

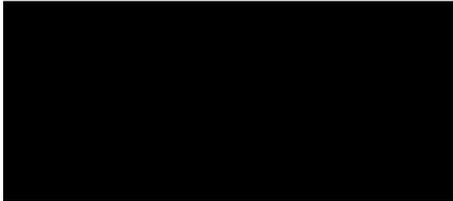
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



B9

Date: MAY 05 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:

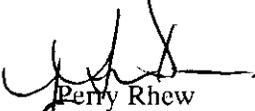


INSTRUCTIONS:

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 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 her United States citizen spouse.

The director denied the petition for failure to establish the requisite qualifying relationship and eligibility based upon that relationship, joint residence, abuse, and good-faith entry into the marriage. On appeal, counsel submits a memorandum and additional evidence, including: an affidavit from the petitioner, dated November 11, 2010; photographs of the petitioner with her former husband; proof of termination of the petitioner’s first marriage; and copies of documentation already in the record.

*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, 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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act further 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.

(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 or the self-petitioner's child, 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 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:

*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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

(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.

#### *Facts and Procedural History*

The petitioner is a citizen of China who entered the United States as a nonimmigrant visitor in 2003. On November 10, 2003, the petitioner married [REDACTED]. The petitioner's former husband filed an alien relative immigrant petition on the petitioner's behalf, which remains pending. The petitioner and her former husband were divorced [REDACTED] on November 9, 2006. The petitioner filed the instant Form I-360 self-petition on September 5, 2008. The director subsequently issued a request for additional evidence (RFE) that the petitioner resided with her former husband, that she was a person of good moral character, and that she married her former husband in good faith. The petitioner, through counsel, submitted additional evidence. The director issued a second RFE that the petitioner's former husband subjected her or her children to battery or extreme cruelty during their marriage, that she was a person of good moral character, and that she married her former husband in good faith. The director also requested information concerning her current marital status. The petitioner, through counsel, again submitted additional evidence. The director subsequently issued a Notice of Intent to Deny (NOID), requesting evidence that the petitioner had a qualifying relationship with her former husband and eligibility based upon that relationship, that her former husband subjected her or her children to battery or extreme cruelty during their marriage, and that she married her former husband in good faith. The director found the petitioner's response to the NOID insufficient and denied the petition on those grounds.

On appeal, counsel asserts that the petitioner submitted sufficient evidence, including a final divorce decree from her previous marriage in China and a professional psychological evaluation, as evidence that the petitioner had a qualifying relationship with her former U.S. husband and that her former U.S. citizen husband subjected her to battery or extreme cruelty. Counsel also asserts that U.S. Citizenship and Immigration Services (USCIS) erroneously determined that the petitioner did not enter into the marriage in good faith as, prior to its denial, USCIS did not disclose evidence allegedly obtained from U.S. Immigration and Customs Enforcement (USICE) interviews and thus violated the petitioner's due process. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and on appeal does not overcome the director's grounds for denial.

At the outset, it is noted that the AAO finds no error in the director's actions. We note counsel's April 6, 2010 response to the director's January 14, 2010 RFE where he instructed USCIS to contact Special Agents at USICE regarding their interviews of the petitioner about her interactions with a matchmaking agency in [REDACTED]. Thus, the petitioner was aware of the testimony that she provided to USICE agents, as outlined in the director's denial decision, and the director was not required disclose it to her prior to the final denial decision. 8 C.F.R. § 103.2(b)(16)(i). In addition, the petitioner has not demonstrated any resultant prejudice that would constitute a due process violation. See *Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), cert. denied, 419 U.S. 1113 (1975).

