

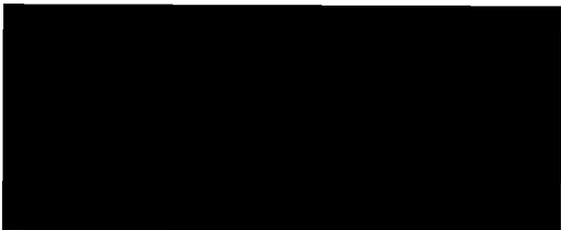
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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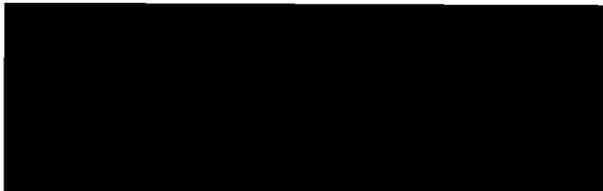
FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:

MAY 28 2010

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:

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 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 petition will be denied.

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 determining that the petitioner failed to establish: that she had resided with the United States citizen spouse; that she had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse; and that she had married the United States citizen spouse in good faith.

On appeal, the petitioner submits a statement and additional documentation. Upon review of the totality of the record, the AAO concurs with the director's determination that the petitioner has not established that she resided with the United States citizen spouse, that she was subjected to battery or extreme cruelty perpetrated by the United States citizen spouse, and that the petitioner entered into the marriage in good faith.

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 explained 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.

(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 explained 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.

(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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Canada. She states on the Form I-360 that she last entered the United States on April 21, 2008 as a visitor. She married [REDACTED],¹ on September 26, 2008 in Florida. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on or about November 21, 2008. The Form I-130 was denied on February 18, 2009 after the petitioner's spouse filed to appear for a scheduled interview. On April 7, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. The petitioner noted on the Form I-360 that she resided with [REDACTED] from September 2008 until "present." The director issued a request for further evidence (RFE) in this matter on April 21, 2009. Upon review of the evidence in the record, including the petitioner's response to the RFE, the director denied the petition on October 6, 2009.

Residence

The AAO will not itemize each document the petitioner submitted for the director's review but incorporates herein the director's accurate characterization of each of those documents as well as the petitioner's testimony and the testimony submitted on her behalf. On appeal, the petitioner submits a personal statement in which she reiterates that she kept her house and her spouse kept his and that they enjoyed the benefits of having both places. The petitioner also notes that she did not see any urgency in changing her address to her spouse's address; thus, she still received mail at her home. The petitioner provides two additional documents that list her address as her spouse's address: (1) a receipt for her medical exam and vaccinations; and (2) the original title for a 1984 trailer that was signed, dated, and the address changed as of November 10, 2008. The petitioner also submits an October 28, 2009 letter stating that the petitioner and her spouse rented a camping site at the [REDACTED] from September 26, 2008 to February 16, 2009.

¹ Name withheld to protect the individual's identity.

Upon review of the totality of the record, including these new documents, the petitioner has not established that she resided with [REDACTED]. The AAO observes that the petitioner acknowledges that she kept her house and although she asserts that [REDACTED] spent the night there, she provides no evidence that he moved into her residence. The AAO also observes that the petitioner implies that she never resided in the trailer as there was a problem with black mold in the trailer. The AAO has reviewed the transcript of the petitioner's conversation with [REDACTED] and agrees with the director's determination that the transcripts do not indicate that the couple lived together but rather indicate that the petitioner never moved into [REDACTED]'s trailer. The petitioner's submission of a letter indicating that the couple rented a camping site is insufficient, in light of other information in the record, to establish that the couple resided together at the camping site.

Upon review of all the documentation and the petitioner's statements in support of the couple's joint residence, the AAO finds that the evidence does not provide a consistent account demonstrating that the couple resided together either at the camping site at [REDACTED] or at the petitioner's residence. The AAO further observes that the petitioner does not describe the places she allegedly lived with her spouse in probative detail. The petitioner has not provided testimony from others familiar with the couple who are able to detail information regarding how they were aware the couple lived together, when the couple allegedly lived together, and where the couple lived together. Upon review of the totality of the record, there is insufficient consistent information to establish that the couple resided together at either of the two addresses listed as their separate residence during the marriage. The record does not establish the couple's joint residence.

Abuse

As the director determined, the record also failed to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her spouse. On appeal, the petitioner notes that she began self-defense classes in March 2009 and asserts that this was because of her fear of [REDACTED]. The petitioner provides a copy of an information packet provided to women in abusive relationships and asserts that the information in the packet describes the abuse that she was not able to put into words. The petitioner acknowledges that she was not battered but contends that [REDACTED] enjoyed abusing her in almost every other possible way and that she was the victim of his extreme cruelty. Although the petitioner relates her fear of [REDACTED] in her April 2, 2009 and October 28, 2009 statements, she does not provide specific incidents that describe acts of battery or extreme cruelty.

The record does not include evidence that the petitioner was subjected to battery or extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner and her general statements fail to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty, that [REDACTED]'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. Again, the AAO has reviewed the totality of the record including the transcript of conversations between the petitioner and [REDACTED]. The AAO finds that the recorded conversations show at most that the couple experienced marital discord.

The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that she has been subjected to battery or extreme cruelty perpetrated by her spouse in order to meet her burden of proof. In this matter, she has failed to do so. Without detailed information regarding specific incidents of abuse, rather than general statements without chronological timelines or other information, the petitioner has not established that she has been subjected to battery or extreme cruelty.

Good Faith Entry into Marriage

The AAO observes that a finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage to determine if this was a marriage of two people intending to share a life together. For immigration purposes, evidence of good faith should demonstrate the emotional ties, commingling of resources, and shared financial responsibilities often associated with a bona fide marriage. The AAO recognizes that the key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975).

As the director noted, the petitioner indicated that she knew [REDACTED] for a number of years prior to beginning their marital relationship. The director identified the specific reasons the documents submitted by the petitioner did not assist in establishing her good faith entry into the marriage. On appeal, the petitioner reiterates that she loved [REDACTED] and married him in good faith and that they had a great relationship until [REDACTED] started using drugs. She notes that if she intended to deceive United States Citizenship and Immigration Services (USCIS) she would have laid better groundwork or chosen a more likely candidate than [REDACTED]. The petitioner does not provide further documentary evidence, other than that mentioned above, to establish that she entered into the marriage in good faith.

The AAO does not find the petitioner's statements or the testimony and documentation submitted probative in establishing her good faith in entering into the marriage. Her statements are general and bare of the essential detail necessary to assist in determining her intentions upon entering into the marriage. As observed above, the testimony and documentary information submitted does not establish the couple's joint residence and thus also is insufficient to establish that the petitioner entered into the marriage in good faith. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

As always 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.

ORDER: The appeal is dismissed. The petition is denied.