

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

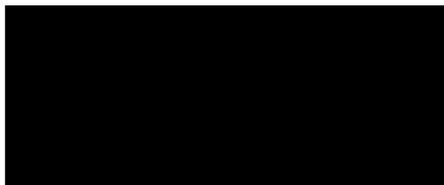
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9

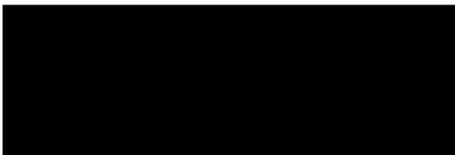


Date: MAY 10 2011 Office: VERMONT SERVICE CENTER FILE: A95 890 071
EAC 06 168 51031

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 service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO, dated August 10, 2010, will be affirmed, and the petition will remain denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 decision of the AAO, only certain facts will be repeated as necessary here. In this case, the petitioner is a citizen of the People's Republic of China who married a U.S. citizen on December 31, 2003. They ceased living together in November 2004, and divorced in November 2005. The petitioner filed the instant Form I-360 on May 8, 2006. The director denied the petition on October 11, 2007, finding that the petitioner failed to establish that she entered into the marriage in good faith. In its subsequent decision on appeal, the AAO concurred with the director's determination.

On motion, counsel states that the petitioner married her ex-husband in good faith. As supporting documentation, counsel submits: a statement; an affidavit dated September 10, 2010, from the petitioner; a letter from the petitioner's parents dated September 8, 2010, and translation; copies of photographs of the petitioner with her ex-husband; a "Psychiatric Update Report" dated August 9, 2010; and copies of documentation already in the record.

Good Faith Entry into Marriage

In its previous decision, the AAO found the evidence submitted by the petitioner and on the petitioner's behalf insufficient to establish that the petitioner entered into the marriage in good faith. The AAO found that the petitioner's affidavit lacked sufficient probative detail in regards to her initial relationship with her ex-husband, their subsequent interactions, their courtship, wedding ceremony, shared residence, and experiences. The AAO also found that the affidavits from Mr. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] also lacked detailed and probative information with regards to the petitioner's intentions upon entering into the marriage. The AAO also found that the relevant documentary evidence, including the tax return, correspondence, health insurance card, Explanation of Benefits (EOB), utility statements, and credit card, did not establish the petitioner's good-faith entry into the marriage, as they were either dated after the petitioner and her ex-husband stopped living together or were issued in only one name. The AAO also found that the photographs did not establish the petitioner's good-faith entry into the marriage as they were neither captioned nor dated. In sum, the AAO found that the relevant evidence failed to demonstrate that she entered into her marriage in good faith.

On motion, counsel submits an affidavit dated September 10, 2010, from the petitioner, who states that: she and her ex-husband were childhood friends because their parents were mutual friends; when her ex-husband moved to the United States in 1994, they stayed in contact with each other via phone and letters; she and her ex-husband started to fall in love when he visited her in China for a few months

