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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
and Immigration
Services**

B9

FILE:

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

NOV 17 2010

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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. A subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO) because the petitioner failed to submit any additional documentation in support of the appeal. Upon further review, the AAO has determined that the petitioner submitted additional documentation and thus will reopen the proceeding on a Service motion. 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 resided with her husband and that she married him in good faith.

On appeal, counsel submits a brief and additional evidence.

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).

An alien who has divorced a United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person:

who was a bona fide spouse of a United States citizen within the past 2 years and –

* * *

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.

Section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC).

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 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.

* * *

(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 Cambodia who was admitted to the United States on May, 7, 2007, as a K-1

nonimmigrant. The petitioner married S-S-¹, a U.S. citizen, on May 22, 2007, in Cranston, Rhode Island. On July 2, 2007, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On September 24, 2007, the director denied the Form I-485 because S-S- withdrew the I-864, Affidavit of Support, which he had previously filed on the petitioner's behalf. On October 21, 2008, the acting field office director denied a subsequent motion to reconsider. On October 24, 2008, the marriage between the petitioner and S-S- was dissolved by the Justice of the Family Court in Providence, Rhode Island.²

The petitioner filed the instant Form I-360 on March 9, 2010. On November 27, 2009, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite abuse, joint residence, good moral character and good-faith entry into the marriage. On February 22, 2010, the petitioner, through counsel, responded with additional evidence, and concurrently filed a Form I-485, which remains pending. On March 25, 2010, the director denied the instant I-360 petition because the petitioner did not establish that she resided with her husband and that she married him in good faith. On April 27, 2010, the petitioner, through counsel, timely appealed the denial of the instant I-360 petition.

On appeal, counsel asserts that the petition should be approved, as the documentary evidence previously submitted and the additional evidence submitted on appeal demonstrates that the petitioner resided with her husband and that she married him in good faith. The petitioner submits additional documents, including statements from the petitioner and [REDACTED], dated May 24, 2010 and May 21, 2010, respectively, and a report from [REDACTED] dated May 22, 2010, based on her interview with the petitioner on May 11, 2010, which lasted approximately three hours.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- The petitioner's affidavit dated February 18, 2010, submitted in response to the RFE, and her affidavit dated May 24, 2010, submitted on appeal;
- An affidavit dated February 17, 2010, from [REDACTED], submitted in response to the RFE;
- An affidavit dated January 27, 2010, from [REDACTED], submitted in response to the RFE, and her affidavit dated May 21, 2010, submitted on appeal;
- A report dated May 22, 2010 from [REDACTED]; and
- A bank statement dated August 2, 2007, listing the names of the petitioner and S-S- and the address at [REDACTED]

On the Form I-360, the petitioner stated that she resided with her husband from May 2007 until June 2007, and listed the last address at which they resided together as: [REDACTED]

¹ Name withheld to protect individual's identity.

² File No.: P08-1178.

Island 02910.

In her February 18, 2010 affidavit submitted in response to the RFE, the petitioner states, in part, that, after arriving in the United States [on May, 7, 2007], she and S-S- ended up living in S-S-'s family home [the ██████████], until she moved out on June 30, 2007, and went to stay with her cousin, ██████████, in ██████████.

In her May 24, 2010 affidavit submitted on appeal, the petitioner states, in part, that she and S-S- lived with his parents and they had lived together for "less than two months" when she "decided to leave him" and moved to "[her] cousin ██████████ house."

In her February 17, 2010 affidavit, ██████████ states, in part, that her sister, ██████████, told her that the petitioner and S-S- "seemed happy at first" but "one day, out of nowhere, [the petitioner] had called her, very upset, crying that she needed to leave [S-S-'s] house." ██████████ explains that the petitioner stayed with her sister and that "a wife [in Cambodian society] who is kicked out by her husband, like [the petitioner], will have a very bad reputation."

In her January 27, 2010 affidavit, ██████████ states, in part, that the petitioner and S-S- "seemed very happy" until the petitioner called her one day crying and wanted ██████████ to pick her up. ██████████ states that she took the petitioner to work with her and then to her home after S-S- did not show up to take his wife back home.

In her May 21, 2010 affidavit, ██████████ states, in part, that the petitioner lived with her from the time she left S-S- in June 2007 until she moved to Colorado in February 2009. ██████████ also states that she was present at the petitioner and S-S-'s wedding ceremony.

In his decision, the director found the petitioner's evidence insufficient to show that she had resided with S-S-. The director pointed out that the petitioner had not submitted bank statements for the time period of the claimed joint residence. The director also found that the interview notice from USCIS, addressed to the petitioner and S-S- at ██████████ and the affidavits failed to demonstrate the claimed joint residence. In addition to the director's findings, the record contains unexplained inconsistencies pertaining to the claimed joint residence. For example, the petitioner asserts that she moved out of her husband's family home on June 30, 2007, which is inconsistent with the information on the Form I-864, Affidavit of Support Under Section 213A of the Act, signed by ██████████ on October 19, 2007, in which ██████████ lists the petitioner's mailing address as the ██████████ address. Moreover, the information provided by ██████████ in the Form I-864, which she signed on October 19, 2007, listing the petitioner's mailing address as the ██████████ address, is inconsistent with her own testimony in her personal affidavits dated January 27, 2010 and May 21, 2010, respectively, in which she indicated that, during this same time period, the petitioner was actually living with her in Providence, Rhode Island. In addition, the record contains a copy of the U.S. Customs Declaration signed by the petitioner on May 7, 2007, the date she arrived in the United States, in which she listed her destination as: ██████████. The record also contains a copy of the petitioner's I-94, Arrival Record, in which the petitioner listed under "Address

