

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

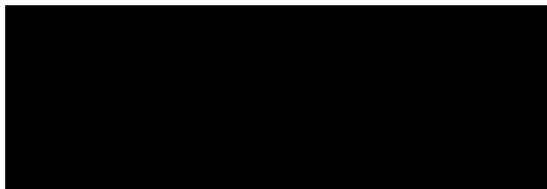
PUBLIC COPY

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

B9



FILE:  Office: VERMONT SERVICE CENTER Date: FEB 15 2011

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 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be 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 her United States citizen spouse.

On August 17, 2010, the director denied the petition, determining that the petitioner had not established she had jointly resided with her United States citizen spouse during the marriage and had not established that she entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a brief, and additional documents.

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.

* * *

(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 set forth 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 of Cameroon and citizen of France. She entered the United States on or about February 2002 as a visitor. On February 17, 2004, the petitioner married W-D-¹, the claimed abusive United States citizen. On or about April 13, 2004, W-D- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On July 8, 2006, the Form I-130 was denied and on July 20, 2006, the petitioner's Form I-485 was denied. On April 19, 2007, the petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, which was denied on October 9, 2008. The petitioner's motion to reopen the matter was dismissed on December 8, 2008. On December 28, 2009, the petitioner filed her second Form I-360. On February 2, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had jointly resided with W-D- and that she had not

¹ Name withheld to protect the individual's identity.

established that she had entered into the marriage in good faith. Counsel for the petitioner timely submits an appeal and additional evidence.

Residence

The petitioner in this matter does not indicate on the Form I-360 that she jointly resided with W-D-. In the petitioner's initial November 9, 2009 statement in support of the instant Form I-360, the petitioner declared that: after the couple married on February 17, 2004, W-D- revealed that he not only had cancer, but was also bisexual and had HIV/AIDS; she wanted to live in the same house with W-D- even though they could not have sex because of his condition, but her daughter made threats to run away if W-D- moved into the petitioner's house; she obtained a house for W-D- five doors from her house; even though they did not live under the same roof, W-D- spent all of his time with the petitioner and her family, "[h]e just slept in his own house." The petitioner stated that W-D- left her and moved to Arizona in the summer of 2006.

In the petitioner's son's November 12, 2009 affidavit, her son declared that W-D- did not actually live with the petitioner, his sister, and himself, but instead lived in a house five doors down from where they lived. In the petitioner's daughter's November 9, 2009 affidavit, her daughter declared that she had prevented W-D- from moving into their house by threatening to run away or commit suicide if he moved in with them.

Based upon the information in the record, the director determined that the petitioner had not established that she had resided with W-D-.

On appeal, counsel for the petitioner submits a receipt showing the petitioner's limited liability company paid W-D-'s rent for a house located at [REDACTED] for a period of time from April 1, 2005 to March 31, 2006. Counsel also submits photocopies of utility bills addressed to W-D- at [REDACTED] where the petitioner and her children lived. One utility bill indicates current charges are due on November 30, 2004 and a second utility bill indicates current charges are due on July 2, 2010. Counsel asserts that although the petitioner and W-D- were not domiciled in the same house, the [REDACTED] house was one of the petitioner's residences and W-D- also resided there. Counsel contends that it easily follows that the couple resided together at [REDACTED] for some time prior to the petitioner filing the Form I-360.

The term "residence" means the place of general abode; the place of general abode of a person means his or her principal, actual dwelling place in fact, without regard to intent. Section 101(a)(33) of the Act. The petitioner's primary place of abode was in her separately established house. She does not provide any probative testimony, nor do any of the affiants providing testimony on her behalf, that she moved into W-D-'s residence. She makes it quite clear that the couple maintained separate houses because of her daughter's dislike of W-D-. She does not establish that she ever moved into W-D-'s residence. Likewise, the petitioner has not established that W-D- ever moved into her residence. The utility bills do not establish that W-D- resided at the [REDACTED] address. W-D- receiving mail at the petitioner's house is not probative in establishing the couple's joint residence. The receipts that counsel has submitted show that W-D- still receives mail at the petitioner's residence, more than four years after he moved to Arizona. The

petitioner's own statements in this matter establish that she did not jointly reside with W-D-. Upon review of the totality of the evidence in the record, including the petitioner's testimony and the testimony submitted on her behalf, the petitioner has failed to establish that she jointly resided with W-D- during the marriage.

