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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

**PUBLIC COPY**

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DATE: JUL 21 2011

Office: VERMONT SERVICE CENTER FILE:

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 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.

The director determined that the petitioner had not established that she had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and affidavits in support of the appeal.

*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.

\* \* \*

(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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

*Facts and Procedural History*

The petitioner is a native and citizen of Belgium. She entered the United States on October 5, 2000 under the Visa Waiver Program, with authorization to remain for 90 days. On July 25, 2008, she married T-B-<sup>1</sup> the claimed abusive United States citizen. On December 2, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On August 11, 2009, 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 entered into the marriage in good faith. Counsel for the

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

petitioner timely submits a Form I-290B, Notice of Appeal, and additional affidavits in support of the appeal.

### *Good Faith Entry Into Marriage*

The petitioner initially submitted photographs of what appears to be the couple's wedding ceremony and of the couple on one or more additional occasions. She also provided a copy of a month-to-month lease with a start date of August 1, 2008 signed by her and T-B- indicating the maximum occupancy of the rented premises was for two persons. She also included a bank statement addressed to the couple for banking services from September 16, 2008 to October 16, 2008, as well as a void check showing the couple's claimed joint address. The petitioner also included copies of text messages from T-B- to her and well as transcripts of voicemail messages that T-B- left for her. The petitioner also provided an October 23, 2008 personal statement in which she declared that she met T-B- in 2007 while he was living in her apartment building. She noted that after six months of dating they started to go to the mosque and pray together and realized they had a lot in common, including that he was alone in the city with no family and she only had her mother. The petitioner stated that the couple went out to dinner and to movies, hung out with friends, and engaged in fun activities that people who are dating do. The petitioner indicated that "three months ago he proposed to [her] and [she] happily accepted." The petitioner stated further that after two weeks of marriage, T-B- became a different person. The remainder of the petitioner's statement describes T-B-'s alleged abusive conduct. The petitioner also included several affidavits describing the petitioner's demeanor and T-B-'s behavior after the marriage.

In response to the director's RFE, the petitioner submitted a personal statement dated March 8, 2010. The petitioner indicated that the bank account was initially a joint account with her mother but T-B- was added to the account because T-B- did not want to open an account with her because he had a child to support. She noted that the couple rarely used the account together and that her mother mostly paid for everything. The petitioner indicated further that after the wedding, she and T-B- signed the lease contract to live in her apartment with her mother because he had roommates in his apartment. The petitioner stated that the couple planned to obtain a bigger apartment at a later date. The petitioner also declared that she fell in love with T-B- immediately and that he had everything she was looking for in a man and it was time for her to get married. She indicated that the couple married three months after he proposed and that when they were involved he was helpful with groceries, with taking them places, and they would go to the movies and have dinner at home. The petitioner indicated that in their "culture, Islam, a man and a woman don't date, they get to know each other but soon after they have to get married."

The petitioner also provided a statement signed by her mother who stated that the petitioner was attracted to T-B- and they spent time together a lot, and T-B- would take them both to a restaurant, the movies or the beach. The petitioner also provided several additional statements from friends, two of whom indicated their belief that the petitioner was in love with T-B-.

Based on the information in the record, the director determined that the petitioner had not established her good faith intent in entering into the marriage.

On appeal, the petitioner states that her intention was to live with T-B- for life; she lived in the same building with him, he asked her mother's permission, they saw their religious advisor, and when she married she was pure. The petitioner declares that she would never marry a man without having him for the rest of her life and having children with him. The petitioner also provides a statement signed by [REDACTED] who states that he was a witness to the couple's marriage in the traditional Islamic faith and that the couple had counseling before getting married. The petitioner further provides a statement signed by [REDACTED] who indicates that she met the petitioner in March 2007 and became friends with her and knew that the petitioner's religion was very important to her and that the petitioner had discussed her involvement with T-B- and that she was in love with him. Counsel asserts that the petitioner's involvement in religious counseling and the fact that she was a virgin prior to marriage demonstrate her true intention in entering into the marriage.

Counsel's assertion is not persuasive. Upon review, the petitioner has not provided detailed testimony regarding her initial meeting with T-B-, their courtship, or their subsequent interactions except as it relates to her claim of abuse. 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). The record does not include sufficient probative testimony that assists in understanding her intent when entering into the marriage. Although the petitioner professes her love for T-B- and claims on appeal that the couple saw their religious advisor prior to marriage, she does not provide the requisite underlying detail necessary to ascertain her actual intent when entering into the marriage. For example, she fails to describe, in any meaningful detail, the couple's first introductions; their decision to date; their first date; their courtship; their decision to marry; their engagement; their wedding; or any of their shared experiences.

Similarly, the statements of others submitted on her behalf fail to provide probative details regarding observations of the petitioner's allegedly good faith entry into marriage with T-B-. The statement of the Iman submitted on appeal is not submitted on the letterhead of any religious organization and the writer does not provide or reference the records demonstrating that the couple had religious counseling prior to the marriage. [REDACTED] in her statement does not provide information that she witnessed the bona fides of the courtship and marriage. The photographs, lease, and bank statement also fail to convey the petitioner's intent when entering into the marriage. While documentary evidence is not required to establish the petitioner's good faith intent when entering into the qualifying relationship, the petitioner must provide consistent, credible, probative testimony to establish her good faith intent. The petitioner does not provide the requisite detail in her testimony and the detail is also lacking in the statements of others submitted on the petitioner's behalf. Upon review of the totality of the record, the record does not include sufficient probative evidence establishing that the petitioner entered into marriage with T-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Residence*

Beyond the decision of the director, the petitioner has not established that she jointly resided with T-B-. As noted above, the petitioner stated that she met T-B-, a tenant in her apartment building. In

her statement in response to the director's RFE, the petitioner indicated that T-B- continued to return to his apartment even after marriage. The lease signed in August 2008 indicates it is for two people and the petitioner indicates that her mother continued to live in the apartment. Thus, the record does not provide consistent information sufficient to establish that the petitioner and T-B- jointly resided together. The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. Section 101(a)(33) of the Act. The record does not establish that the petitioner's T-B-'s primary places of abode were in the same apartment. Moreover, the petitioner has not provided any probative testimony regarding her joint residence with T-B-. She has not described their jointly-owned belongings, if any; she does not describe their home furnishings, and she does not describe the alleged joint apartment in which they lived. She does not provide the necessary probative, consistent detail to establish that the couple resided together during the marriage. Although the lack of documentary evidence is not necessarily disqualifying, the petitioner must still provide probative credible testimony in support of her claim of joint residence. Upon review of the totality of the information in the record, the record fails to establish that the petitioner resided with the claimed abuser. For this additional reason, the petition may not be approved.

*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.