While in the United States”: [REDACTED] It is noted that evidence in the record indicates that the [REDACTED] address is that of [REDACTED] place of employment. As such, it appears that, upon her arrival to the United States, the petitioner did not reside with S-S- in his family home at [REDACTED] as she claimed on the instant petition. The record contains no explanation for these inconsistencies. The affidavits from the petitioner and her cousins, as well as the report from [REDACTED] also contain inconsistencies pertaining to the petitioner’s claimed joint residence with S-S-. For example, the petitioner reported to [REDACTED] that she was never allowed to leave her husband’s family home except for “three times with her mother-in-law to do the family grocery shopping,” and that S-S- refused to “take her out to see the area in which she lived,” which is inconsistent with [REDACTED] May 21, 2010 affidavit, in which she states that, after the petitioner and S-S- were married, they visited her a few times, once at her house where they had dinner together, and at her job “just to stop by and talk for awhile.” In addition, [REDACTED] statement that the petitioner was “kicked out by her husband” is inconsistent with the petitioner’s statement that she herself decided to move out of S-S-’s family home. Again, the record contains no explanation for these inconsistencies. While the AAO acknowledges the bank statement dated August 2, 2007, listing the names of the petitioner and S-S- and the [REDACTED] address, the statement contains no evidence that both the petitioner and S-S- used the account. A review of the record in its entirety does not find that petitioner resided with S-S-.

In sum, the relevant evidence contains unexplained inconsistencies regarding the petitioner’s alleged residence with her husband. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In addition to the documentation listed above, the record contains photographs of the petitioner and S-S- together to show that she married her husband in good faith.

In her February 18, 2010 affidavit submitted in response to the RFE, the petitioner states, in part, that her mother and S-S-’s mother, who were childhood friends, arranged for her to meet S-S- for the first time on July 25, 2006, at the airport in Phnom Penh. The petitioner states that “[a]fter spending many days, just the two of [them],” S-S-’s mother asked him if he wanted to marry the petitioner and he said yes. The petitioner states that she was satisfied with S-S-’s answers to her questions regarding his family, work ethic, and willingness to support her financially and emotionally, and decided they “got along very well.” The petitioner states that after being granted a visa and arriving in the United States, she found out things were different, as S-S- had no job and refused to work, and therefore they ended up living with his family. The petitioner explains that she suffered abuse from S-S- until she moved out on June 30, 2007.

In her May 24, 2010 affidavit submitted on appeal, the petitioner states, in part, that her mother and S-S-’s mother “got together and decided [she and S-S-] should marry.” The petitioner states that her mother “pushed [her] into it because [she] was in [her] late twenties at that time and in Cambodia, that is considered being an old maid.” The petitioner states that, after becoming engaged, S-S- returned to

the United States while she stayed in Cambodia waiting for a visa, and they stayed in contact with each other by phone. The petitioner states also that when she arrived in the United States, S-S- "didn't seem as excited to see [her] as [she] was to see him." The petitioner explains that shortly thereafter, they were married in S-S-'s mother's salon in the presence of his mother and her cousin, [REDACTED]. The petitioner states that after their wedding ceremony, they returned to S-S-'s family home for a dinner with S-S-'s brother and sister. The petitioner explains that she and S-S- had problems "[f]rom almost the very beginning," whereupon she decided to leave him and move in with her cousin, [REDACTED] where she lived from late June 2007 to February 2009.

In her February 17, 2010 affidavit, [REDACTED] states, in part, that she lives in Colorado and thus did not have much contact with the petitioner and S-S-'s family when the petitioner arrived in the United States. [REDACTED] also states that her sister [REDACTED] told her that the petitioner and S-S- "seemed very happy at first," but one day she received a call from the petitioner telling her that she needed to leave S-S-'s house, whereupon the petitioner began living with her sister.

In her January 27, 2010 affidavit, [REDACTED] states, in part, that the petitioner and S-S- "seemed very happy" when they visited her at her business and when they went to her home for dinner. [REDACTED] states that the petitioner called her one day crying and wanted [REDACTED] to pick her up. [REDACTED] states that she took the petitioner to work with her and then to her home after S-S- did not show up to take his wife home.

In her May 21, 2010 affidavit, [REDACTED] states, in part, that she knows the marriage between the petitioner and S-S- was "real and valid." [REDACTED] also states that she was present at the petitioner and S-S-'s wedding ceremony and they both seemed happy.

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). The petitioner, however, has submitted scant evidence to support a finding that she entered into her marriage in good faith. The statements submitted on the petitioner's behalf are general and vague and provide minimal information pertinent to the circumstances of the alleged good-faith entry into the marriage. For example, [REDACTED] states that she did not have much contact with the petitioner and S-S- because she lives in Colorado, and thus she reports only what her sister told her. In addition, [REDACTED] states that the petitioner and S-S- "seemed very happy" and their marriage was "real and valid." In addition to being general and vague, [REDACTED] testimony is also inconsistent with the petitioner's own testimony, as discussed above. For example, she stated that the petitioner and S-S- visited her after their marriage at [REDACTED] home and at her place of business, which is inconsistent with what the petitioner reported to [REDACTED] that she was never allowed to leave the family home and that she went out only three times to go grocery shopping with her mother-in-law. Again, the record contains no explanation for these inconsistencies. The photographs confirm that the petitioner and S-S- were pictured together, but these documents alone do not establish the petitioner's good-faith entry into the marriage. In sum, the numerous inconsistencies, discussed above, and the scant evidence in the record regarding the petitioner and S-S-'s courtship, decision to marry, wedding, and shared experiences, significantly detract from the credibility of her claim. Upon review of the record in its entirety, the relevant evidence fails to

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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 resided with her husband and that she married him 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.

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.