

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



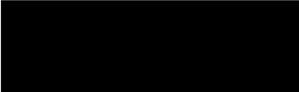
U.S. Citizenship
and Immigration
Services



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Date: **DEC 08 2012**

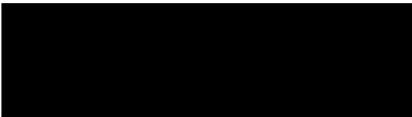
Office: VERMONT SERVICE CENTER

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:

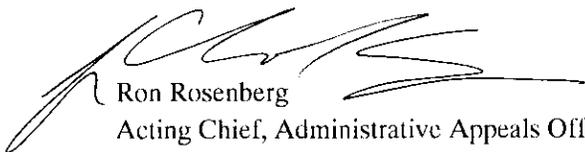


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“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 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with her husband and entered into the marriage in good faith. The director also denied the petition on the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief and additional evidence.

Relevant 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)

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 further explicated 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.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered 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 . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

* * *

(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 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:

(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.

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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 petitioner is a citizen of The People's Republic of China (China) who entered the United States on July 13, 2009, as a K-3 visitor. The petitioner married [REDACTED], a U.S. citizen, on [REDACTED] 2008 in [REDACTED] China. The petitioner's husband filed an alien relative immigrant petition (Form I-130) on the petitioner's behalf, which was approved on September 29, 2008. The petitioner filed and later withdrew her application for adjustment of status. The petitioner filed the instant Form I-360 on September 14, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's joint residency with [REDACTED] evidence of abuse, and good-faith entry into the marriage. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

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 as supplemented, the petitioner has not overcome the director's grounds for denial. Beyond the director's decision, the petitioner has also not established that she is a person of good moral character.² The appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See*

Joint Residence

The record fails to demonstrate that the petitioner resided with [REDACTED]. The petitioner stated on her Form I-360 that she resided with [REDACTED] from January of 2008 to February of 2008 in [REDACTED] China. The relevant evidence on the record contains the petitioner's two affidavits submitted with her Form I-360, [REDACTED] credit card statement showing purchases made in China, electronic mail messages between the petitioner and [REDACTED] including one containing a copy of [REDACTED] round trip airline itinerary for his January 2008 trip, and a copy of a letter from [REDACTED]. The director properly reviewed and addressed the deficiencies of the evidence submitted below as these documents fail to establish that the petitioner jointly resided with [REDACTED] in [REDACTED].

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). In her affidavits, the petitioner did not describe her shared residence with [REDACTED] in any probative detail. She did not, for example, describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with [REDACTED] after their marriage. In her affidavit dated August 12, 2010, the petitioner stated that she first met [REDACTED] through an online dating site in September of 2007. She then stated that she met [REDACTED] in person in Hong Kong when he came to visit her in mid-January of 2008. She stated that she and [REDACTED] stayed at a hotel in Hong Kong for three days while sightseeing throughout the city before returning to her hometown of [REDACTED]. During this time at her home, the petitioner and [REDACTED] were married. The petitioner and [REDACTED] then had a banquet in a neighboring city, Nan Ning, where they stayed at a hotel for nine days. The petitioner stated they then returned to [REDACTED] for one week before [REDACTED] traveled back to Colorado. In her affidavit dated September 7, 2010, the petitioner explained that "Although we lived together for a while in China, after I arrived in the U.S., [REDACTED] refused to see me." She explained that she hoped he would have a change of heart but that he never did and she "never got the opportunity to live with [her] husband." The petitioner explained that [REDACTED] did not want to see her but said he would help her apply for her lawful permanent resident status. She further explained that she does not have documents showing they resided together in the United States but does have documents showing that they "resided" together in China when [REDACTED] came to visit her.

A review of the administrative record shows that in a previously submitted Form G-325A Biographic Information, the petitioner claimed to be living with [REDACTED] at his Colorado address from July of 2009 after her arrival from China to the present.³ This statement directly contradicts the petitioner's testimony in these proceedings that she never resided with [REDACTED] at his Colorado address.

Section 101(a)(33) of the Act defines the term "residence" as a person's "principal, actual dwelling place in fact, without regard to intent." Based on the petitioner's description, [REDACTED] resided in fact in

Spencer Enterprises, Inc. v. United States, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

³ The Form G-325A was signed by the petitioner on March 8, 2010.

