



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 04 2015**

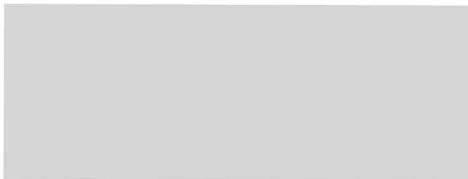
FILE #: [REDACTED]

PETITION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director) revoked approval of the immigrant visa petition. 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 revoked approval of the petition on the basis of her determination that the petitioner did not establish either that she resided with her former spouse or entered into the marriage with him in good faith. On appeal, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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 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)(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.

Facts and Procedural History

The petitioner, a citizen of Romania, entered the United States on January 19, 2003 on a B-1 non-immigrant visa. The petitioner married C-D-¹ on [REDACTED] 2007 in [REDACTED] Illinois. C-D- filed an immigrant visa petition on behalf of the petitioner, which was denied on February 10, 2010. The petitioner and C-D- divorced on [REDACTED], 2011. On February 9, 2012, the petitioner filed the instant Form I-360 self-petition, which was approved on April 15, 2013. The director subsequently issued a Notice of Intent to Revoke (NOIR) on September 10, 2014, notifying the petitioner that the evidence did not establish that she resided with or married C-D- in good faith. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director revoked approval of the petition and the petitioner timely appealed.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's grounds for revocation. The appeal will be dismissed and approval of the petition will remain revoked for the following reasons.

"Good and Sufficient Cause" to Revoke Approval of the Self-Petition

The petitioner alleges that the director did not have "good and sufficient cause" to revoke approval of the self-petition, as required by section 205 of the Act, for three reasons. First, the petitioner argues that, because the revocation relied on a 2010 investigation by U.S. Citizenship and Immigration Services (USCIS) but the director did not revoke approval of the self-petition until 2013, the revocation was not based on new evidence not available at the time the self-petition was approved, contrary to a December 15, 2010 Policy Memorandum (PM-602-0022) issued by USCIS concerning revocation of VAWA-based self-petitions.

As a corollary to the first argument, the petitioner contends that, even if the results of the 2010 USCIS investigation were not available to the director when the self-petition was approved, the petitioner disclosed the salient facts revealed by the USCIS investigation in her self-petition and, on that basis, the revocation was not based on "new evidence not available at the time the self-petition was approved", as described in the Policy Memorandum. Second, the petitioner contends that the director's citation to *Matter of Ho*, 19 I&N Dec. 583, 590 (BIA 1988) was unwarranted because she explained and rebutted the issues raised by the director in the NOIR.

The petitioner's reliance on the Policy Memorandum is misplaced. As noted in the background section of the Policy Memorandum, the Policy Memorandum was issued in order to "ensure consistency in the adjudication of VAWA self-petitions, including consistency in revocations of VAWA self-petitions" because "certain district offices were issuing notices of intent to revoke [self-petitions] that were approved at the Vermont Service Center (VSC)." The Policy Memorandum clarified that only the Director of the VSC is to issue NOIRs or revoke self-petitions and was not intended to address situations,

¹ Name withheld to protect the individual's identity.

such as this, when USCIS obtains information through its own investigation process that is material to the eligibility of self-petitioners. Nor does the Policy Memorandum supplant the regulation at 8 C.F.R. § 205.2(a) which provides that the director “may revoke the approval of [a] petition upon notice to the petitioner . . . when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].”

In addition, the petitioner did not disclose in the self-petition the same substance of the information gleaned from the USCIS investigation and, as a result, the director acted within her authority to issue the NOIR and, ultimately, to revoke approval of the petition. In particular, the self-petition does not recount that USCIS officers visited [REDACTED] on two occasions and that the petitioner was present at one of those visits. Nor does the self-petition reveal that USCIS officers visited [REDACTED] and met with at least a neighbor and a postal carrier during that visit. While some of the information in the self-petition incidentally overlaps with the information obtained by USCIS in its investigation, such as information regarding [REDACTED] the investigation revealed significant evidence that differs from the information contained in the self-petition.

Similarly, the petitioner’s reliance on *Matter of Ho* is overbroad. The Board of Immigration Appeals, in its decision in *Matter of Ho*, provided that, “[t]he decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.” The petitioner explained issues raised in the NOIR and provided additional evidence. The director appropriately weighed such explanations and evidence and proceeded to revoke approval of the self-petition for good and sufficient cause.

