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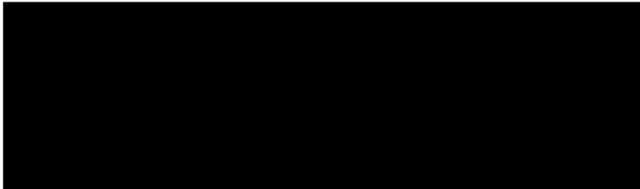
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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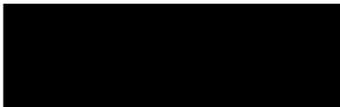
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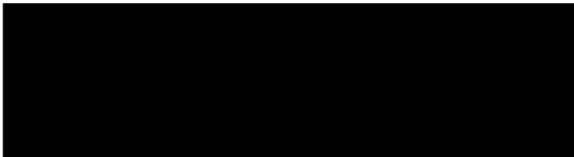
IN RE:

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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The AAO granted a subsequent a motion to reopen and reconsider and affirmed its previous decision. The matter is again before the AAO. Although the petitioner erroneously indicated on the Form I-290B, Notice of Appeal or Motion, that she was filing an appeal, the AAO will grant a second motion to reopen and reconsider. The previous AAO decisions, dated September 15, 2009 and February 9, 2009, will be affirmed. The petition will remain 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.

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 explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

\* \* \*

(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.

As the facts and procedural history have been adequately documented in the previous decisions of the AAO, only certain facts will be repeated as necessary here. In this case, the petitioner is a native and citizen of China who was admitted into the United States on February 16, 2003 as a K-1 fiancée of a U.S. citizen. The petitioner filed the instant Form I-360 on April 14, 2005. The director denied the petition on December 12, 2006, finding that the petitioner failed to establish that she had entered into a legally binding marriage with a U.S. citizen and that she had married her husband in good faith. In its February 9, 2009 decision on appeal, the AAO determined that the petitioner's marriage to her former husband was valid, thus rendering unnecessary the director's requirement that the petitioner provide original certificates of marriage and annulment. In its subsequent decisions on appeal and on motion, the AAO concurred with the director's determination that the petitioner had failed to establish that she married her husband in good faith.

On second motion, counsel states that the evidence demonstrates that the petitioner married her former U.S. citizen husband in good faith. As supporting documentation, counsel submits: a supplemental declaration dated November 12, 2009, from the petitioner; a notarized statement dated October 10, 2009, from the petitioner's former U.S. citizen husband; a statement dated October 26, 2009, from the petitioner's son, [REDACTED]; the petitioner's business card, business license, and related information; documentation pertaining to the petitioner's educational background; telephone bills; instant messenger printouts; a FedEx invoice; airline tickets and related documentation; photographs; a statement dated November 4, 2009, from [REDACTED]; a statement dated November 3, 2009, from [REDACTED]; two business cards for [REDACTED]; and copies of documentation already in the record.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

On second motion, counsel states that the totality of the evidence is sufficient to establish that the

petitioner married her former husband in good faith. Counsel also states that the petitioner is now submitting phone bills and instant messenger printouts for the time period from August 2001 to November 2001, to show the calls to the petitioner from her former husband during their courtship. Counsel states that the notarized declaration from her former husband also shows that it was love at first sight and that they immediately wanted to get married. Counsel states the petitioner also has demonstrated her good-faith entry into the marriage by providing plane tickets, photographs, and affidavits from acquaintances. Counsel provides a history of the petitioner's relationship with her former husband, and states that the AAO wrongly dismissed the declaration from [REDACTED], which should have been looked at in the context of the abuse, and that the petitioner already explained that the minor errors on the G-325A were due to having signed the form without reviewing it, as her former husband did not like anyone questioning him. Counsel states that the petitioner specified "self-employed" on the Department of State Optional Form 156 because she owned her own company, and that additional documentation is submitted for [REDACTED] because the AAO dismissed his declaration for not indicating his title or position at [REDACTED]. Counsel also states that the AAO unfairly dismissed all photographs provided by the petitioner, as they are part of the aggregate probative evidence of the petitioner's good-faith marriage. Upon review of the evidence, we affirm our prior determination that the petitioner did not establish the requisite good-faith marriage.

