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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

**PUBLIC COPY**

*By*

Date: **JAN 24 2012**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE: Self-Petitioner: [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 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 Rnew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont Service Center director (“the director”) denied the immigrant visa petition and reaffirmed his decision upon granting the petitioner’s motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 denied the petition for failure to establish that the petitioner resided with her husband. On appeal, counsel submits a brief and an additional affidavit.

*Applicable Law and Regulations*

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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 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.

The evidentiary 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:

(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 record in this case provides the following pertinent facts and procedural history. The petitioner is a citizen of Uzbekistan who entered the United States on June 7, 2009 as a nonimmigrant performer (P-3). On November 18, 2009, the petitioner married a U.S. citizen. The petitioner filed the instant Form I-360 on March 1, 2010. The director subsequently issued a request for further evidence that, *inter alia*, the petitioner resided with her husband and married him in good faith. The petitioner responded with additional evidence. After considering the relevant evidence of record, the director denied the petition for failure to establish her good-faith entry into the marriage and her residence with her spouse. Upon reopening and reconsideration, the director determined that the petitioner had established her good-faith entry into the marriage, but had not shown that she resided with her husband.

On appeal, counsel asserts that the director failed to consider that the abuse caused the petitioner to frequently separate from her husband, but that these separations did not negate their other periods of joint residence.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the relevant evidence submitted below and on appeal fail to overcome the ground for denial and the appeal will be dismissed for the following reasons.

### *Joint Residence*

The petitioner's statements provide an inconsistent account of her residence with her husband. In her first, undated statement, the petitioner explained that after their marriage, her husband said they would live together in a house he was refurbishing in New Jersey. In the meantime, the petitioner's husband lived with his mother and step-father in New Jersey and the petitioner "remained in [REDACTED] for part of the week." The petitioner stated that she stayed with the petitioner at his parents' home on holidays and weekends. After an incident of abuse in early January 2010, the petitioner recounted that she "stayed away" from her husband "for several months," but "moved in" with him again at his parents' home on or about April 1, 2010, although the petitioner soon left her husband after another incident of abuse on April 14, 2010. The petitioner's statement is inconsistent with her Form I-360, on which did not list their joint address and reported that they resided together from September 2009, before their marriage, until February 2010.

Although the petitioner initially stated that she spent only holidays and weekends with her husband at his parents' home at the beginning of their marriage, in her January 6, 2011 affidavit submitted on motion, the petitioner asserted that she "spent every night at his mother's home with him." The petitioner explained that while she and her husband were dating, she lived with her aunt in [REDACTED] and that after their marriage, she would stay with her aunt when she and her husband were separated due to his abuse, but that when they were not fighting, she spent all of her time with her husband at his mother's home in [REDACTED]. The petitioner also recounted that they "always had the intent of finding a place of [their] own" and that they looked at several residences, but her husband always made excuses as to why they could not purchase a home.

On motion, the petitioner also submitted affidavits from her friends, [REDACTED] and [REDACTED], both of whom recount seeing the petitioner on a few occasions during her marriage, but do not describe any visit to the petitioner's allegedly joint residence with her husband. [REDACTED] whose letter was also submitted on motion, confirmed that he helped the petitioner and her husband search for a house [REDACTED] for about two months beginning in January 2010, but was unsuccessful.

On appeal, the petitioner submits an affidavit from her aunt who attests that the petitioner temporarily stayed with her after abusive episodes during her marriage. However, the petitioner's aunt states that the petitioner "never lived at [her] apartment. She never lived there before her wedding, never lived there during her marriage, and never lived there after her final separation." Her aunt's assertion contradicts the petitioner's first statement in which she recounted that she lived with her aunt prior to her marriage and at the beginning of her marriage when she "remained in [REDACTED] for part of the week" and spent the other days with her husband in New Jersey.

In addition to the inconsistencies in her own statements and with that of her aunt, the remaining, relevant evidence does not support the petitioner's claim that she resided with her husband during their marriage at his mother's home in New Jersey. The record contains several documents dated during the petitioner's purported marital residence which identify her address at that of her aunt on [REDACTED] and another residence on [REDACTED] the petitioner's November 18, 2009 marriage certificate; the petitioner's Intent to Withdraw Request for Asylum form dated November 30, 2009; the January 15, 2010 New York City Police Department Good Conduct Certificate; a Form G-28, Notice of Entry of Appearance as Attorney for the petitioner's prior counsel, which the petitioner signed on February 14, 2010; and an April 15, 2010 New Jersey Victim Notification Form. The record contains no documents listing the petitioner's address as that of her purportedly marital residence [REDACTED]. In his final decision, the director listed four of the documents dated during the petitioner's marriage which identify her Brooklyn addresses, but the petitioner provides no explanation for this discrepancy on appeal.

On appeal, counsel submits an article entitled, "The Cycle Theory of Battering" by [REDACTED]. We acknowledge that abusive relationships often involve periods of violence, contrition, reconciliation and repeated separations. While this fact supports the credibility of the petitioner's account of leaving her husband after incidents of abuse, it does not establish their joint residence.

On appeal, counsel reiterates that the petitioner and her husband "always had the intent of finding a home of their home," an intent which counsel claims supports the petitioner's residence with her husband. While the record shows that the petitioner intended to reside with her husband, intent alone does not meet the shared residency requirement. Section 101(a)(33) of the Act prescribes that: "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*,<sup>1</sup> 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. See H.R.Rep.

<sup>1</sup> *Savorgnan v. United States*, 338 U.S. 491, 504-06 (1950).

No. 1365, 82d Cong., 2d Sess. 33 (1952). 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 . . . while continuing to maintain a general place of abode or principal dwelling place elsewhere.” 61 Fed. Reg. 13061, 13065 (Mar. 26, 1996). While the petitioner in this case may have intended to reside with her husband, the preponderance of the relevant evidence shows that her husband’s residence in New Jersey was not the petitioner’s principal, actual dwelling place in fact.

Lastly, counsel claims on appeal that the director erroneously relied on “assumptions about the predictable living situations of normal couples.” We recognize that abused spouses often face difficulties providing documentation of shared residence and the regulations do not require primary evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). Rather, a self-petitioner may submit “affidavits or any other type of relevant credible evidence of residency.” 8 C.F.R. § 204.2(c)(2)(iii). In this case, however, the record contains inconsistent statements regarding the petitioner’s claimed residence with her husband during their marriage and she provides no explanation for why documents dated during her marriage list her address [REDACTED] not her purportedly marital residence [REDACTED]. Consequently, the petitioner has not established her residence with her husband during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) 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.

**ORDER:** The appeal is dismissed.