

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: JUL 29 2014 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)

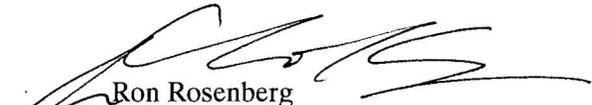
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“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 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 U.S. citizen spouse.

The director denied the petition for failure to establish the existence of a qualifying relationship with a U.S. citizen and corresponding eligibility for immediate relative classification. The director also determined that the petitioner did not establish that she resided with her husband during their marriage or that the petitioner entered the marriage in good faith. On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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 explained in 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, that a spouse may self-petition under these provisions if she:

- (i) . . . (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

- (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 explained in 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.

(ii) *Relationship.* . . . Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner. . . .

(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 China who entered the United States on July 17, 2011, as the fiancée of a U.S. citizen, J-L¹, who she married on July 23, 2011, in Los Angeles, California. The petitioner filed the instant Form I-360 on October 20, 2011. The director subsequently issued a Request for Evidence (RFE) of the petitioner's marriage certificate, her joint residence with J-L, and her good-faith entry into their marriage. The petitioner, through counsel, timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

¹ Name withheld to protect the individual's identity.

The AAO conducts appellate review on a *de novo* basis. *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. Counsel's claims and the evidence submitted on appeal overcome some, but not all, of the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of citizenship of the United States citizen and evidence of the marital relationship. On appeal, counsel has submitted a copy of the petitioner's marriage certificate to J-L-.² The record also contains a copy of J-L-'s birth certificate, showing he was born in the United States. Consequently, the petitioner has demonstrated that she has a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification pursuant to §§ 204(a)(1)(A)(iii)(II)(aa)(AA) and 204(a)(1)(A)(iii)(II)(cc) of the Act. The director's contrary determination is withdrawn.

Joint Residence

The appeal cannot be sustained, however, because the petitioner has not overcome the remaining grounds for denial. The petitioner stated on her Form I-360 that she resided with J-L- from July to August 2011. The petitioner did not submit any evidence to establish joint residence with J-L- after marriage both initially or in response to the RFE. Although the record contains some photographs of the couple, they are undated and are not identified as having been taken at any specific residence that the petitioner shared with J-L-. On appeal, counsel submits a declaration from the petitioner and declarations from friends and relatives. In the petitioner's affidavit, she failed to provide any probative details of the couple's joint residency. She did not describe, for example, their residence, any shared belongings, or any of their residential routines. The letters of support submitted on appeal also fail to demonstrate that the petitioner resided with J-L- during their marriage. [REDACTED] explained that after the petitioner arrived in the United States, she lived with J-L- and that when she was evicted from the house, Mr. [REDACTED] met her outside J-L-'s house, but he did not indicate that he ever visited the petitioner at J-L-'s house or otherwise describe the petitioner's joint residence with her husband during their marriage. The preponderance of the evidence does not demonstrate that the petitioner resided with her husband after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner entered into marriage in good faith and counsel's claims on appeal fail to overcome this ground for denial. The petitioner initially submitted copies of email correspondence. In response to the RFE, the petitioner submitted additional email correspondence as well as copies of telephone bills. While these documents reflect that the petitioner and J-L- had some communication with each other prior to their marriage, they

² The psychological evaluation in the record states that on August 30, 2011, J-L- served the petitioner with divorce papers. There is no indication in the record that the couple's divorce has been finalized.

failed to show that the petitioner entered the marriage in good faith. Contrary to counsel's contention that the telephone bills show the couple talked to each other on the telephone for hours every day, the bills in the record from December 2010 through April 2011 show that calls were made to, or received from, China for a total of only 43 minutes during the entire five-month period. The director correctly determined that the preponderance of the evidence submitted below did not establish the petitioner's good-faith entry into the marriage.

The affidavit and support letters submitted on appeal also fail to establish the petitioner's good faith in marrying J-L-. In the petitioner's affidavit submitted on appeal, she briefly recounted that her relatives introduced her to J-L- and that they kept in touch through the internet and telephone calls. She stated that in October 2010, J-L- went to China and told her that he loved her and wanted to marry her. The petitioner explained that she hesitated because she did not know much about him, but he took good care of her and she liked him, so she agreed, came to the United States, and married him. The remainder of her affidavit focuses on the abuse in the marriage. [REDACTED] stated that in October 2010, she went with J-L- to China to visit the petitioner, the petitioner and J-L- went sightseeing and the petitioner told Ms. [REDACTED] that J-L- was nice to her. [REDACTED] briefly stated that after the petitioner came to the United States and married J-L-, they all went to a restaurant together. The petitioner's father described how he met J-L- at the airport in China and accompanied the couple for sightseeing. [REDACTED] stated that he introduced J-L- to the petitioner, that their families all met in China and he attended the couple's engagement banquet. [REDACTED] recounted that when he met J-L- in China in 2010, the petitioner introduced him as her husband.

On appeal, counsel asserts that the director incorrectly concluded that the petitioner had no intention of entering into marriage. Counsel also contends that the RFE sought documents that were impossible to obtain considering the short duration of the couple's cohabitation. According to counsel, even if such documents existed, the petitioner would have no way of obtaining them because they would be in J-L-'s possession.

Counsel's contentions are misplaced. A self-petitioner must enter into marriage in good faith and not for the primary purpose of circumventing the immigration laws of the United States. *See* 8 C.F.R. § 204.2(c)(1)(ix). Evidence of entry into a good faith marriage is not limited to any specific documents but rather, all credible, relevant evidence, including "evidence regarding courtship, wedding ceremony, shared residence and experiences" and "affidavits of persons with personal knowledge of the relationship." *See* 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's declaration lacked probative details of their courtship, relationship, or her intentions for marrying J-L-. The declarations from friends and family also failed to provide probative details regarding the couple's courtship, wedding ceremony, shared residence and experiences. They did not describe, for example, any particular social occasion or other interactions with the couple in sufficient detail to establish their personal knowledge of the relationship. When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner entered into marriage with J-L- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has established that she had a qualifying relationship with a U.S. citizen and is eligible for immediate relative classification. However, she has not established that she resided with her husband after their marriage or that she entered into the marriage in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met and the appeal will be dismissed.

ORDER: The appeal is dismissed.