

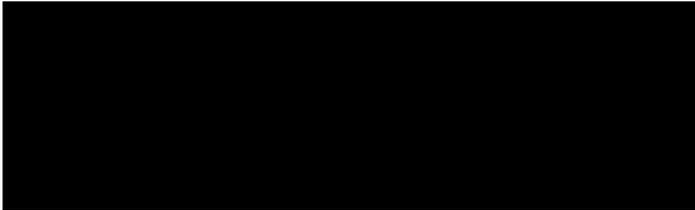
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



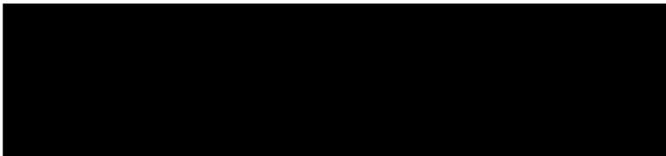
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DATE: **APR 12 2011** Office: VERMONT SERVICE CENTER File: [REDACTED] EAC 09 241 50533

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 \$630. 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 summarily dismissed. The petition remains 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.

The director denied the petition, after determining that the applicant had not established that: she resided with the claimed abusive spouse; that she had been subjected to battery or extreme cruelty by a United States citizen; or she had entered into the marriage in good faith.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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.

(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.

Summary Dismissal

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part:

An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of the Philippines. She entered the United States May 23, 2007 on a K-3 visa subsequent to her marriage to E-M-¹ in the Philippines. On March 20, 2008, E-M-'s petition for an annulment of the marriage was granted in the Superior Court of California, County of San Diego. On September 20, 2008, the petitioner married J-M-,² the claimed abusive United States citizen, in Las Vegas, Nevada. On September 4, 2009, the petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On January 29, 2010, the director issued a request for evidence (RFE). On May 27, 2010, upon consideration of the totality of the record, the director denied the petition, determining that the petitioner had not established: she resided with the claimed abusive spouse; she had been subjected to battery or extreme cruelty by a United States citizen; or she had entered into the marriage in good faith.

Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, and checked the box to indicate that a supplemental brief and/or additional evidence would be submitted to the AAO in 30 days. On the Form I-290B, counsel reiterated that a brief and/or evidence would be submitted within 30 days. To date, no additional evidence or brief have been submitted. The record is considered complete.

Residence

The petitioner noted on the Form I-360 that she had resided with J-M- from November 2008 to April 2009. Other than the petitioner's personal statements, dated October 14, 2009 and April 19, 2010, the record includes no information regarding her claimed joint residence with J-M-.

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

The petitioner's personal statements provide an overview of the alleged abuse and do not provide any probative evidence regarding the petitioner's alleged joint residence with J-M-. The record on appeal also fails to include any evidence regarding the petitioner's alleged joint residence with J-M-. Accordingly, the petitioner has not established that she jointly resided with J-M-.

Abuse

The petitioner in this matter provides statements without descriptive and specific detail regarding alleged battery or extreme cruelty perpetrated by J-M-. Her statements do not provide the surrounding circumstances and events of the claimed abuse. This issue is also not addressed on appeal. The record does not include sufficient probative, consistent detail to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by J-M-.

Good Faith

The petitioner provides no information in her statements regarding her interactions with J-M- prior to or during the claimed marriage. The record does not include other information that would assist in establishing that the petitioner entered into the marriage in good faith. This issue is also not addressed on appeal. The petitioner has not established that she entered into the marriage in good faith.

Summary Dismissal

The director in this matter determined that the petitioner had not submitted sufficient probative evidence demonstrating that he had been subjected to battery or extreme cruelty perpetrated by her United States citizen spouse. We concur with the director's assessment of the relevant evidence. The petitioner does not provide any further evidence or argument on appeal that overcomes the director's decision. The petitioner fails to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding. Accordingly, the appeal must be summarily dismissed pursuant to the regulation at 8 C.F.R. § 103.3(a)(1)(v).

Conclusion

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 summarily dismissed. The petition remains denied.