Colorado during the marriage and made one brief visit to the petitioner's home. During this visit, the petitioner and [REDACTED] met in person for the first time, were married, and stayed at hotels for a significant part of [REDACTED] approximately three week visit. The photographs of the petitioner and [REDACTED] were taken during that visit and are not probative of a shared residence. The credit card purchases were also made during this one trip and are not probative of a shared residence. Further, the letter from [REDACTED] establishes that he traveled to China to visit the petitioner but it is insufficient to establish a joint residence with her. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The petitioner failed to establish that she married [REDACTED] in good faith. The record contains the petitioner's affidavits, electronic mail messages and online chat text messages between the petitioner and [REDACTED] a letter from [REDACTED], and various photographs. As correctly determined by the director, the electronic mail messages and letter from [REDACTED] are insufficient to establish the petitioner's good faith entry into marriage with [REDACTED]. Further, the director correctly determined that the submitted photographs are also insufficient to establish the petitioner's intentions upon marrying [REDACTED]. In her first affidavit, the petitioner stated that she met [REDACTED] through an online website sometime in September of 2007. She stated that they chatted online, sent each other electronic mail messages, and talked through an online service. The petitioner described getting to know [REDACTED] and feeling like she could take care of him. She stated that in January of 2008, they began to talk about getting married and did so when he came to visit in mid-January of 2008. She stated that they celebrated with a banquet and then [REDACTED] returned to his home in Colorado. In her second affidavit, the petitioner stated that she communicated with [REDACTED] for months before he went to China to marry her. She did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the alleged abuse. On appeal, counsel argues that the petitioner treated [REDACTED] as her husband which is evidenced by the messages and chats. On appeal, the petitioner submits a message to her from [REDACTED] dated June 24, 2009 her response dated June 25, 2009. The messages concern [REDACTED] desire to terminate the relationship and are not indicative of the petitioner's intent upon marrying [REDACTED].

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 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." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's affidavits do not provide sufficient detail to adequately address her good faith intent upon marrying [REDACTED]. When viewed in the totality, the preponderance of the relevant evidence does not 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.

Battery or Extreme Cruelty

We further find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this

ground for denial. The relevant record contains the following: the petitioner's affidavits; an electronic mail messages from [REDACTED] dated July 24, 2009 where he states that he does not want to see the petitioner, that he thinks of her as a "chinese [sic] wife," and that she is not an American wife; and reports documenting the problem of sex tours in China.

In her first affidavit, the petitioner stated that just before she was scheduled to travel to the U.S. to reunite with [REDACTED] he told her that their marriage was a mistake and that he did not want to see her. She stated that they continued to correspond with each other but that he would not change his mind. She then stated that around February or March of 2010, the petitioner could tell that [REDACTED] had become bored and that he was a "different person." In her second affidavit, the petitioner briefly stated that due to [REDACTED] abandonment of her, she suffered from humiliation and emotional pain. The relevant evidence does not demonstrate that the actions of the petitioner's spouse constituted battery or extreme cruelty as that term is defined in the regulation. On appeal, counsel reasserts his claim that [REDACTED] refusal to see the petitioner after she traveled to the U.S. was abusive. As the director explained, the record fails to demonstrate that these actions constituted extreme cruelty. The evidence that counsel submits on appeal further fails to demonstrate that [REDACTED] actions constitute extreme cruelty. Accordingly, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

Beyond the director's decision, the petitioner failed to establish her good moral character. Primary evidence of a self-petitioner's good moral character is his or her affidavit. See 8 C.F.R. § 204.2(c)(2)(v). The affidavit should be accompanied by a police clearance from each place the self-petitioner has resided for six or more months during the three-year period immediately preceding the filing of the self-petition. *Id.* The petitioner did not attest to her good moral character in either of the two affidavits submitted below and only submitted a criminal background check from [REDACTED] China. A review of the administrative record shows that the petitioner has resided in California since she entered the United States on July 13, 2009. The petitioner failed to submit a local police clearance or state issued criminal background check from California. The petitioner's Chinese criminal background check is therefore insufficient to establish her good moral character. Accordingly, the petitioner has failed to demonstrate that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

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 and the petition will remain denied for the reasons stated above, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.