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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  
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Services

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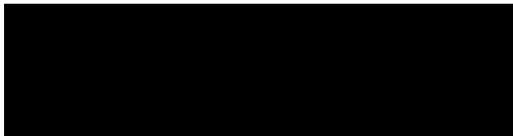
Date: **MAR 15 2012**

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:

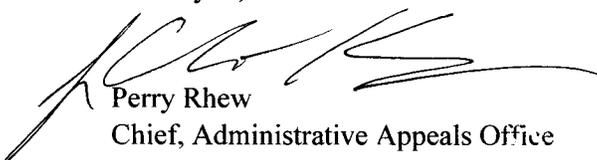


**INSTRUCTIONS:**

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 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 Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition. The AAO dismissed a subsequent appeal. The matter is now before the Administrative Appeals Office (AAO) on a motion to reconsider. The motion will be granted and the previous decision of the AAO will be withdrawn in part and affirmed in part. The appeal will remain 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 her former U.S. citizen spouse.

On October 1, 2010, the director denied the petition for failure to establish that the petitioner entered into marriage with her spouse in good faith. On July 21, 2011, the AAO dismissed the petitioner’s appeal. The AAO determined that the petitioner failed to establish that she entered into marriage with her spouse in good faith and resided with her spouse.

On motion, 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.

\* \* \*

(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.

\* \* \*

(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 Belgium who was admitted to the United States on October 5, 2000 under the Visa Waiver Program. She married T-B-, a United States citizen, on July 25, 2008 in Ventura, California. The petitioner filed the instant Form I-360 on December 2, 2008. The matter is now before the AAO on a motion to reconsider its prior decision dismissing the petitioner's appeal.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The AAO's prior decision will be withdrawn in part and affirmed in part for the following reasons.

#### *Good-Faith Entry Into Marriage*

In its July 21, 2011 decision, the AAO reviewed the evidence of record and determined that the petitioner had not provided detailed testimony regarding her initial meeting with T-B-, their courtship, or their subsequent interactions except as it related to her claim of abuse. The AAO further determined that that the petitioner submitted supporting statements that failed to provide probative details regarding the authors' observations of the petitioner's good faith entry into marriage with T-B-. The AAO

concluded that the totality of the evidence did not include sufficient probative evidence establishing that the petitioner entered into marriage with T-B- in good faith.

On motion, the petitioner submits a statement, dated August 2011, in which she explains in detail how she first met T-B-, their courtship, engagement, wedding ceremony and shared experiences. Her statement provides probative information regarding the petitioner's good faith intentions in marrying T-B-. The petitioner previously submitted photographs of her wedding, pictures of herself and T-B- at a beach and other locations, and photographs of herself and T-B- at a "humanitarian day" event. The photographs corroborate the claims of good-faith marriage that the petitioner attested to in her recent statement.

On motion, the petitioner also submits printed copies of romantic electronic mail exchanges between her and T-B- on the day of their wedding. She submits an August 2011 letter from her friend, [REDACTED] who describes his observations of the couple shortly after their marriage and who provides further, probative details on the petitioner's good-faith marriage to T-B-.

De novo review of the record establishes that the petitioner married her spouse in good faith. When viewed in the totality, the preponderance of the relevant evidence submitted below and on motion demonstrates 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.

#### *Joint Residence*

In its July 21, 2011 decision, the AAO determined that the record failed to demonstrate that the petitioner resided with her husband. In making this determination, the AAO found that the petitioner, in her statement issued in response to the director's request for evidence (RFE), indicated that T-B- continued to return to his apartment even after their marriage. The AAO noted that the petitioner submitted a lease signed in August 2008, which provides that it is for two residents and the petitioner indicated that her mother continued to live in the apartment. The AAO stated that the petitioner had not provided probative testimony regarding her joint residence with T-B-. The AAO concluded that the record does not establish that the petitioner's and T-B-'s primary places of abode were in the same apartment.

On motion, counsel asserts that "precedent law maintains that cohabitation is not required to establish the veracity of a marriage and should therefore not be used as basis for dismissing the petitioner's request." Counsel states "there is substantial information in the form of testimony demonstrating that the marriage was entered in good faith whether the director was convinced of their cohabitation or not." Counsel misinterprets the joint residence eligibility requirement as pertaining only to the good faith marriage requirement." Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Although the same or similar evidence may support more than one claim, meeting one eligibility requirement will not necessarily demonstrate the other.

De novo review of the record does not establish that the petitioner resided with her spouse. On the Form I-360, the petitioner stated that she resided with her spouse from July 25, 2008 until October 2008. However, in the statement on her residence issued in response to the RFE, the petitioner does not specify the exact dates of her residence with her husband and she does not describe their home or shared residential routines in any detail. The petitioner recalled that on the day of her marriage to T-B-, they signed a one-month lease to reside in her apartment. She recalled that soon after their marriage her husband stated that she and her mother could move into his larger apartment because his roommate was moving out. She stated that this arrangement did not happen because she and her husband were having constant arguments and he did not want to reside with her mother. The petitioner recalled that they continued to have marital problems and in the middle of August 2008 had an argument because her husband would not show her his apartment. She stated that after this argument, she and her husband returned to their respective apartments and they did not speak for a couple of days.

Although the petitioner may have intended to reside with her husband, the Act defines residence as a person's general abode, which means the person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33). As stated in our previous decision, the petitioner's statement does not provide consistent and probative information sufficient to establish that she and T-B- resided together. On motion, counsel does not address the inconsistencies noted in the petitioner's affidavit and her failure to demonstrate with probative testimony that she resided with T-B-. 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.

### *Conclusion*

On motion, the petitioner established that she entered into her marriage with her husband in good faith. However, she failed to establish that she resided with her husband. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and the appeal remains dismissed.

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.

**ORDER:** The motion is granted. The AAO's decision, dated July 21, 2011, is withdrawn in part and affirmed in part. The petition remains denied.