The petitioner also alleges that the director used an “improper evidentiary standard” and failed to afford certain evidence proper weight, mischaracterized certain evidence, and incorrectly disregarded credible evidence. For self-petitioning abused spouses and children, the statute prescribes an evidentiary standard, which mandates that USCIS “shall consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). *See also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, “the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency’s] sole discretion.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i).

The mere submission of evidence that is relevant may not always suffice to establish the petitioner’s credibility or meet the petitioner’s burden of proof. Here, material inconsistencies and derogatory evidence in the record noted by the director detract from the credibility and the weight given to certain evidence provided by the petitioner. As we shall discuss, the petitioner has not established that she entered into her marriage in good faith or that she resided with her husband during their marriage, as required by sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(A)(iii)(I)(dd) of the Act.

Joint Residence

The preponderance of the relevant evidence does not establish that the petitioner resided with C-D- during the marriage, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act. "Residence" is defined in the Act 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). In her Form I-360 self-petition, the petitioner indicated that she resided with C-D- from September 2007 until March 2011 and the last residence they shared was [REDACTED]. In her affidavit, dated September 21, 2014 and submitted in response to the NOIR, the petitioner stated that she moved in with C-D- at [REDACTED] in August 2007 and then they moved to [REDACTED] in October 2010. On a Biographic Information sheet (Form G-325A) signed by the petitioner on November 21, 2007, she indicated that she lived at [REDACTED] starting in August 2006. In her affidavit dated December 3, 2011, the petitioner stated that a "girl" (later identified as [REDACTED] and Ms. [REDACTED] son, who had been living with C-D-'s parents, came to live with her and C-D- in the fall of 2009. The petitioner stated in the same affidavit that Ms. [REDACTED] was pregnant and she gave birth in February 2010 to, as the petitioner later learned, C-D-'s child. According to the petitioner, the petitioner, the petitioner's son from a previous relationship, C-D-, Ms. [REDACTED] and her two children all lived together at [REDACTED] until October 2010, when the petitioner, the petitioner's son and C-D- moved to [REDACTED].

On February 1, 2010, USCIS officers visited [REDACTED] and spoke with Ms. [REDACTED] who claimed that she did not live at that address but that C-D- let her stay there and to drive his car and, while she knew C-D- was married, she could not recall the name of his spouse. On February 3, 2010, USCIS officers again visited [REDACTED] and the petitioner and Ms. [REDACTED] were both present. The petitioner informed the officers that C-D- was not home and the officers left but noted that two sonograms were attached to the refrigerator and that Ms. [REDACTED] was visibly pregnant. On February 3, 2010, USCIS officers also conducted a site visit at [REDACTED] but no one was home at the time. A U.S. Postal Service employee confirmed that he only delivered mail to the petitioner and [REDACTED] at [REDACTED] and he confirmed their identities based on photographs provided by the USCIS officers of the petitioner, Mr. [REDACTED] and C-D-.

The petitioner provided evidence that she purchased [REDACTED] in October 2007 and rented it to several individuals, including Mr. [REDACTED], [REDACTED], and [REDACTED] and that she ran her business from the basement of [REDACTED]. The petitioner submitted a copy of a lease of [REDACTED] to Mr. [REDACTED] and Ms. [REDACTED] dated November 1, 2007, for a term ending October 31, 2009. The petitioner also offered an affidavit from Mr. [REDACTED] indicating that he rented a room at [REDACTED] from the petitioner from November 2007 until some time in 2008 and an Order of Possession for the eviction of Mr. [REDACTED] and Ms. [REDACTED] from [REDACTED] dated December 6, 2012, due to a foreclosure action.

With respect to whether the petitioner and C-D- jointly resided at [REDACTED] from October 2010 until March 2011, when C-D- moved out of [REDACTED] the petitioner, in her September 21, 2014 affidavit, stated that, during the "rare times that [C-D-] was home, he would . . . end up sleeping somewhere else . . . [and] [a]lthough he technically did not move out of the [REDACTED] house until

March 2011, he didn't spend a lot of time there." That statement, together with the other relevant evidence, indicates that [REDACTED] was not a joint residence for the petitioner and C-D-.

Similarly, the record does not contain sufficient evidence to support a finding that the petitioner and C-D- resided together at [REDACTED]. The statement by Ms. [REDACTED] to USCIS officers, taken during their visit to [REDACTED], that C-D- was married but that she did not know the name of his wife, despite the claim by the petitioner that she, C-D-, Ms. [REDACTED] and two children had been living in the same house for several months casts doubt on whether the petitioner resided with C-D- at [REDACTED]. In addition, Lexis-Nexis printouts provided by the petitioner indicate that she lived at [REDACTED] until November 2009 and that C-D- lived at [REDACTED] until December 2011, raising concerns as to whether C-D- or the petitioner lived at that address together after November 2009 and whether C-D- moved from that address to live with the petitioner at [REDACTED] as she recounts in her affidavit.