in 1997 and stayed at her house; during that visit, her ex-husband was considerate, humorous, attentive to her feelings, and respectful and courteous to her parents and cousins; her ex-husband told her that he planned to join the U.S. Army and would return after two years; her ex-husband visited her in China and stayed at her house again in 1999, 2000, 2001; during his visits to China, they traveled to other provinces and enjoyed spending time with each other; during his stay in the United States, her ex-husband sent money to her as a gesture of his dedication to provide for her; they held an engagement ceremony in China in the summer of 2002, which was attended by about 50 persons and recorded on a DVD; the petitioner and her ex-husband exchanged rings at the engagement ceremony and her father gave her ex-husband a gold bracelet; upon his return to the United States, her husband filed a fiancée petition on her behalf and attended the visa interview with her at the consular office; she came to the United States with her ex-husband because she was in love with him, they both wanted to have more than one child, and they felt that their children would have more opportunities in the United States; initially they lived in [REDACTED] where her ex-husband worked as the manager of his father's restaurant; they applied for a marriage license and held a marriage celebration at his father's restaurant in November, which was attended primarily by her husband's family and restaurant employees; they honeymooned in [REDACTED] and in [REDACTED] where his mother lives; while on her honeymoon, she became sick in a hotel in [REDACTED] and her husband commissioned a friend to make a special, home-made soup for her; in December 2003, they moved to [REDACTED] and several days later celebrated the registration of their marriage at [REDACTED] in [REDACTED] with her ex-husband's friends; her ex-husband spent \$1,000 for the wedding photos; from December 2003 to March 2004, she and her ex-husband sublet part of an apartment for about \$550 per month, including utilities, from her husband's friend, [REDACTED] at: [REDACTED]; her name was not on the lease; during their first year of marriage, her husband worked as a part-time waiter in Chinese restaurants in [REDACTED] and paid for her to study English; she cooked the evening meals at home and, during their marriage, her husband took her shopping and gave her flowers on Valentine's Day, took her out to dinner, and on another occasion, he bought a box of chocolates for her; on the weekends she and her husband went sightseeing and shopped; in March 2004, she and her husband moved with [REDACTED] to: [REDACTED] and again they paid \$550 per month, including utilities; the phone and other separate payments were in her ex-husband's name because he spoke good English and wanted to control everything; and she fled from their residence on November 12, 2004, after repeated physical and mental abuse from her husband. The petitioner also states that, although she has no other related documentation, the health insurance card was through her husband's work, as she was going to school and was not employed, and that she has additional evidence in China, including letters exchanged between her and her ex-husband and a VHS tape from her engagement party, which she can provide once they arrive.

On motion, counsel also submits: a letter from the petitioner's parents dated September 8, 2010, reiterating primarily the same information as the petitioner; a Psychiatric Update Report dated August 9, 2010, from Dr. [REDACTED] who states, in part, that he saw the petitioner on July 26, 2010, and she scored in the category of "severe" on the Patient Health Questionnaire assessing the severity of her depression and anxiety; and copies of photographs of the petitioner with her ex-husband.

The AAO acknowledges the documentation listed above, including the more detailed statement from

the petitioner, the statement from her parents, an updated report from Dr. [REDACTED], and the photographs. The record, however, contains unexplained inconsistencies and/or deficiencies that diminish the probative value of the petitioner's testimony. For example, the petitioner states on motion that she and her ex-husband were engaged in 2002, which conflicts with Dr. [REDACTED]'s statement in his November 8, 2005 psychiatric evaluation report that the petitioner and her ex-husband were engaged in 1999. The petitioner also states on motion that her ex-husband worked as a part-time waiter in Chinese restaurants and paid for her to study English at the [REDACTED] in [REDACTED] which conflicts with Dr. [REDACTED]'s statement in his November 8, 2005 psychiatric evaluation report that the petitioner's ex-husband did not allow her to go to school.

In her affidavit submitted on motion, the petitioner testified that in addition to attending school, she earned very little money doing arts and crafts projects at home as a contractor, and that the only way that she could have health insurance was through her ex-husband's work because she was not employed. The petitioner's statements regarding her lack of employment during her marriage, however, are belied by evidence in the record. The petitioner's Form G-325A, Biographic Information, which she signed on November 1, 2005, indicates that from June 2004 until she signed the form on November 1, 2005, she worked as a nail designer. The record also contains February 1, 2006 affidavits from [REDACTED], the petitioner's boss at the nail salon, and [REDACTED], the petitioner's co-worker at the salon, who both indicate that the petitioner began working in the salon in July 2004. The employment in the nail salon in the summer of 2004 also conflicts with the Dr. [REDACTED]'s statement in his November 8, 2005 psychiatric evaluation report that the petitioner's ex-husband did not allow her to find a job.

Although the petitioner submitted a more detailed affidavit on motion, the inconsistencies that her testimony has introduced into the record diminish the probative value of her statements regarding her reasons for marrying, her and her spouse's courtship, and their shared experiences during the marriage. 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. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must remain denied.

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 decision of the AAO, dated August 10, 2010, will be affirmed and the petition will remain denied.

ORDER: The previous decision of the AAO, dated August 10, 2010, is affirmed. The petition remains denied.