

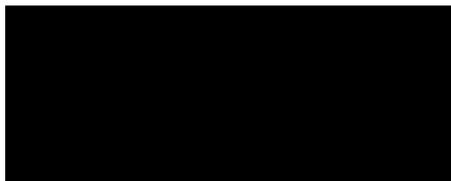
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



B9

DATE: **APR 05 2012**

Office: VERMONT SERVICE CENTER

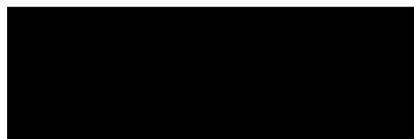
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IN RE:

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:

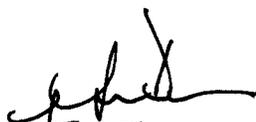


INSTRUCTIONS:

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. The Administrative Appeals Office (AAO) rejected a subsequently filed appeal. Upon review of the matter, the AAO reopens the matter on its own motion. The appeal is dismissed and the petition will remain denied.

The petitioner seeks immigrant classification pursuant to 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 she had jointly resided with the United States Citizen (USC) spouse. On appeal, counsel for the petitioner submits a brief. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

*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.

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.

### *Facts and Procedural History*

The petitioner is a native and citizen of Mexico who states she entered the United States on July 1, 1999 without inspection. She married J-C-<sup>1</sup> the claimed abusive USC, on May 6, 2008. She filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on August 12, 2008.<sup>2</sup> Based on the insufficiency of the evidence of the record, the director issued a request for further evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director denied the petition after determining that the petitioner had failed to establish that she had resided with the USC spouse. The AAO rejected the subsequently filed appeal determining the appeal had been filed untimely. Upon review, the AAO reopens the matter on its own motion to consider the merits of the matter.

On appeal, counsel claims that the petitioner and her husband did reside together after their marriage. Counsel further asserts that the statute does not require joint residency after marriage, but merely mandates residence with the abuser during some period in the past. We disagree and concur with the director's determination.

### *The Statutory Language Clearly Requires Residence During the Marriage*

Section 204(a)(1)(A)(iii)(II)(dd) of the Act requires a self-petitioner to be a person "who has resided with the alien's spouse or intended spouse." On appeal, counsel claims that the petitioner submitted substantial evidence to establish that she lived with the claimed abusive USC before and after her marriage. Counsel contends that the director's determination that the petitioner must reside with the claimed abusive USC during the qualifying marriage has no basis in law. Contrary to counsel's assertion, the plain language of the residence requirement mandates that the self-petitioner have resided with the abusive spouse during the marriage (or the qualifying intended marriage). As the word "spouse" in the residence requirement refers to the abuser, residence with the abuser must occur during the marriage (spousal relationship) or qualifying intended marriage.

The self-petitioning provisions were first enacted as part of the Violent Crime Control and Law

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

<sup>2</sup> The petitioner filed a second Form I-360 on May 27, 2009, which was denied on December 23, 2010.

Enforcement Act of 1994, Pub. L. No. 103-322 (Sept. 13, 1994) (VAWA 1994). Section 40701 of Subtitle G of that legislation amended section 204(a)(1) of the Act by renumbering the subsections and adding, in pertinent part:

(iii) An alien *who is the spouse of a citizen of the United States*, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), *and who has resided in the United States with the alien's spouse* may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien if such a child has not been classified under clause (iv)) under such section if the alien demonstrates to the Attorney General that—

(I) the alien is residing in the United States, the marriage between the alien and the spouse was entered into in good faith by the alien, and during the marriage the alien or a child of the alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's spouse; and

(II) the alien is a person whose deportation, in the opinion of the Attorney General, would result in extreme hardship to the alien or a child of the alien.

Pub. L. No. 103-322, § 40701 (1994) (codified at 8 U.S.C. § 1154(a)(1)(A) (1995)) (emphasis added). Upon their enactment in 1994, the self-petitioning provisions required marriage to the abusive U.S. citizen or lawful permanent resident at the time of filing. Consequently, the words “has resided with the alien’s spouse” clearly required residence with the abuser during the qualifying marriage.

The 2000 amendments to the self-petitioning provisions further show that the statute does not encompass joint residence outside of the marriage. The Battered Immigrant Women Protection Act of 2000, Title V of the Victims of Trafficking and Violence Protection Act of 2000 (VAWA 2000), amended section 204(a)(1) of the Act to extend eligibility to, *inter alia*: aliens whose marriage was invalid due to the abuser’s bigamy, aliens whose USC citizen spouse had died within two years prior to filing the self-petition, aliens who had divorced the abuser within the past two years if the divorce was connected to the abuse and aliens whose abuser had lost permanent resident status or lost or renounced citizenship within the past two years related to an incident of domestic violence. Pub. L. No. 106-386, § 1503(b), (c) (Oct. 28, 2000) (codified at 8 U.S.C. § 1154(a)(1)(A)(iii), (a)(1)(B)(ii)).

