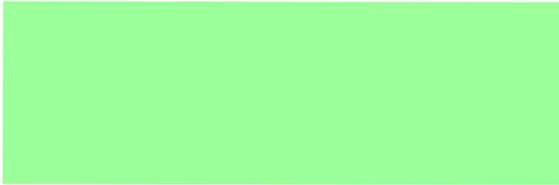


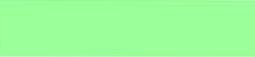


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JAN 22 2013** Office: VERMONT SERVICE CENTER File: 

IN RE: Self-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:

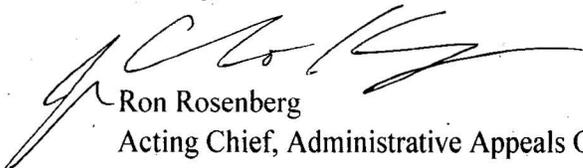


INSTRUCTIONS:

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 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 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 request 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 that any motion must 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 Vermont 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 had failed to establish that she resided with her husband.

On appeal, counsel submits a brief, another personal statement from the petitioner, an affidavit from a friend, and information regarding Camp Pendleton.

Applicable Law

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 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.

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:

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.

Facts and Procedural History

The petitioner is a citizen of Sweden who entered the United States on August 1, 2006, as a nonimmigrant student. On June 13, 2009, the petitioner married a U.S. citizen in California. The petitioner filed the instant Form I-360 on November 29, 2010. The director subsequently issued a Request for Evidence (RFE) of, among other things, joint residence. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on January 6, 2012 for failure to show that the petitioner had resided with her spouse, had been battered or subject to extreme cruelty by her spouse, and that she entered into the marriage in good faith. The petitioner subsequently filed a Motion to Reconsider, which was granted. The director found that in her motion, the petitioner had sufficiently established that she was battered or subject to extreme cruelty and that she entered into the marriage in good faith. However, the director found that the petitioner did not establish that she and her husband resided together and on July 24, 2012, he denied the petition on that basis. Counsel timely appealed.

On appeal, counsel asserts that the petitioner and her husband's "principal dwelling place . . . was Camp Pendleton as proven by the issuance of a military ID card to [the petitioner]."

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner has failed to overcome the director's ground for denial and establish she resided with her husband. A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons.

Joint Residence

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner resided with her husband. On the Form I-360, the petitioner claimed that she lived with her husband from June 2009 to February 2010 and that their last joint address was [redacted] in Los Angeles, California. In her initial declaration, the petitioner stated that her husband had applied for government housing for them to live together, but that their application was not approved, and that until

he returned from his deployment, her husband said they should stay at her apartment in Los Angeles. In her second declaration, the petitioner stated that after their marriage, she went to his military base for “extended visits” and he “came to [her] place over the weekends.” She also stated explicitly that “there are no joint leases, mortgages under both our names because my husband lived in the barracks at Camp Pendleton. We did not rent a place of our own because he was deployed a few months later.” The petitioner submitted a letter from her friend, [REDACTED], who stated that when the petitioner went to *visit* her husband in San Diego, the petitioner would ask her not to call. The petitioner also submitted a mental health evaluation prepared by [REDACTED] a licensed marriage and family therapist. In the evaluation, the therapist states that “since [the petitioner’s husband] was still living in military barracks with other Marines, [the petitioner] could not move in with him. She continued to live in her studio apartment in Los Angeles...” The therapist further stated that the petitioner’s husband “became extremely jealous and accused her of having affairs in Los Angeles *while he was living in San Diego.*” (Emphasis added.)

On appeal, counsel claims that the petitioner and her husband resided together at Camp Pendleton. Where United States Citizenship and Immigration Services (USCIS) can articulate a material doubt regarding the petitioner’s eligibility, the agency may either request additional evidence or deny the application if the material doubt indicates that the claim is probably not true. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). The preponderance of the evidence submitted below shows that the petitioner and her husband did not reside together, nonetheless, the petitioner now claims that they lived together in Camp Pendleton, an unsupported claim which greatly diminishes the petitioner’s credibility. The petitioner herself claimed on her Form I-360 that they resided together at her apartment in Los Angeles, but now claims that they resided together at Camp Pendleton. However, in both of her declarations below, the petitioner described only visiting her husband, not a shared marital residence. On appeal, the petitioner now claims that she lived with her husband at Camp Pendleton from June to September, but fails to describe their claimed shared residence or daily routines in probative detail. In her letter on appeal, [REDACTED] confirms that the petitioner went to Camp Pendleton in June, but also claims that the petitioner left some of her belongings and maintained her room in [REDACTED]’s apartment and that on weekends the petitioner and her husband would visit. The petitioner has not explained any of these inconsistencies. Although the petitioner indicated that she and her husband intended to reside together after he returned from deployment, the Act defines residence as a 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). 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 appeal, the petitioner has failed to demonstrate that she resided with her husband during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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

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Dec. 369 at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.