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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

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[redacted]

DATE: MAY 0 8 2012 OFFICE: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: 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 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 service center director (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 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 on the basis of his determination that the petitioner failed to establish that she resided with her husband. On appeal, counsel submits a letter and additional evidence.

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

> 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 standard and 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:

> *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.

Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33), states the following:

The term "residence" means the place of general abode; the place of general abode means his principal, actual dwelling place in fact, without regard to intent.

Pertinent Facts and Procedural History

The petitioner is a citizen of the Philippines who entered the United States on October 9, 2007. She married [redacted] a citizen of the United States, on [redacted] 2009. The petitioner filed the instant Form I-360 on October 12, 2010. The director issued a subsequent request for additional evidence (RFE) and the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on August 24, 2011.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

Joint Residence

The petitioner claimed on the Form I-360 that she and [redacted] resided together from December 2, 2009 until April 9, 2010. However, the relevant testimonial and documentary evidence submitted below, which the director properly summarized and reviewed in his decision denying the petition, does not establish that the petitioner and [redacted] ever resided together. To the contrary, it indicates the petitioner lived in hotels and with friends and family members for seven and a half months following the couple's wedding until December 2009, when [redacted] rented a condominium located in Escondido, California and that although [redacted] visited the petitioner there, he maintained his own, separate residence. The director properly determined that [redacted] never "resided" with the petitioner pursuant to section 101(a)(33) of the Act, which was set forth above and defines the term "residence" for immigration purposes, and that the petitioner had consequently failed to demonstrate the couple's requisite joint residence pursuant to section 204(a)(1)(A)(iii)(II)(dd) of the Act.

[1] Name withheld to protect individual's identity.

On appeal, counsel and the petitioner assert that the couple began living together in the Escondido condominium in December 2009 (neither claims the couple resided together during the first seven and a half months of their marriage). In relevant portion, counsel's appellate submission consists of an affidavit from the petitioner; an affidavit from [redacted] the owner of the Escondido condominium; several text messages sent between the petitioner and [redacted] and her own brief letter.

In her September 19, 2011 affidavit submitted on appeal the petitioner claims that as far she is concerned, the Escondido condominium was the couple's marital home, principal residence, and where she expected [redacted] to come after work from December 2, 2009 until April 9, 2010. However, section 101(a)(33) specifically states that residence is determined "without regard to intent." The petitioner's testimony submitted on appeal does not establish that she resided with [redacted] in the Escondido condominium because she does not demonstrate that it was [redacted] "principal, actual dwelling place in fact," as required by the definition of residence contained at section 101(a)(33) of the Act. If [redacted] was residing in the Escondido condominium with the petitioner as his "principal, actual dwelling place in fact," the petitioner would not have asked him where he "sleep[s], stay[s], take[s] shower etc." in her electronic mail (e-mail) message dated February 5, 2010. Nor would she have told him that "[y]ou got a unit [I] thought for the two of us and you just left me alone there . . . I had to beg all the time so you would come to the unit for me" in her August 7, 2010 e-mail message. The definition of residence contained at section 101(a)(33) of the Act represents a codification of the Supreme Court's holding in *Savorgnan v. United States*, 338 U.S. 491, 504-06 (1950), in which the Court determined that, in contrast to domicile or permanent residence, intent is not a material factor in establishing one's actual residence, principal dwelling place, or place of abode. *See* H.R.Rep. 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 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). The petitioner's e-mail messages to [redacted] cited above undermine her testimony submitted on appeal regarding her allegedly joint residence with [redacted] Furthermore, the petitioner submitted a lease agreement she knew was fraudulent below as evidence of her joint residence with [redacted] and that action on her part diminishes the probative value of her testimony regarding the allegedly joint residence.

The September 19, 2011 affidavit from [redacted] does not establish that the couple resided jointly at the Escondido condominium either, as she provides no probative information regarding the couple's allegedly joint residence there. Her recollections that she personally gave the key to the unit to [redacted] and that he paid the rent for four months do not establish that he ever actually resided there.

The text messages sent by [redacted] submitted on appeal do not establish that the couple resided jointly together either, as they do not demonstrate that the Escondido condominium was [redacted] principal, actual dwelling place in fact, as required by section 101(a)(33) of the Act. Although [redacted] made general statements including "home is where you are" and reassured the petitioner that the unit was

their "house" despite the fact that it was a rental, his text messages provide no probative details regarding the couple's allegedly joint residence and fail to overcome the evidence submitted below indicating he maintained his own, separate residence during the marriage.

The arguments made by counsel in her brief letter submitted on appeal fail to establish that the couple resided together during their marriage. Despite the fact that the director's decision denying the petition was based on section 101(a)(33) of the Act, counsel does not reference that statute. Although counsel asserts that an individual may have two places of residence and that residence requires bodily presence, the definition of residence contained at section 101(a)(33) of the Act does not mention the possibility of having two residences, and it does not define residence as bodily presence. Although counsel maintains that residence is defined by the intent of the person, she is incorrect because the definition of residence at section 101(a)(33) of the Act specifically disregards intent. Counsel's arguments made on appeal do not establish that the Escondido condominium was [redacted] principal, actual dwelling place in fact, which is required in order to demonstrate that the couple resided together there.

The relevant evidence fails to establish that the petitioner and [redacted] shared a joint residence as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act because it does not demonstrate that [redacted] ever resided with the petitioner as the term "residence" is defined at section 101(a)(33) of the Act.

Conclusion

The petitioner has failed to overcome the director's grounds for denial and has not established that she resided jointly with [redacted] Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and this petition must remain denied.

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). She has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.