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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



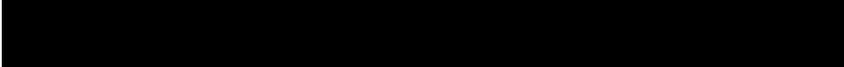
U.S. Citizenship  
and Immigration  
Services

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DATE: Office: VERMONT SERVICE CENTER FILE:   
**JAN 26 2012**

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:

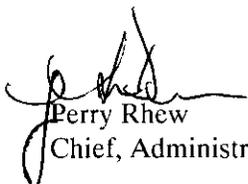
SELF-REPRESENTED

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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 United States citizen.

The director determined that the petitioner had not established that she had jointly resided with the claimed abusive United States citizen, that she is a person of good moral character, or that she had entered into the marriage in good faith. On appeal, the petitioner submits a Form I-290B, Notice of Appeal or Motion, a supplemental statement, the petitioner's January 20, 2011 fingerprint response, and previously submitted documentation.

*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.

\* \* \*

(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

person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

(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 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.

\* \* \*

(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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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.

### *Facts and Procedural History*

The petitioner is a native of Pakistan and a citizen of the United Kingdom. She entered the United States on July 21, 2008 under the visa waiver program. On October 3, 2008, she married R-P,<sup>1</sup> the claimed abusive United States citizen. On April 16, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On October 6, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had jointly resided with R-P-, that she is a person of good moral character, or that she had entered into the marriage in good faith. The petitioner timely submits a Form I-290B, a supplemental statement, evidence of her good moral character, and previously submitted documentation.

### *Good Moral Character*

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

The petitioner initially did not submit any information regarding her good moral character. In response to the director's RFE, the petitioner provided her personal statement, statements of two affiants declaring that the petitioner is a person of good moral character, and an indication that she had requested a criminal history and would forward it once it had been received. When the director issued the decision on December 29, 2010, the director had not received the requested criminal history clearance. On appeal, the petitioner submits a January 20, 2011 record review of a fingerprint search of the records contained in the Bureau of Criminal Information and Analysis files and the finding of no information meeting dissemination criteria pursuant to California law on the petitioner.

Thus, the record now contains a criminal history review and clearance. Based on the information submitted on appeal and the petitioner's personal statement and the two affidavits submitted on her behalf, the petitioner has established she is a person of good moral character. The director's decision to the contrary is withdrawn.

### *Residence*

The petitioner in this matter indicated on the Form I-360 that she jointly resided with R-P- from July 2008 until December 2008 in Huntington Beach, California. In the petitioner's initial statement accompanying the petition, she stated "private marriage" next to a line reading "proof we resided together." The petitioner's marriage certificate lists the same address for the bride and groom. In a personal statement submitted in response to the director's RFE, the petitioner indicated that when she first arrived in the United States she stayed in a hotel for a few days and then stayed with R-P- occupying separate rooms until the couple married. The petitioner also indicated that at first the couple stayed in R-P-'s friend's apartment and after two weeks moved to R-P-'s cousin's house in Huntington Beach, California where they rented a room. The petitioner stated that there was no contract, the cousin paid all the bills, and the petitioner and R-P- did not have to pay anything. The petitioner noted that her only proof of shared residency is the marriage certificate which indicated that both the bride and groom lived at the same address.

The director determined that the record was insufficient to establish that the petitioner had jointly resided with R-P-.

On appeal, the petitioner states it is unfair that her petition was denied because she does not have any bills, bank accounts, or insurance with R-P-. She again references her marriage certificate as evidence of joint residence.

Upon review of the information in the record, we concur with the director's assessment of the evidence. The petitioner does not provide detailed information regarding the claimed joint residence. She does not clearly detail the living arrangements either prior or subsequent to the marriage, other than as generally stated above. She does not describe their jointly-owned belongings if any, she does not describe their home furnishings, and she does not describe their residence in detail. Moreover, she references the fact that her biological child lived with her and R-P- and attended school. She, however, does not provide her child's school records and does not provide an explanation why these school records could not be provided. The petitioner's testimony

does not contain sufficient probative detail to establish that the couple resided together during the marriage.

### *Good Faith Entry Into Marriage*

In the petitioner's initial personal statement, she stated that she came to the United States as a visitor and was persuaded to get married. She indicated that she had known R-P- for over a year and they visited an immigration attorney who told her that getting married was not illegal. She noted that she did not have proof of their shared courtship as everything had been deleted. She provided one picture and claimed the picture was on her phone.

In response to the director's RFE, the petitioner stated that she met R-P- through a website while living in London, England. She indicated that they communicated via websites and eventually over the phone. The petitioner reiterated that she does not have any proof of their courtship as R-P-'s messages were on a computer that has since been thrown away and his letters to her were taken by his cousin. The petitioner indicated that she owned a property in Florida and that her sister insisted that she enter into a prenuptial agreement to keep the property safe if she married. The petitioner stated that she quit claimed the property to her sister because she did not want to ask R-P- to sign a prenuptial agreement. The petitioner does not further expound upon her interactions with R-P- except as it relates to the alleged abuse.

Based upon the information in the record, the director determined that the petitioner had not established she had entered into the marriage in good faith.

On appeal, the petitioner asserts that she signed the quit claim deed of her property in Florida to her sister only to keep her sister happy. She states that when she entered the marriage she completely trusted R-P- and signing the property over to her sister was not valid unless the deed was filed with the state. The petitioner provides a printout of the Florida land records which shows that the petitioner still owns the property, subject to numerous liens. The petitioner contends that she entered into the marriage in good faith but that R-P- did not. She notes that if he had married her in good faith she would have the documents showing the couple was establishing a life together but as R-P- married her only to use her, she does not have any joint documents. The petitioner avers that she married for love and that she would not have left her family and everything she knew if it had not been to enter into a good faith marriage.

Upon review of the petitioner's statements, she briefly references meeting R-P- via a website and communicating with him for over a year. She notes that she entered the United States as a visitor and then immediately began staying with him. The record does not contain probative testimony regarding the petitioner's courtship with R-P-, the types of activities they enjoyed together in detail, or her interactions with R-P- except as it relates to the claim of abuse. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). The petitioner's testimony does not convey the meaningful detail necessary to ascertain her intent when entering into the marriage. Although the petitioner states that she entered into the marriage for love and she would not have left England if it had not been

a good faith marriage, she does not provide the requisite underlying detail in her testimony necessary to ascertain her actual intent when entering into the marriage. Upon review of the totality of the record in this matter, the record does not include sufficient probative evidence establishing that the petitioner entered into marriage with R-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

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