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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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B9.

DATE: **MAY 18 2011** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: [REDACTED]

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:

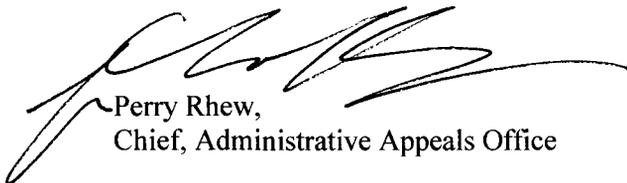
[REDACTED]

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 [REDACTED]. 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 and the Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed.

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 citizen of the United States.

Applicable Law

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, the following:

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 standard and 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.

* * *

- (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.

Pertinent Facts and Procedural History

The director denied the petition on January 14, 2008 on the basis of his determination that the petitioner had failed to demonstrate that she shared a joint residence with her husband or that she married him in good faith. The petitioner appealed the director's decision to the AAO and, in our April 1, 2009 decision, we agreed with the director's decision, but nonetheless remanded the petition to the director on technical grounds for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).¹

¹ On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (April 17, 2007). The rule became effective on June 18, 2007, after the filing of this petition on January 8, 2007.

The director issued the requisite NOID on February 24, 2010, and the petitioner submitted a letter in response. The director found the petitioner's response insufficient and denied the petition on February 3, 2011 on the grounds cited in our prior decision. The director notified the petitioner that his decision would be certified to the AAO for review and that she had 30 days during which to submit a brief or other written statement to be considered during our review. As no further documentation has been received from counsel or the petitioner, we deem the record complete as it now stands.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the petitioner has failed to establish that she jointly resided with her husband or that she married him in good faith. In our April 1, 2009 decision, we agreed with the analysis of the director's earlier January 14, 2008 decision. The contents of our prior decision, as well as the evidence of record upon which we based that decision, are part of the record and their contents need not be repeated. Accordingly, on certification we will only discuss the evidence submitted after we issued our prior decision.

Joint Residence

The first issue on certification is whether the petitioner married her husband in good faith. In her March 26, 2010 letter, the petitioner stated that her husband moved into her apartment after they married; that their relationship was "on and off"; that things did not work out; and that she moved out of the apartment in order to work as a nanny. However, this brief letter contained no probative information about the petitioner's alleged joint residence with her husband: for example, she did not describe their apartment, their building, their furnishings, their jointly-owned belongings, their neighborhood, their neighbors, or any of their shared, residential routines. Accordingly, it does not establish that she shared a residence with her husband.

Upon review, we affirm the director's decision. The new evidence of record fails to overcome the previous decisions of the director and the AAO. The petitioner has failed to establish that she resided with her husband as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

Although the petitioner briefly discussed her alleged joint residence with her husband in her [REDACTED] 26, 2010 letter, she provided no further probative details regarding the relationship. The petitioner's letter lacks any additional information regarding the couple's relationship that would provide insight into her intentions upon entering into the marriage, and provides little information regarding any shared experiences. For example, the petitioner failed to describe in probative detail the couple's first introductions, their first impressions of one another, their decision to date, their courtship, their decision to marry, their engagement, or their wedding ceremony. Nor does the photograph of the couple on a single occasion establish that the petitioner entered into the marriage in good faith; it establishes only that the petitioner and her husband were together on a single occasion.

Upon review, we affirm the director's decision. The new evidence of record fails to overcome the previous decisions of the director and the AAO. The petitioner has failed to establish that she married her husband in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to establish that she resided with her husband or that she married him in good faith. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and her petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and we will affirm the director's decision denying the petition.

ORDER: The director's February 3, 2011 decision is affirmed. The petition remains denied.