

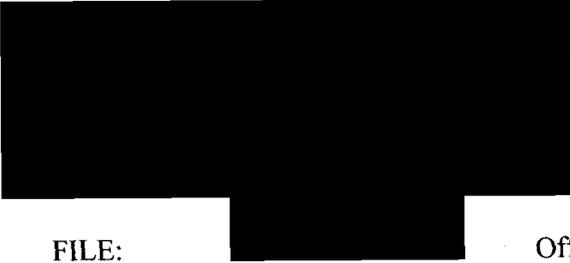


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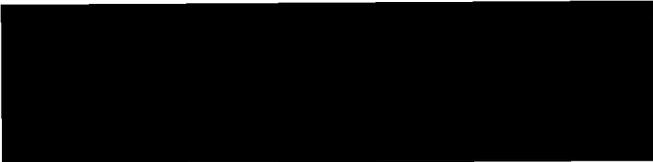
Date: MAY 21 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that she resided with her husband; and (2) that she married her husband in good faith. Counsel filed a timely appeal on August 28, 2009. On appeal, counsel submits a five-page memorandum of law.

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.

\* \* \*

(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 petitioner is a citizen of Chile who entered the United States as a B-1/B-2 visitor on April 10, 2005. She married [REDACTED],<sup>1</sup> a citizen of the United States, on October 13, 2006. The petitioner filed the instant Form I-360 on February 14, 2008. The director subsequently issued a request for evidence (RFE) that the petitioner shared a joint residence with [REDACTED], and that she married him in good faith. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on July 28, 2009.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's grounds for denial of the petition.

### **Joint Residence**

The first issue on appeal is whether the petitioner has established that she resided with [REDACTED]. On appeal, counsel asserts that the couple's marriage certificate, alone, proves that the petitioner shared a

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

joint residence with [REDACTED]. Although the marriage certificate states an address in [REDACTED] as the residence of both the petitioner and [REDACTED] counsel submits no explanation or evidence that the address stated on a New York marriage certificate is based on anything other than the mere statement of the parties to the marriage.

Counsel further asserts that a joint loan agreement and a single joint bank account statement demonstrate the requisite shared residence. However, the loan agreement is not signed by either the petitioner or [REDACTED], makes no reference to any residence shared by the former couple and is dated March 25, 2007, four days before the petitioner stated the former couple ceased living together. The single bank statement also fails to support counsel's claim. The statement reflects only two transactions: a counter deposit of \$1,500 on September 27, 2006, and a debit of \$1,500 to close the account on September 28, 2006, the following day. On appeal, counsel contends that the rapid closure of a bank account does not indicate a lack of joint residence, but rather that the account was closed because [REDACTED] "was a heavy drug user." Nonetheless, counsel fails to articulate how a statement of an account closed the day after it was opened provides probative evidence of a shared residence.

Nor do the statements from [REDACTED] and [REDACTED] establish that the petitioner and G-H- resided together. Although [REDACTED] briefly stated that she knows the couple lived together, and [REDACTED] stated that she visited the couple's apartment, neither affiant offered any probative information regarding the couple's shared residence, such as details regarding their apartment, their home furnishings, their neighbors, their daily routines or any of their belongings.

In her December 12, 2007 self-affidavit, the petitioner stated that she and [REDACTED] began living together in [REDACTED] in September 2006, and they resided together until March 29, 2007. She repeated that assertion in her May 11, 2009 self-affidavit. However, as with the statements from [REDACTED] and [REDACTED] the petitioner's self-affidavits failed to offer any probative information regarding the couple's purportedly joint residence. On appeal, the petitioner submits no new evidence or additional statements regarding her purported residence with [REDACTED].

Upon review of the entire record, the relevant evidence fails to establish that the petitioner resided with [REDACTED] as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### **Good Faith Entry into Marriage**

The second issue on appeal is whether the petitioner has established that she married [REDACTED] in good faith. The AAO agrees with the director's determination that the petitioner has failed to make that demonstration. The brief, one-paragraph letters of [REDACTED] and [REDACTED] fail to describe in detail any occasions on which they observed the former couple together and they offer no other detailed and probative information regarding the petitioner's feelings for [REDACTED] prior to and during their marriage. The petitioner submitted a greeting card signed by [REDACTED] which reflects his feelings for the petitioner, but does not offer insight into the petitioner's intentions in entering the marriage. The petitioner also submitted copies of photographs and a home video,

which picture the petitioner and █████ together at their marriage and on three or four other occasions, but are insufficient to establish that she entered the marriage in good faith.

The loan agreement also fails to establish the requisite good-faith entry into the marriage. Although the document is titled “Agreement Signed by [████] and [the petitioner],” the first sentence states, “I, █████, make this agreement with [his aunt and uncle].” In addition, as previously noted, the loan agreement is not signed by either the petitioner or █████ and is dated four days before the petitioner stated the former couple separated. The bank statement, as previously discussed, does not indicate that the former couple shared assets and liabilities, as it reflects a single withdrawal closing the account the day after it was opened.

In response to the RFE, counsel asserted that other evidence was unavailable to the petitioner due to █████’s abuse. The petitioner herself, however, does not explain what relevant evidence was unavailable and does not describe her relationship with █████ in any probative detail, apart from the abuse. The petitioner’s affidavits speak primarily to █████’s battery and extreme cruelty during the marriage. The petitioner fails to provide a detailed account of the couple’s courtship and marriage, apart from the abuse, which would assist the AAO in evaluating her intentions upon entering the marriage. For example, the petitioner fails to describe, in any meaningful detail, the couple’s first introductions; the petitioner’s first impressions of █████; their decision to date; their first date; their courtship; their decision to marry; their engagement; their wedding; or any of their shared experiences, apart from the abuse. On appeal, the petitioner submits no new evidence or additional statements. The relevant evidence of record fails to demonstrate that the petitioner entered into marriage with █████ 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 resided with █████ or that she married him in good faith. The petitioner has failed to overcome either ground of the director’s denial on appeal. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

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.