While expanding the definition of a qualifying relationship, VAWA 2000 did not alter the requirement that the self-petitioner have resided with the abuser during the marriage or the qualifying intended marriage. Rather, VAWA 2000 amended the residence requirement to clarify that the joint residence must have been either with the alien’s “spouse” or “intended spouse.” The amendment reordered the eligibility requirements and changed the relevant residence from that of “[a]n alien who is the spouse of a citizen of the United States . . . and who has resided in the United States with the alien’s spouse” (prior section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A) (1995)) to that of an alien “who has resided with the alien’s spouse or intended spouse” (section 204(a)(1)(A)(iii)(II)(dd) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(dd)). The addition of

“intended spouse” accounted for the bigamy provision, but still required that the residence occur during the marriage or the qualifying intended marriage. Notably, the VAWA 2000 amendments did not change the residence requirement to encompass residence with the abuser as a “former spouse.” Hence, it is clear that residence during the marriage was still required for aliens who were no longer married to their abusers at the time of filing.

The statutory language of the residence requirement is clear. Section 204(a)(1)(A)(iii)(II)(dd) of the Act requires the self-petitioner to show that he or she “has resided with the alien’s spouse or intended spouse.” The statute and regulations do not encompass residence outside of the marriage or qualifying intended marriage. Even if the statutory language were unclear, the history of the self-petitioning provisions negates counsel’s interpretation. Since their enactment in 1994 and through two major subsequent amendments, the self-petitioning provisions have retained the requirement that the self-petitioner demonstrate residence with the abuser during the marriage or the qualifying intended marriage.

*The Petitioner Has Not Demonstrated That She Lived With Her Spouse During Their Marriage*

On the Form I-360, the petitioner stated that she lived with her husband from June 2003 until July 2008. In the petitioner’s personal statement appended to the petition, the petitioner noted that she had resided with J-C- prior to the marriage and the couple had a son. The petitioner indicated that in April 2008, the couple re-established their relationship. The petitioner declared “we got married on May 06, 2008, I stayed at my parent’s house because [J-C-] asked me to do it that way and wait until we could move into our own place.” The petitioner indicated that at some point she traveled to California to find work and then returned. She noted that everything ended on July 23, 2008.

The record includes the petitioner’s order of protection issued on July 24, 2008 which provides two separate addresses for the petitioner and for J-C-. The police report also dated July 24, 2008 indicates that the assault incident took place in an area adjacent to a specific road. The police officer noted that the couple had a son but that they did not live together.

In response to the director’s RFE, the petitioner stated that she stayed with her husband on her wedding night at the home of her mother-in-law and “the next day [J-C-] asked that I stay at my mom’s house for a few days because in my mother-in-law’s house there were a lot of people staying there and there wasn’t really space for my son and me.” The record also includes a psychological evaluation which references the couple moving to his parent’s house.

The director determined that although the petitioner’s testimony indicated that the couple intended to live together in a marital home, circumstances had prevented this from occurring. The director discounted the information in the psychological evaluation as it conflicted with the petitioner’s own statements.

On appeal, counsel for the petitioner asserts that the couple lived together after the marriage on May 6, 2008 until June 2008. Counsel avers that the petitioner may have stayed at her mom’s house for a few days after the marriage but that she was living with J-C- until June 2008. Counsel notes that the July 24, 2008 police report includes an inaccurate reference to the length of the marriage and

contends that the police officer did not speak Spanish and the petitioner did not speak English; thus the police officer's report that the couple did not live together is not probative. Counsel asserts that the petitioner did live with her USC spouse both before and after they were married and thus she is eligible for VAWA relief.

Section 101(a)(33) of the Act prescribes that, as used in the Act: "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." 8 U.S.C. § 1101(a)(33). This definition represents a codification of the Supreme Court's holding in *Savorgnan v. United States*, in which the Court determined that, in contrast to domicile or permanent residence, intent is not material to establish actual residence, principal dwelling place, or place of abode. *Savorgnan v. United States*, 338 U.S. 491, 504-06 (1950). The preamble to the interim rule regarding the self-petitioning provisions cited section 101(a)(33) of the Act as the binding definition of "residence" and further clarified that "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home in the United States while continuing to maintain a general place of abode or principal dwelling place elsewhere." 61 Fed. Reg. 13061, 13065 (Mar. 26, 1996).

In this matter, the petitioner's testimony reveals that she maintained her residence at her mother's house while her USC spouse maintained his residence at his mother's house. While the relevant evidence indicates that the petitioner may have resided with her spouse prior to their marriage and intended to live with him after their marriage, it does not demonstrate that the petitioner and her spouse actually resided together during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. The petitioner's testimony does not establish that her place of general abode was with her USC spouse. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

### *Conclusion*

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 appeal will be dismissed.

**ORDER:** The appeal is dismissed. The petition remains denied.