad dreams. She reports that her husband refused to take her to a doctor when she was sick and told her to get out if she did not like it, and that on August 29, 2005, she moved out of her husband’s house.

In her November 9, 2006 affidavit, the petitioner reiterates her claims from her March 30, 2006 affidavit, and states further that, at her husband’s suggestion, they opened a savings account together and used her aunt’s address so that his mother would not know about the funds. The petitioner states that she was not allowed to drive her husband’s car, that, therefore, she was not added to his auto insurance policy, and that she does not know whether her husband had life or health insurance, as he did not discuss such things with her. She also reports several behaviors of her husband and other incidents that she does not mention in her March 30, 2006 affidavit. For example, she asserts that if her husband had a bad day at work, he would explode violently at her, that he hit her and threatened to beat her to death after she took his phone away from him in July 2005, that he hit her finger with chopsticks when she touched his food, that he interrogated her regularly about her daily activities, that she hit a pole and broke her teeth while walking in Chinatown, and that she thought of drowning herself. The inconsistencies between the petitioner’s two affidavits detract from the probative value of her

testimony

In her April 10, 2006 affidavit, the petitioner's aunt states that she was the petitioner's matchmaker and that in early 2003, with the petitioner's permission, she gave the petitioner's telephone number to J-Z-. She also states that the petitioner looked happy at the beginning of her marriage to J-Z-, but soon after, she looked sad, absent-minded, and skinny. She states that the petitioner told her that J-Z- and his mother mistreated her, ridiculed her, made cruel remarks to her, and gave her stale, "starting-to-rot" fruits and vegetables to eat. The petitioner's aunt also states that, in order to make the petitioner feel better, she invited her to her home and cooked her favorite foods for her. She states further that in August 2005, the petitioner called her on the telephone, sobbing uncontrollably, to tell her that she was moving out and to ask if she could stay with her temporarily. The petitioner's aunt states that the petitioner slept on a couch in her living room and had become very depressed. In her November 9, 2006 affidavit, the petitioner's aunt primarily reiterates her April 10, 2006 statements and additionally states that she visited the petitioner and her husband two times at their home, that she was not welcomed, and that she heard the petitioner's mother-in-law call the petitioner a pig and also heard the petitioner's husband yell at the petitioner.

In his April 3, 2006 affidavit, _____ states that he observed that for a few months after J-Z- and the petitioner were married, J-Z- often took the petitioner to barbecue gatherings, but after a few months J-Z- began attending with another woman. _____ also states that one night in July 2005, he observed the petitioner walking alone in Chinatown, and that when he offered her a ride, she told him she did not know where to go. He said that thereafter, he saw her in Chinatown and she looked skinny, pale, absent-minded, and depressed, and that he saw her for the last time at the library, at which time she cried and confided in him about the cruel treatment of J-Z- and his mother.

As noted above, counsel states on appeal: "[V]iewed with other evidence in the record, [the] petitioner's affidavits are detailed, consistent, and credible." The AAO disagrees. As discussed above, the petitioner's two affidavits, dated March 30, 2006 and November 9, 2006, respectively, contain inconsistencies. Moreover, in her March 30, 2006 affidavit, the petitioner does not mention confiding in anyone at the library or in Chinatown. Nor does she mention even knowing _____ who describes himself as "[knowing] about [the petitioner's husband] through a mutual friend of me and him." Yet _____ asserts that he saw and "bumped into" the petitioner numerous times in Chinatown, offered her a ride, and even ran into her at the library, whereupon she made an "emotional outburst" and took him into her confidence about the cruel treatment from her husband and her mother-in-law. In addition, _____ and the petitioner's aunt use almost identical language in describing the petitioner - absent-minded, depressed, and skinny. Thus, it is not clear that his views are his own. It is also noted that, although the petitioner does mention meeting _____ in her November 9, 2006 affidavit, she does not mention any of the details that _____ provides in his April 3, 2006 affidavit, such as his encountering her alone in Chinatown and offering her a ride, and his encountering her at the library and her confiding in him after her "emotional outburst." Moreover, she states in her November 9, 2006 affidavit that she had no close contact with anyone except for her aunt and her aunt's family. In view of the foregoing, the AAO must

question the credibility of [REDACTED] claims. 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).

In addition, as stated by the director in her December 21, 2006 decision, the correspondence submitted by the petitioner, including Christmas, Valentine, and birthday cards, speaks to the petitioner's husband's intent, not to the petitioner's. Also, the two joint savings account statements for the petitioner and her husband reflect the address of the petitioner's aunt, not the address of the petitioner and her husband. The AAO acknowledges the petitioner's assertion in her November 9, 2006 affidavit that it was her husband's suggestion that they use her aunt's address so that his mother would not know of the funds. However, as discussed by the director in her December 21, 2006 decision, the record contains no evidence of any additional activity in this account other than the initial deposit of \$300. It is also noted that the financial information on the savings account statement for October 1 through November 3, 2005, which is after the petitioner moved out of her husband's apartment, has been redacted. In view of the foregoing, the joint savings account statements have little probative value. Also the email sent from the petitioner to J-Z- discusses his imminent trip to New Zealand to meet her for the first time. The probative value of this email is minimal, as it does not speak to the petitioner's intent to marry her husband in good faith.

The report, dated January 3, 2006, from [REDACTED] also fails to establish that the petitioner married her husband in good faith. [REDACTED] states that her report is based on her evaluation of the petitioner of unspecified length on January 2, 2006, four months after the petitioner separated from her husband. [REDACTED] diagnoses the petitioner with "Major Depressive Disorder, Severe, without Psychotic features and some PTSD symptoms." [REDACTED] reiterates the petitioner's claims from her March 30, 2006 affidavit and states additionally that the petitioner wants to apply for legal immigration independently, that she does not want to bring disgrace to her family or face humiliation as a divorced or abandoned woman, that she does not want her parents in China to "lose face," and that it would be beneficial to her mental health to stay in the United States. [REDACTED] does not indicate that she treated or recommended any treatment for the petitioner. While we do not question the expertise of [REDACTED] her testimony fails to establish that the petitioner married her husband in good faith. The numerous deficiencies and inconsistencies in the record, discussed herein, detract from the probative value of [REDACTED] testimony.

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 deficiencies and inconsistencies in the record, discussed herein, significantly detract from the credibility of her claim. The petitioner's aunt and [REDACTED] fail to provide probative details regarding the petitioner's alleged good-faith entry into the marriage. In addition, the petitioner's explanation in her November 9, 2006 affidavit regarding

living with her husband only seven months and lack of joint evidence also fails to establish her claim. Accordingly, the petitioner has not demonstrated that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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.

The petitioner has not demonstrated that she entered into marriage with her husband in good faith. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.