Good Faith Entry Into Marriage

In the petitioner's November 9, 2009 statement in support of the instant Form I-360, she declared that: she met W-D- at a party in 2003 and discovered they had common interests; W-D- started coming over to help with her gardening and told her that he had cancer; after six months her relationship with W-D- became romantic; they went to different restaurants, saw many movies together, and she thought he would be a wonderful father figure to her two teenaged children; and she was completely in love him. The petitioner stated further that on advice of her attorneys, she had W-D- sign a prenuptial agreement that kept their financial resources separate although she had purchased a number of things for W-D-. The petitioner stated that she married W-D- in good faith with the full intention of spending her life with him but that he subjected her and her children to extreme cruelty, became bitter and hostile and left her and moved to Arizona.

The petitioner also submitted her son's statement in which he declared that: although he had concerns about his mother's relationship with W-D-, W-D- seemed to make his mother happy and that W-D- took him to Tae Kwon Do classes; they took vacations together; and that his mother married W-D- with the full intention of spending the rest of her life with him. The petitioner further submitted her daughter's statement in which she declared that: she met W-D- in 2004 when he came to visit her mother; after about six months her mother and W-D- started dating; her mother fell in love with W-D-; that they took vacations together; and that her mother married W-D- with the full intention of spending the rest of her life with him.

The record also included affidavits from [REDACTED]. In the November 9, 2009 affidavit signed by [REDACTED] he declared that: he met the petitioner in August 2005; he and his wife became friends with the petitioner and W-D- and had meals with them on a regular basis; he has no doubt from his interaction with the petitioner and W-D- that they were a true married couple; until approximately the beginning of 2006, he saw the petitioner and W-D- hold hands, behave affectionately to each other and kiss each other often; he believed that they were in love with each other and behaved as a married couple; and he believed from his personal contact with the petitioner and W-D- that the couple loved each other at the inception of their marriage but that W-D- ruined the marriage with his behavior.

In the November 13, 2009 affidavit signed by [REDACTED] she declared that: she met the petitioner in 2003 when they were neighbors; her children and the petitioner's children were friends; her house was only a couple of houses from the petitioner's and she and her children and the petitioner and her children interacted frequently; she met W-D- in 2003; she met W-D- at the petitioner's house; she knows that the petitioner and W-D- were truly husband and wife and she saw them express affection for each other on many occasions during the period between 2003 and 2005; she went to dinner with the petitioner and W-D-, and the children would accompany

them on many occasions; and she is aware that W-D- ended his relationship with the petitioner and moved to Arizona but the petitioner did not explain what happened in their relationship.

In the November 12, 2009 affidavit of [REDACTED] declared that: she met the petitioner in August 2003; she and the petitioner were next door neighbors; her children and the petitioner's children were friends and socialized at each other's houses a great deal; she and her husband would go out to dinner and a movie with the petitioner and W-D- a couple of times a month; she saw the petitioner and W-D- about every day and had the opportunity to observe them interact with each other; and she saw the petitioner and W-D- hold hands, behave affectionately to each other and kiss each other often and she believed that they were in love with each other and behaved as a married couple .

The record also included: a September 23, 2009 letter signed by instructors of a marital arts club who indicated that the petitioner's son and W-D- were enrolled in Tae Kwon Do classes from February 2005 to May 2005 and often arrived and left together; a January 16, 2008 letter signed by an attorney advising the petitioner to enter into a prenuptial agreement with W-D- to ensure that her personal assets remained her sole and separate property unless she intentionally commingled them with W-D-'s assets; photographs of the couple and others; and electronic mail between the petitioner and W-D- after W-D- moved to Arizona.

The record further included the petitioner's declaration dated November 16, 2006 in support of the first filed Form I-360 in which the petitioner declared that: the couple spent a lot of time together before getting married, vacationing together, eating at different restaurants, and W-D- taking her son to Tae Kwon Do classes; shortly after they married, W-D- discovered he had liver cancer and became very depressed and that is when the problems started in the marriage; and she wanted to buy a bigger house in Las Vegas or Arizona, but as the situation at home became more unbearable, it was clear that was not possible as her daughter told her if they were to move with W-D- to a bigger house, she would kill herself or run away.