#### *Battery or Extreme Cruelty*

In her June 16, 2010 affidavit submitted in response to the NOID, the petitioner stated that: when they were first married in November 2003, her former husband would pick her up in the afternoon to eat at a restaurant and then take her to a motel; her former husband never introduced her to his family and she had only his cell phone number, pager number, and his sister's address; when she went back to [REDACTED] in December 2003 to pack her belongings in order to move in with her former husband, he stopped calling her after initially calling her every night; she returned to [REDACTED] in January 2004, and searched for her former husband until March 2004, when she discovered that he was in jail and that he been married before and had four children with two other women; in June 2004, her former husband was released from jail and they resumed the same routine of him picking her up and taking her to a motel; her former husband was verbally abusive to her and violent on three occasions; on one occasion he punched her in the chest with both fists, punched her left shoulder, and slapped her face; her friends advised her not to call the police "because [her] English was so limited"; her former husband demanded \$2,000 from her after they received their "immigration" interview notice and she refused to give it to him; they stayed at a hotel the night before the interview and her former husband threatened to kill her if she "didn't have sex with him"; she finally told him to kill her because she did not care anymore; her former husband caused a scene at the interview and lied to the immigration officer about not having any children; her former husband disappeared after the interview; she last saw her former husband in August 2004, when, after he yelled at her while they were in his car, she told him she was going to get a divorce and she got out of his car and never saw him again.

In her November 11, 2010 affidavit submitted on appeal, the petitioner states that after her former husband was released from jail in June 2004, he was violent and "would punch walls all the time" and rape her. The petitioner also states that she did not call the police because her former husband threatened her.

In his March 15, 2008 letter submitted in response to the RFE, [REDACTED] stated, in part, that, while she was studying at [REDACTED], the petitioner complained to him about her unhappy marriage, and that her former husband disappeared shortly after their marriage. [REDACTED] also stated that the petitioner told him that her former husband abused her verbally and physically after getting out of prison. [REDACTED] also recalled that he witnessed the petitioner's former husband talking to the petitioner rudely during a visit to their school, and that he, in turn, asked the petitioner not to bring her former husband to their school again so as not to damage the school's image.

In her psychological evaluation, dated February 23, 2009, Dr. [REDACTED] stated that, during and after her relationship with her former U.S. citizen husband, the petitioner began to suffer from an episode of Major Depression and symptoms associated with Post-Traumatic Stress Disorder (PTSD).

The director determined that the petitioner submitted conflicting information and failed to submit corroborative, independent, objective evidence to establish the requisite battery or extreme cruelty. Specifically, the director found that the petitioner never mentioned to USICE agents that her former husband had threatened or scared her or that he had harmed her physically, emotionally, or mentally. The director also found that the petitioner did not submit affidavits from the friends who allegedly advised her against calling the police. On appeal, counsel asserts that the petitioner was the victim of a scam artist who ran a matchmaking agency and duped many immigrants to get their money. Counsel also asserts that the petitioner's affidavit and the psychological evaluation from [REDACTED] are compelling evidence that the petitioner was the victim of exploitation and rape by her former U.S. citizen husband. Counsel asserts further that the petitioner did not file a police report about her abusive former husband because he convinced her that the police would not believe her, and that the petitioner did not share the details of abuse with the USICE agents, in part, because they were focused on details pertaining to the operator of the fraudulent matchmaking agency. Counsel also asserts that the petitioner was unable to submit affidavits from friends, aside from [REDACTED], because she spent the majority of her time at school and with her former husband.

The AAO acknowledges [REDACTED] psychological evaluation of the petitioner based on two meetings with the petitioner on February 19 and 27, 2009, respectively, for a total of eight hours. [REDACTED] reiterates the information from the petitioner's affidavits and diagnoses the petitioner with Major Depression and symptoms associated with Post-Traumatic Stress Disorder (PTSD), as a direct consequence of being abused by her former U.S. citizen husband. [REDACTED] recommended a treatment plan for the beneficiary, to include a combination of individual psychotherapy and antidepressant medication, and cognitive therapy interventions. [REDACTED] also recommended preventative treatment, including avoidance by the petitioner of a separation from her current fiancé, and/or the trauma of a forced relocation.

Preliminarily, we withdraw the director's comments regarding the petitioner's failure to submit corroborative, independent objective evidence. The regulation at 8 C.F.R. § 204.2(c)(2)(i), does not require the submission of primary evidence and states that USCIS will consider any credible evidence.

