

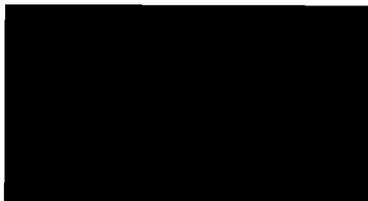
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



B9

FILE:



Office: VERMONT SERVICE CENTER Date:

NOV 23 2010

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:

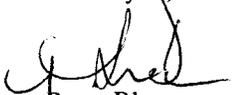


INSTRUCTIONS:

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 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. 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 pursuant to 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.

On June 17, 2010, the director denied the petition, determining that the petitioner had not established: that she had resided with the claimed abusive United States citizen spouse; and that she had entered into the marriage in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief and previously provided documents in support of the appeal.

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 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 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 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.

\* \* \*

(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 India. She married K-K-,<sup>1</sup> the United States citizen spouse in India on March 6, 2005. She entered the United States on or about October 6, 2006 as a conditional permanent resident married to a United States citizen.<sup>2</sup> On April 2, 2007 the marriage was annulled. On March 5, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

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

<sup>2</sup> The petitioner's conditional residence status was terminated in a decision issued on May 4, 2009.

*Residence*

On the Form I-360, the petitioner claimed that she resided with K-K- from March 6, 2005 to September 2006 in India. The record included a July 18, 2008 affidavit signed by the petitioner in which she declared: that she married K-K- on March 6, 2005 and he sponsored her for a green card; that he was very nice to her before the marriage; that everything was going in the right direction and she was happy to join her husband in the United States; and that all of a sudden her husband left her without informing her of anything and she came to know through family friends that he went back to the United States. In the petitioner's initial statement in support of the Form I-360, she declared that she and K-K- rented part of a double storied house in India where they spent one month together after their marriage on March 6, 2005. The petitioner also stated that one day K-K- told her he was returning to the United States and upon his return to the United States, the couple communicated normally for a while. The petitioner indicated that when she obtained her visa to the travel to the United States she decided to come to the United States but K-K- did not meet her at the airport and she then lived with friends and relatives. In response to the director's request for evidence (RFE) on this issue, the petitioner provided another personal statement, in which she declared that she and K-K- married on March 6, 2006, "after which [they] rented a upper part of a double storied house in" India where they spent some time together until K-K- returned to the United States. The petitioner noted that although K-K- had promised he would return to get her, when she did not hear from him, she kept trying to contact him but all her attempts were in vain. After she obtained her visa, she and her family members decided that she should go to the United States to find K-K- but when she arrived she was not able to locate him and she learned through the Immigration office that K-K- had divorced her.

The record also included an undated statement from [REDACTED], who declared that he had rented the top portion of his house to the petitioner and K-K- and they started to live in his house on February 25, 2005 and that K-K- left about one month later and the petitioner continued to live in the house until September 2006. The record further included an April 18, 2009 affidavit signed by [REDACTED] who declared that the couple came to him in February 2005 to rent the upper portion of his house because they were soon to be married and that he rented them the top floor which they occupied in the month of March 2005. The record also contained an affidavit dated stamped as January 27, 2010 in which [REDACTED] declared: that he "rented the top portion of [his] house to [the petitioner and K-K-] who started to live in [his] house Tenants from February 25, 2005;" and that "[K-K-] stayed on first floor of [his] house with her [sic] wife and after some time he left for the United States of America, leaving his wife [the petitioner] in [Sandeep Singh's] house as a tenant who continued to live there by her self till September 2006."

In an April 17, 2009 affidavit, the petitioner's mother declared: that one day the petitioner's landlord, who lived on the ground floor, called and told her that the petitioner had been beaten by her husband. The petitioner also provided affidavits signed by [REDACTED], [REDACTED], [REDACTED], and [REDACTED] that all bear a date stamp of January 27, 2010. Each affiant declared that he or she had visited the petitioner and her husband at their rented house.<sup>3</sup>

<sup>3</sup> Although the affidavits of the petitioner's mother and these four affiants predate the director's

In a January 19, 2009 evaluation prepared by [REDACTED], a licensed marriage and family therapist, [REDACTED] reported that the petitioner indicated that the couple delayed their honeymoon until they could both be in the United States and that K-K- returned to the United States on October 6, 2006 – a year and a half after the marriage. In an April 22, 2009 evaluation prepared by [REDACTED], a licensed marriage and family therapist, [REDACTED] indicated that the petitioner reported that shortly after her marriage, she and K-K- moved into an apartment together. [REDACTED] also stated that K-K- came to the United States in October 2006 and that the petitioner stayed in their apartment in India another 18 months before coming to the United States to join K-K-.

The director determined that the inconsistencies in the record regarding the dates the petitioner and K-K- resided together in India precluded a determination that the petitioner established a joint residence with K-K-. On appeal, counsel for the petitioner asserts that the landlord's April 18, 2009 affidavit which included more details regarding the claimed abuse, should be the affidavit used as the landlord's other affidavits appear rushed and mistake filled. Counsel asserts that the landlord's April 18, 2009 statement is independent evidence that the petitioner resided with K-K-.

