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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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FILE:

Office: VERMONT SERVICE CENTER

Date:

MAR 21 2011

IN RE:

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 Vermont Service Center director (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 denied the petition on the basis of his determination that the petitioner had failed to establish that she married her husband in good faith and resided with him. On appeal, counsel submits an additional affidavit of the petitioner.

Applicable Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(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.

Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The petitioner is a citizen of China who married [REDACTED]. The petitioner entered the United States [REDACTED] 02 as a conditional resident based on the approved alien relative petition (Form I-130) filed by her spouse on her behalf. [REDACTED] the Form I-751, Petition to Remove Conditions on Residence, jointly filed by the petitioner and her husband was denied for abandonment and the petitioner was subsequently placed in removal proceedings.¹

The petitioner filed the instant Form I-360 on December 15, 2008. The director subsequently issued a request for further evidence (RFE) that the petitioner resided with her husband and married him in good faith. The petitioner responded with additional evidence. After considering the relevant evidence of record, the director denied the petition.

On appeal, the petitioner asserts that she provided ample evidence of her residence with her spouse and her entry into their marriage in good faith, but that the director did not consider the totality of the evidence and erroneously relied on minor inconsistencies in her documentation.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, we find no error in the director's ultimate determinations and the petitioner has failed to overcome the grounds for denial on appeal.

¹ The petitioner remains in proceedings before the New York Immigration Court and her next hearing is scheduled for March 30, 2011.

Joint Residence

On the Form I-360, the petitioner stated that she resided with her spouse from March 2002 until April 2005. In her affidavits submitted below, the petitioner explained that she and her spouse rented an apartment from her uncle in San Francisco, California and lived there together from her arrival in the United States in March 2002 until August 2002, when she left their home to work in New York. The petitioner stated that she came back to San Francisco to visit her husband three times during that period and then returned to live with him in San Francisco from January 2003 until April 2005.

The record does not support the petitioner's account of her purported residence with her husband. U.S. Citizenship and Immigration Services (USCIS) records show that the petitioner's husband enlisted in a branch of the U.S. armed services in November 2002 and remained on active duty in the United States and abroad through at least July 2005.² These records directly contradict the petitioner's claim that she resided with her husband in San Francisco from January 2003 to April 2005.

In addition, as noted by the director, the record contains other documents that are inconsistent with the petitioner's account of her marital residence. First, the petitioner submitted a copy of her 2002 federal income tax return, on which her filing status was listed as single and her address was stated as being in New Jersey. However, the record contains a copy of another 2002 federal income tax return of the petitioner and her husband that was submitted with their joint Form I-751 petition to remove the conditions on the petitioner's residence. On that tax return, their filing status was listed as married filing jointly and their address was listed as the purported marital residence in San Francisco. When confronted with this discrepancy in the RFE, the petitioner responded by submitting her Internal Revenue Service (IRS) tax transcript which shows her filing status for 2002 as single. In her May 25, 2010 affidavit, the petitioner explained, "I filed for tax return for myself since my husband told me that he will not include me in the tax return that he was filing." The petitioner further stated that the tax preparer did not explain the different filing statuses to her and that her "education and English level were two of the reason caused [her] confusion." On appeal, the petitioner reiterates her claim that there is no inconsistency and further states, "I did not know what my husband did in 2004 for the tax return of . . . 2002, since the I-751 was filed in 2004 under the help of a[n] immigration service company."

The petitioner's explanation is not credible. The petitioner signed the Form I-751 on January 25, 2004 and it was jointly filed by her and her husband. The Form I-751 contains no signature of a preparer or any other indication that it was prepared or filed by anyone other than the petitioner and her husband. The purportedly joint 2002 tax return was submitted with the jointly filed Form I-751. The petitioner's 2002 actual tax return was filed in March 2003, which was two months after she purportedly returned to San Francisco to reside with her husband, but the return lists her address in New Jersey and was prepared by an accountant in Flushing, New York.

² The records regarding the petitioner's husband's military service did not derive from him, but were obtained from an independent branch of the federal government.