To establish her joint residence with C-D- at [REDACTED] the petitioner submitted tax returns, bills, bank statements, photographs, automobile insurance documents, affidavits from individuals who knew the petitioner during her marriage to C-D-, a psychological evaluation, Lexis-Nexis printouts, and home inspection records related to a property damage insurance claim. These documents are of limited probative value to establish a joint residence at [REDACTED] and they do not refute the evidence suggesting that the petitioner lived at [REDACTED] during the course of her marriage to C-D-.

The other documents submitted by the petitioner also raise evidentiary concerns. The tax returns are unsigned and do not indicate that they were actually filed with the Internal Revenue Service (IRS). The bank statements reflect low balances and a lack of activity. The photographs indicate that the petitioner and C-D- spent some time together but it is unclear when and where the photographs were taken. The automobile insurance documents do not reflect a history of coverage or payments. Only the September 24, 2014 affidavit from [REDACTED] mentions that the petitioner lived with C-D- at [REDACTED] however, her affidavit is insufficient to establish joint residence because, although she claims to have visited the petitioner and C-D-, she provides no details about the residence. The other affidavits from [REDACTED] and [REDACTED] do not mention where the petitioner and C-D- lived. And, the psychological evaluation recounts that C-D- often stayed with his parents during the period when the petitioner contends that they lived together at [REDACTED].

As noted above, 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). Upon *de novo* review of all of the evidence submitted below, the record does not establish that the petitioner and C-D- shared a principal, actual dwelling place at either [REDACTED] or [REDACTED] as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Good-Faith Entry into the Marriage

To establish good-faith entry into marriage, a self-petitioner may submit “testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(vii). The preponderance of the relevant evidence does not demonstrate that the petitioner entered into her marriage with C-D- in good faith. To establish that her marriage with C-D- was entered into in good faith, the petitioner submitted affidavits from her and C-D- that describe how they met, their plans to marry and the life together. However, their affidavits differ from each other on several salient points. C-D-’s affidavit recounts his initial attraction to the petitioner, how they were introduced at church, their first date, their phone calls, that they share a favorite food, and details regarding their decision to live together and marry. The petitioner’s affidavits are devoid of the same level of details regarding their meeting, courtship and decision to live together and marry.

The petitioner also submitted tax returns, bills, bank statements, photographs, automobile and home insurance documents, affidavits from individuals who knew the petitioner during her marriage to C-D-, a psychological evaluation, and Lexis-Nexis printouts. These documents are of limited probative value because they offer insufficient evidence that the petitioner entered into her marriage with C-D- in good faith. Specifically, the tax returns are unsigned and do not indicate they were filed with the IRS. Some of the bills bear only the name of the petitioner. The utility account is only in C-D-’s name. The bank account statements reflect low balances and very little activity. It is not clear from the photographs when and where they were taken and who is in the photographs. The automobile records do not reflect a history of payments. The home insurance records relate only to [REDACTED]. The affidavits from [REDACTED] and [REDACTED] are not sufficiently detailed regarding the petitioner’s relationship with and marriage to C-D-. In addition, the psychological evaluation does not contain a probative account of the petitioner’s courtship, wedding ceremony, joint residence and experiences sufficient to demonstrate that the petitioner married C-D- in good faith.

Here, neither the petitioner’s personal affidavits, nor those of her acquaintances, contain probative information regarding the couple’s courtship, wedding reception, and other shared experiences beyond the claimed abuse. The documentary evidence in the record is also not supported by other evidence that is sufficient to demonstrate the petitioner’s intent in marriage. When considered in the aggregate with the other evidence described above, including the results of the USCIS field investigation, the preponderance of the relevant evidence does not establish that the petitioner entered into the marriage with C-D- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director’s grounds for revocation of her self-petition’s approval. The petitioner has not demonstrated that she resided with C-D- as required by section

204(a)(1)(A)(iii)(II)(dd) of the Act or that she married C-D- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Consequently, the petitioner is ineligible for immigrant classification pursuant to 204(a)(1)(A)(iii) of the Act, and the director's decision revoking approval of the petition will not be disturbed.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met and the director had good and sufficient cause to revoke approval of the petition. Accordingly, the appeal will be dismissed and the approval of the petition will remain revoked for the reasons stated above.

ORDER: The appeal is dismissed