The petitioner's statements, the affidavits submitted on her behalf, and the information the petitioner provided to two different therapists do not establish that the petitioner established a joint residence with her husband. Counsel's assertion on appeal that the landlord's statement of April 18, 2009 should be used to confirm that the petitioner resided with K-K- is without merit. The landlord does not provide additional information explaining why his two other statements in the record contain information that is inconsistent with the April 18, 2009 statement. The four affidavits signed by [REDACTED], [REDACTED], [REDACTED], and [REDACTED] that all bear a date stamp of January 27, 2010, as well as the petitioner's mother's affidavit, do not provide the requisite detail describing their alleged visits to the petitioner's apartment. The general one-sentence statement in each of the four affidavits signed by [REDACTED], [REDACTED], [REDACTED], and [REDACTED] is insufficient to establish that the petitioner resided with K-K-. The petitioner's mother does not provide detailed information regarding: her daughter's alleged joint residence; when the petitioner allegedly resided at the residence; or when the petitioner's husband allegedly resided there. The record does not include testimony or any documentary evidence establishing that the couple established a joint residence in India during their marriage, and the petitioner claims that she and K-K- never resided together in the United States. The petitioner has failed to establish that she resided with K-K- as required to establish eligibility for this benefit.

#### *Good Faith Entry into Marriage*

The petitioner has also failed to establish that she entered into the marriage in good faith. The petitioner stated generally that she met K-K- in February 2005 while he was visiting India to attend his cousin's wedding. The petitioner indicated: that upon their introduction, K-K- asked his cousin about marrying her and that when the proposal was brought to her mother's attention, they agreed to

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decision, counsel for the petitioner references these affidavits as "new" evidence on appeal.

meet. The petitioner stated that she was asked whether she was interested in marrying K-K- and she agreed because his cousin had said nice things about him. The petitioner's mother also referred to the marriage as an arranged marriage and her advice to the petitioner to try to make the marriage work. The record includes photographs of the wedding and a number of affidavits from individuals who claimed to have attended the wedding and who express their belief that the marriage was not a contract or paper marriage. The record includes an April 1, 2005 invoice for a scooter, wherein the petitioner identifies herself as the wife of K-K-. In the January 19, 2009 evaluation prepared by [REDACTED], [REDACTED] noted that the petitioner and K-K- entered into an arranged marriage and that the petitioner had described her future husband as attentive and friendly towards her, and implied that the couple did not consummate the marriage as the honeymoon was delayed until the petitioner was able to come to the United States.

On appeal, counsel for the petitioner asserts that the petitioner entered into the marriage with the hopes of making a life together with her United States citizen spouse and notes that the petitioner "stuck with the marriage" despite K-K-'s cruel abuse. Counsel also addresses the petitioner's inconsistent statements regarding her relationship with K-K- after he returned to the United States as set out by the director in his decision. Counsel asserts that the petitioner's first statements provided to United States Citizenship and Immigration Services (USCIS) in 2008 and early 2009 reflect the petitioner's psychological symptoms of confusion and uncertainty caused by the psychological abuse meted out by her husband and that the petitioner's later statement is more reliable given the passage of time and the petitioner's better mental state.

Upon review of the information in the record, the petitioner has not provided detailed information that demonstrates that she entered into the marriage in good faith. The record lacks the requisite information that would establish that the "arranged" marriage was a good faith marriage. The petitioner's statements do not provide any specific information regarding her intent in entering into the marriage. 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. In this matter, the petitioner provided only a cursory description of her introduction and interactions with her spouse prior to the marriage and during the marriage, other than as her interactions related to the alleged abuse. The petitioner's remaining relevant testimony is general and inconsistent as noted by the director and is insufficient to establish that she entered into the marriage in good faith. Counsel's explanation of the petitioner's inconsistent statements regarding whether she had contact with K-K- after he left India is insufficient. The petitioner's failure to provide consistent testimony regarding the nature of her relationship with K-K- undermines the credibility of her testimony.

The affidavits submitted on the petitioner's behalf also fail to include information regarding the shared experiences of the couple. Although the affiants noted that the couple married, noted their belief that the marriage was not a paper or contract marriage, and some of the affiants indicated that they attended the wedding or visited the couple, the affiants do not provide the necessary information

establishing the petitioner's intent in entering into the marriage. Although the petitioner's mother provided an affidavit on the petitioner's behalf, she does not provide the requisite detailed information that would assist in establishing the petitioner's intent in entering into the marriage. The affiants do not describe any particular incidents wherein they witnessed the alleged bona fides of the couple's marital relationship. The general statements submitted do not substantiate that the petitioner's intent upon marrying K-K- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the intent of the petitioner upon entering into the marriage.

A wedding ceremony and photographs of the wedding couple do not establish the petitioner's intent in entering into the marriage. These documents, as well as an invoice wherein the petitioner identified herself as the wife of K-K-, are insufficient to establish that the petitioner intended to establish a life with K-K-. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf is inconsistent and thus not probative in supporting a finding that she entered into the marriage in good faith. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with K-K- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings 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.