The record contains unexplained inconsistencies and/or deficiencies that diminish the petitioner's claim of having been subjected to battery or extreme cruelty. In her June 16, 2010 affidavit, the petitioner claimed that she did not call the police about her former husband's abuse because her friends advised her not to do so because of her limited English. This conflicts with the petitioner's claim in her November 11, 2010 affidavit submitted on appeal that she did not tell the police or file a report because her former husband threatened her. In addition, the petitioner claimed in her June 16, 2010 affidavit that, after his release from jail, her former husband once punched her in the chest with both fists, punched her on the left shoulder, slapped her face, and threatened to kill her if she "didn't have sex with him." In her November 11, 2010 affidavit, however, the petitioner claims no murder threats against her by her former husband or punching incidents other than his "punch[ing] walls all

the time.” Moreover, although counsel states on appeal that the petitioner’s former husband punched the petitioner in the chest on two or three occasions, the petitioner does not make this claim in her own testimony. In addition to these unexplained inconsistencies and/or deficiencies, the statement from the petitioner’s friend [REDACTED] is general and does not recount any specific incidents of abuse in probative detail. While we do not question the expertise of [REDACTED], her conclusions are based upon the petitioner’s testimony regarding the alleged events, which have been found to lack credibility. Thus, her conclusions are of limited value in establishing that the petitioner was subjected to abuse by her former husband. The relevant evidence in this case contains inconsistencies and deficiencies that diminish the probative value of the petitioner’s claims to have been subjected to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Faith Entry into Marriage*

In her June 16, 2010 affidavit submitted in response to the NOID, the petitioner stated that: when she came to the United States in 2003, she first contacted a dating agency [REDACTED], and later, after she decided to move to [REDACTED], she contacted a dating agency [REDACTED] that advertised in a Chinese newspaper; [REDACTED] dating agency introduced her to her former U.S. citizen husband at the agency’s office; she and her former husband met many times thereafter and went out together for meals in order to get to know each other better; the petitioner’s former husband was initially affectionate with her and told her he would treat her well; and they were married in a church on November 11, 2003.

In her November 11, 2010 affidavit submitted on appeal, the petitioner states that: she specifically asked the dating agency [REDACTED] if it was involved in false marriages and all of her doubts were cleared after talking to the agency’s owner; the owner recommended the petitioner’s former husband as a good match and showed his tax returns to her as evidence of his steady income; and she believed that the \$18,000 amount she paid for the entire process was normal and did not seem like a scam.

The director found that the petitioner admitted to USICE agents that, for her marriage to her former U.S. citizen husband, she paid \$8,000 to the agency and \$2,400 plus \$300 a month to her former husband. On appeal, counsel asserts that the petitioner was forthcoming about paying an agency to help her find a husband, and that the petitioner did not find it unusual to pay the agency because it is common in her culture, and that it was not unusual to pay her husband because she loved him and felt obligated to support him.

The petitioner is not required to submit preferred primary or secondary evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The petitioner, however, has submitted insufficient evidence to support a finding that she entered into her marriage in good faith. The photographs confirm that the petitioner and her former husband were pictured together, but these documents alone do not establish the petitioner’s good-faith entry into the marriage. The petitioner explains in her affidavits why she sought the services of a matchmaker; however, she does not provide any probative details about her courtship with her former husband, decision to marry, wedding, and shared experiences, apart from the alleged abuse. While it may be common in the petitioner’s culture to seek a matchmaker’s services, the petitioner is still required to establish that she entered

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

*Qualifying Relationship and Eligibility for Immediate Relative Classification*

The director determined that the petitioner had not submitted evidence of the legal termination of her marriage to [REDACTED]. The director also determined that the petitioner had not demonstrated a connection between her divorce from her former U.S. citizen husband and battering or extreme cruelty. On appeal, counsel submits proof of termination of the petitioner's marriage to [REDACTED]. The petition may not be approved, however, because the petitioner has failed to establish the requisite battery or extreme cruelty, and thus she has failed to demonstrate any connection between her divorce from her former U.S. citizen husband and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

*Joint Residence*

Although the director did not address this issue in detail, he found that the petitioner admitted to USICE agents that she never resided with her former U.S. citizen husband and that the record did not contain sufficient evidence to demonstrate joint residence. On appeal, the petitioner does not provide any evidence or arguments in rebuttal. The term "residence" is defined at section 101(a)(33) of the Act as "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." A review of the record in its entirety finds that the petitioner and her former U.S. citizen husband never shared a joint residence. According to her two affidavits, the petitioner stated that she and her former husband lived in separate residences and went to motels and/or hotels on occasion. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her former husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Conclusion*

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The petitioner has failed to establish the requisite qualifying relationship and eligibility based upon that relationship, joint residence, abuse, and good-faith entry into the marriage. Accordingly, the appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.