The director determined that the information in the record did not establish that the petitioner entered into the marriage in good faith.

On appeal, counsel for the petitioner asserts that the director glossed over the affidavits submitted on the petitioner's behalf and failed to contact the witnesses to obtain further testimony. Counsel contends that each of the affiants explains how they came to know the petitioner and W-D-, the nature of their contact, and a description of what the affiant saw and heard when the affiant was in the presence of the couple. Counsel notes that W-D- spent time with the petitioner's son and doing so only makes sense if the marriage had been entered into in good faith. Counsel references the electronic mail sent between the couple and claims that the electronic mail shows that the couple still have feelings for each other. Counsel asserts that when the couple married they intended to spend the rest of their lives together and when considering the totality of the record, the petitioner has met her burden of proof that her marriage to W-D- was bona fide.

Upon review of the totality of the record, the petitioner has provided a cursory description of how she met W-D-, and other than listing restaurants and a couple of activities, fails to describe in probative detail the couple's interactions prior to or during the marriage except as it relates to the claimed abuse. When considering the record in the aggregate as counsel suggests, the petitioner's statements reveal significant inconsistencies. For example, the petitioner in her November 16, 2006 statement indicates that the couple spent a year dating prior to their marriage and vacationed together. In the petitioner's November 9, 2009 statement, she states that after six months her relationship with W-D- became romantic but she does not mention vacationing together prior to the marriage. The petitioner's children also appear confused on how long their mother dated W-D- prior to her marriage and what they did prior to the marriage, as the petitioner's daughter states that she met W-D- in 2004 and after about six months her mother and W-D- started dating and the petitioner's son references being taken to Tae Kwon Do classes by W-D- prior to the petitioner's marriage although the receipts show his and W-D-'s enrollment subsequent to the marriage. More importantly, in the petitioner's November 16, 2006 statement she indicates that shortly after the couple married, W-D- discovered he had liver cancer; however, in her November 9, 2009 statement, she states that W-D- told her of his cancer prior to the marriage and after the marriage W-D- revealed that he was bisexual and had HIV/AIDS, an assertion not referenced in her initial statement. The petitioner's statements do not provide a consistent picture of her courtship with W-D-, her knowledge of W-D-'s medical condition, and her continued relationship with W-D- subsequent to the marriage. She fails to provide probative information regarding her intent when entering into the marriage. In this matter, the record does not include probative and consistent testimony which allows a conclusion that the petitioner entered into the marriage to establish a life together.

Upon review of the three affidavits submitted by [REDACTED] these individuals similarly provide a list of restaurants and activities that the couples allegedly participated in together, along with a general conclusory statement that the petitioner and W-D- were affectionate with each other and had a true marriage. The petitioner's two neighbors do not comment upon the living arrangement of the couple. Similarly, [REDACTED] although noting that W-D- allegedly had liver cancer and that the affiant and his wife were very close to the petitioner, does not comment on the petitioner's interaction with W-D- regarding his health. These affidavits do not provide the probative detail of the circumstances of a legitimate marriage.

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). In this matter the petitioner has not set forth her intent in probative and consistent detail in her statements to United States Citizenship and Immigration Services (USCIS). In addition, the affiants' statements, submitted on behalf of the petitioner, do not disclose probative detail of the circumstances or specific events witnessed in the particular situation of the petitioner's marriage and the statements do not assist in establishing the petitioner's intent in entering into the marriage. Neither has the petitioner provided other evidence that would demonstrate that her intent in entering into the marriage was in good faith. As the director observed, the electronic mail has not been authenticated and moreover, the electronic mail does not provide information that establishes the petitioner's intent when entering into the marriage.

Photographs show that the petitioner and W-D- and other individuals were together on several different occasions but do not establish the petitioner's intent when entering into the marriage.

Upon review of the petitioner's statements and the totality of the record, the record is bare of the essential detail necessary to demonstrate that the petitioner's intent to enter into the marriage was in good faith. The record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with W-D- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

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. The petition remains denied.