The remaining relevant evidence also does not demonstrate that the petitioner resided with her husband from March to August 2002. In her first affidavit, the petitioner stated that before her arrival in the United States, her husband rented an apartment from her uncle in San Francisco. The petitioner recounted that she stayed home cooking and doing housework, but she did not further describe the former couple's shared residence during this time, apart from the location of one incident of abuse. In her second affidavit submitted in response to the RFE, the petitioner explained that she never thought she would need documentation of her residence with her husband and does not have any other evidence because her husband "controlled the documents, letters, correspondences and mails." On appeal, the petitioner reiterates her explanations regarding her lack of further documentation and adds, "I did not know and did not have any lease for the residen[ce] in California."

The petitioner's aunt, [REDACTED] confirmed that the petitioner's husband rented a floor of their townhouse and the former couple lived there together after the petitioner's arrival in the United States. [REDACTED] stated that she and her husband respected the former couple's privacy and tried not to bother them. She provided no further probative information regarding the petitioner's residence with her husband during this time. [REDACTED] the petitioner's other aunt who resides in New York, stated that she spoke to the petitioner several times after she arrived in San Francisco, but she provided no information regarding the petitioner's residence with her husband in San Francisco during the period in question. [REDACTED] the petitioner's friend, and [REDACTED] the petitioner's aunt-in-law, briefly stated that the petitioner resided with her husband after her arrival in the United States, but they provided no probative details and did not indicate that they ever visited the former couple's home.

In sum, the relevant evidence of record does not demonstrate that the petitioner resided with her husband during their marriage. We recognize that abused spouses often face difficulties providing documentation of shared residence and the regulations do not require primary evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." 8 C.F.R. § 204.2(c)(2)(iii). In this case, however, the record contains conflicting evidence regarding the petitioner's claimed residence with her husband in 2002 and her explanation of the inconsistency is not credible. USCIS records further show that the petitioner's husband was on active military duty during the remainder of the time in which she claimed they resided together. Finally, the affidavits of the petitioner, her relatives and friend do not contain probative and detailed information sufficient to demonstrate that she resided with her husband prior to his enlistment. Accordingly, the petitioner has not established her residence with her husband during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Entry into the Marriage

The majority of the director's decision discussed and found deficient the documentation initially submitted with the petitioner's spouse's Form I-130 petition and the former couple's jointly-filed Form I-751, copies of which the petitioner submitted with the instant Form I-360. The director also noted that the petitioner's IRS tax transcript shows that her filing status was single throughout her marriage and during her alleged residence with her husband from March 2002 until April 2005. On appeal, the petitioner states that she "did not know about the category of the tax return." She asserts

that she told her accountant that she was married, but her husband did not file a tax return for her and her accountant's choice of the single filing status should not be attributed to her. The petitioner also explains that her husband did not tell her about his finances and she does not know what accounts he had or how to obtain documentation of them.

On appeal, the petitioner asserts that the director's determination that her marriage was not in good faith was erroneous based on her inability to provide documentation of their joint residence and shared assets or liabilities. To the extent that the director's decision indicated that joint documentation is required to establish a self-petitioner's good-faith entry into the marriage, that portion of his decision is hereby withdrawn. Given the obstacles that abused aliens may face, traditional forms of joint documentation are helpful, but not required for a self-petitioner to demonstrate his or her entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii).

In this case, the petitioner stated in her first affidavit that her grandmother in the United States knew her husband's mother and told the petitioner that he was a nice person who wanted to marry a girl from China. The petitioner recounted that she first received a telephone call from her future husband in March 2000 and she was "surprised that his Mandarin is so well and [she] have not language barriers to communicate with him." The petitioner stated that the former couple talked about their families during their first conversation and afterwards her husband called her almost every week. The petitioner stated that they became very serious about their relationship and her husband [REDACTED] 2000 to meet her. The petitioner showed her husband around her hometown and he met her family. Six days later [REDACTED] the petitioner recounted that her husband took her out for a romantic dinner and suddenly kneeled down and asked her to marry him. The petitioner stated, "I found myself to be in the situation of love with him and I was happy with the feelings. Even we did not have much time together in his visit to me, I said yes to him." One week later, the petitioner married her husband in China and he returned to the United States three days afterwards.