At the outset, the AAO acknowledges counsel's statement that the notarized declaration from the petitioner's former husband shows that for him it was love at first sight and that he and the petitioner immediately wanted to get married. However, the issue in this matter is the intent of the petitioner, not of the petitioner's former husband. Thus, his declaration is not probative to the issue of the petitioner's intent when entering into her marriage.

In her November 12, 2009 supplemental declaration submitted on second motion, the petitioner reiterates information from her previous statements, provides a more detailed account of how she met her former husband, and asserts that she married her former husband in good faith. The petitioner also claims that she was the owner, president, and general manager of [REDACTED] Biological Technology Inc. from 1992 – 2003, and provides a business card and business license to support her claim. Regarding the discrepancies discussed in the AAO's September 15, 2009 decision pertaining to the G-325A, Biographic Information forms, the petitioner asserts that her former husband completed and mailed the G-325A form (supporting documentation for the fiancée petition) to her for her signature, which she signed without reviewing it and thus did not notice the typographical error in her company's name. The petitioner also states that her former husband completed the paperwork for her adjustment of status application, including the G-325A form with the incorrect employment information, and told her to sign it, which she did because she completely trusted him and he did not like to be questioned. The petitioner states further that her former husband completed the Department of State Optional Form 156, Nonimmigrant Visa Application, which she signed on January 14, 2002, and he indicated that she was self-employed because at the time she was the owner, president, and general manager of [REDACTED]. The petitioner, however, does not explain why the same Department of State Optional Form 156, Nonimmigrant Visa Application, reflects "None" for No. 10: "Name and Street Address of Present Employer or School." It is also

noted that while the petitioner claims that she was the owner, president, and general manager of [REDACTED] from 1992 – 2003, the business license for the same reflects the term of business ending on July 28, 2002. In addition, the record contains an email message from the petitioner to her former husband, dated April 12, 2001, in which she described her employment history as selling cosmetics from 1993 – 1995 and health care products from 1995 – 1998, and not doing any business after that because an American lawyer wanted to marry her. The record also contains another email message from her former husband to the petitioner, dated July 12, 2001, in which her former husband stated that he was happy that the petitioner might have a job because it would be good to have something to keep her busy, to have less time to worry, and to make the time go faster. In sum, the record contains numerous inconsistencies regarding the petitioner's claimed employment history.

The AAO acknowledges the petitioner's additional statement that she shared her business experience and manufacturing advice with [REDACTED] when he went to the Shanghai Expo in 1997. [REDACTED] March 10, 2009 letter was discussed in detail in the AAO's previous decision dated September 15, 2009. On second motion, the petitioner submits a business card for [REDACTED] identifying him as a sales manager for [REDACTED] and a current business card associating him with the companies "[REDACTED]" and [REDACTED]. As stated in the AAO's previous decision, in his March 10, 2009 letter, [REDACTED] stated, in part, that while he was working at [REDACTED], located at [REDACTED] North Carolina, he invited the petitioner, who was the president of [REDACTED] to visit [REDACTED] production facilities to provide advice on the possibilities of setting up a manufacturing facility in Dalian, China, and that while they "benefited tremendously from [the petitioner's] experience" and met with the petitioner on various other occasions in China, they decided not to invest in China. Mr. [REDACTED] also stated that [REDACTED] "seized operations last year."<sup>1</sup> Again, while the AAO acknowledges [REDACTED] business cards and his claims regarding the petitioner's alleged business trip to [REDACTED], the record contains insufficient evidence that [REDACTED] was an official or authorized representative of [REDACTED], and thus is of little probative value.

Regarding the discrepancies in the petitioner's March 10, 2009 declaration pertaining to her application for entry into the United States in March 2002, in which she stated that she did not try to hide anything from the officer and that she told the officer that she was coming to the United States because her fiancé wanted her to bring samples and that they were also waiting for her fiancée visa, the petitioner asserts on second motion that she told the officer that she was coming for business, that her fiancé was her business partner, and that she had some brochures on sauna equipment because her former husband was interested in such business. Again, the facts regarding the petitioner's attempted entry into the United States in March 2002 have been adequately documented in the previous decision of the AAO, dated February 9, 2009. The petitioner's description of the incident on second

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<sup>1</sup> A search on June 15, 2011 of business corporation information at the North Carolina Department of the Secretary of State's website at <http://www.secretary.state.nc.us/corporations/> finds that Genwove U.S. Ltd. was formed in 1973 and its status is "Current-Active."

motion still conflicts with the report from the immigration officer, who describes the petitioner as trying to hide evidence and misstating the purpose of her visit as "coming to visit a U.S. company to sell saunas," and who found evidence in the petitioner's luggage indicating that she was an intending immigrant. Again, the petitioner was ultimately found inadmissible as an intending immigrant and withdrew her application to enter the United States.

The AAO also acknowledges the October 26, 2009 declaration from the petitioner's son, [REDACTED], who states, in part, that: he was 12 years old when his mother told him that she was dating her former husband and he could feel how in love she was when they talked online; two weeks after he and his mother came to the United States in 2003, his mother's former husband told him that he was going to marry his mother; his mother and her former husband took him to school and attended parent/teacher meetings together; his mother's former husband treated him like a son and took him boating, shooting, and fishing; and he, his mother, and her former husband spent holidays together. [REDACTED] testimony, which is general and vague, fails to provide insight into his mother's intent when entering into her marriage with her former spouse.

The AAO also acknowledges the letters dated November 4, 2009 and November 3, 2009, respectively, from [REDACTED], attesting that the petitioner and her husband attended Sunday meetings and weekday Bible study meetings at the [REDACTED] from October 2003 until March 2004, introduced themselves as a family, and invited church members to visit their home. This information conflicts with the petitioner's claim that her former husband kept her like a prisoner in their home.

The AAO also acknowledges counsel's assertion that the AAO wrongly dismissed the declaration from Robert Brueck because the information from him and his wife, [REDACTED], is probative in showing that the petitioner and her former husband had a bona fide marriage and introduced themselves to others as a married couple. The AAO disagrees that the letters from [REDACTED] and his wife establish that the petitioner entered into the marriage with her former husband in good faith. In her November 12, 2009 declaration submitted on second motion, the petitioner contradicts her previous testimony by stating that her former husband agreed to let her take an English as a Second Language (ESL) class, that she attended some ESL classes, and that a few days after her first ESL class, when her friend [REDACTED] called to ask why she was not at class, she told [REDACTED] that her former husband did not have time to take her and that she "might not be able to go to classes any more." Again, this testimony is inconsistent with the petitioner's March 10, 2009 affidavit, in which she stated that she met [REDACTED] at an ESL class at [REDACTED] but after the second time she attended class, her former husband was too busy and could not take her anymore, as well as with her March 30, 2005 declaration, in which she stated that her former husband would not let her take ESL classes, which were free, at the local college. As discussed in the AAO's previous decision, the petitioner's testimony also conflicts with the testimony from [REDACTED] who stated in his June 8, 2006 letter that his wife, [REDACTED] and the petitioner attended ESL classes together and developed a friendly relationship, spoke on the phone three or four times a week, and visited each other two or three times a month. [REDACTED] testimony is also inconsistent with [REDACTED] testimony, who stated that that when she invited the petitioner to church, the petitioner told her that her husband would not let her out of his eyesight for even one

minute. In addition, as discussed in the AAO's previous decision, the petitioner's testimony that her husband would not let her take ESL classes is inconsistent with the March 9, 2009 letter from an associate professor at [REDACTED] who stated that the petitioner attended classes to learn English. In sum, it appears that on second motion, the petitioner is attempting to revise her testimony so that it does not conflict with her previous testimony and the testimony submitted on her behalf. Again, these inconsistencies detract from the credibility of the petitioner's claim. It is also noted that the photographs confirm that the petitioner, her son, and her former husband were pictured together, but these documents, in light of the unresolved inconsistencies and deficiencies discussed herein, also do not establish the petitioner's good-faith entry into the marriage.

Upon review of totality of the evidence, including the evidence discussed herein along with the telephone bills, instant messenger printouts, FedEx invoice, and airline tickets, the petitioner has not demonstrated that she entered into her marriage in good faith given the unresolved inconsistencies and deficiencies significantly detract from the credibility of her claim. Accordingly, the petitioner has not established that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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 previous decisions of the AAO, dated September 15, 2009 and February 9, 2009 will be affirmed and the petition will remain denied.

**ORDER:** The previous decisions of the AAO, dated September 15, 2009 and February 9, 2009, respectively, are affirmed. The petition remains denied.