While waiting for her immigrant visa petition and application to be processed, the petitioner stated that she and her husband often wrote letters and called each other. She recounted that her husband met her at the airport in San Francisco and they had "a very happy time together" after her arrival. She stated that she stayed home doing housework and cooking while her husband worked as a waiter. While she was working in New York, the petitioner stated that she returned to California three times to visit her husband and did not return to New York in January 2003 because her husband did not allow her to leave and she "had no choice since [she] still love[d] him and considered [her] family important." The petitioner did not further discuss any of their shared marital experiences, apart from her husband's abuse.

In her second affidavit, the petitioner further stated, "I married to my husband since I loved him. I married to my husband since he told me that he loved me. I planned to have my life together with my husband since he told me that he loved me. I planned to have my life together with my husband for my life." On appeal, the petitioner reiterates, "I entered my marriage with my US Husband in

good faith and our marriage was a product of knowing each other by introduction, a progressive exchange of our views to life, my husband came to China to meet me and my family members, we got married in China as the result of love and our determination to be husband and wife.” The petitioner does not, however, provide any further information regarding the former couple’s courtship, wedding and shared experiences, apart from the abuse.

The petitioner’s aunts and friend provide only cursory descriptions of the petitioner’s marital relationship. [REDACTED] stated that in late 2000, the petitioner called her and told them she had gotten married and “was very much in love with her husband.” Although [REDACTED] stated that she and her husband rented a floor of their townhome to the petitioner and her husband, she indicated that she had little contact with the couple, as she tried not to bother them and respected their privacy. She noted only that they “seemed to be happy together at first.” [REDACTED] stated, “Under the arrangement of my mother and the mother of the husband of my niece, my niece and her husband were introduced to each other for a serious relationship leading to marriage. . . . I talked to my niece for several times after she came to San Francisco. She seemed happy and satisfied with her marriage at that time.” The petitioner’s friend, [REDACTED] recounted seeing the petitioner and her husband together on one occasion when they visited New York in August 2002, but she stated only that the petitioner’s husband was quiet and the petitioner later told her that he was not treating her well. The petitioner’s aunt-in-law, [REDACTED] asserted that the petitioner married her husband in good faith, but she did not describe ever visiting the former couple or otherwise observing the petitioner’s interactions with her husband.

The petitioner’s description of her relationship with her husband lacks probative, detailed information and is not supported by other relevant evidence of record. The petitioner stated that her husband spoke Mandarin Chinese and they had no language barrier. However, USCIS records indicate that her husband speaks no foreign languages. The petitioner submitted copies of postmarked envelopes of letters sent to her in China from her husband and one envelope with no postmark purportedly sent from her in China to her husband in the United States, but the envelopes are not accompanied by the actual letters. The petitioner submitted copies of Chinese calling cards, but no records of actual calls made on the cards. The record also contains numerous copies of photographs of the petitioner and her husband in China. The photographs show that they were pictured together on one or two days of sightseeing and at a photography studio in two wedding outfits, but the pictures do not provide probative evidence of their relationship. In these proceedings, the petitioner repeatedly stated that her husband was employed as a waiter in a restaurant, but on her immigrant visa application which she [REDACTED] the petitioner listed her husband’s occupation as “Computer Technician.” Finally, the petitioner stated that between August 2002 and January 2003, she returned to California to visit her husband three times and that they lived together in San Francisco from January 2003 to April 2005. However, as previously noted, USCIS records show that the petitioner’s husband was on active military duty from November 2002 through July 2005. The petitioner makes no mention of her husband’s military service.

On appeal, the petitioner asserts that her “marriage in good faith was inspected and approved by the United States Department of States through its Consulate General [sic] in Guangzhou China. The USCIS should know that the visa application standard and screen for marriage visa application in the US Consulate General in Guangzhou, China is higher and much strict [sic] than the application for adjustment of status application in the United States.” Neither counsel nor the petitioner cites any

legal authority to support her claim and they do not acknowledge that the present record contains significant evidence and unresolved discrepancies that were not before the consular officer at the time of the petitioner's interview regarding her immigrant visa application in 2002.

When viewed in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner also asserts that it was inconsistent for the director to find that she met some of the requirements, but did not establish her residence and good-faith entry into marriage with her husband. The petitioner misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Although the same or similar evidence may be submitted to demonstrate, for example, a qualifying relationship and good-faith entry into the marriage, meeting one eligibility requirement will not necessarily demonstrate the other.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.