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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

Date: **JAN 23 2015** 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:

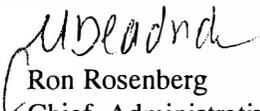
[REDACTED]

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 Acting Vermont Service Center director (“the director”) denied the immigrant visa petition, and affirmed her denial of the petition in a subsequent motion to reopen and reconsider. 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 that the petitioner resided with her husband.

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 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 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:

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.

Pertinent Facts and Procedural History

The petitioner is a citizen of China who entered the United States as a nonimmigrant student on August 16, 2008. The petitioner married D-A-¹, a U.S. citizen, in Florida on November [REDACTED]. The petitioner filed the instant Form I-360 on March 25, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residency with D-A-. The petitioner timely responded with additional evidence which the director found insufficient and denied the petition. The director affirmed her denial of the petition in a subsequent motion to reopen and reconsider. The petitioner timely appealed.

We review these proceedings *de novo*.

Joint Residence

The director correctly determined that the petitioner failed to establish that she resided with D-A- during their marriage based on the relevant evidence submitted below. The petitioner left blank the section of her Form I-360 petition asking for the dates that she resided with her spouse and in the section requesting the address of their last joint marital residence. In her initial affidavit, the petitioner did not discuss her marital residence with D-A-. In her second affidavit, the petitioner claimed that she and D-A- resided as a married couple on November [REDACTED] at their apartment at [REDACTED] Florida; and on November [REDACTED] at their mobile home at [REDACTED] Florida. The petitioner further indicated that the apartment was "just a temporary rental while [she] finished school" in [REDACTED]. She stated that on their wedding day they were together at the [REDACTED] apartment but the next morning D-A-, upset with her, returned to [REDACTED]. The petitioner indicated that she went to the mobile home at [REDACTED] two days later but left in the morning due to D-A-'s behavior. The petitioner stated that the last time she saw D-A- was on January 2, 2012.

The petitioner also provided an affidavit from a co-worker, [REDACTED], who stated that the petitioner argued with D-A- about where to make a common residence. She recounted that the petitioner told her that D-A- wanted the petitioner to move to [REDACTED] where he had a job and a house but that the petitioner wanted him to move to [REDACTED] where she was a student. The petitioner further provided a receipt for a service work order and a tire invoice in D-A-'s name addressed to [REDACTED] Florida; an e-mail from [REDACTED] to the petitioner regarding her wireless account bills sent to [REDACTED] invoices dated October 2011 and November 2011 addressed to D-A- at the [REDACTED] address; a credit card invoice for September 2,

¹ Name withheld to protect individual's identity.

2011 addressed to the petitioner at [REDACTED] Florida; a bank statement and [REDACTED] credit card invoice showing the purchase of gas in [REDACTED] which are both addressed to the petitioner at the [REDACTED] address; photographs of a key and other household items; and copies of text messages between the petitioner and D-A.

On appeal, the petitioner asserts that the preamble to the interim rule at 61 Fed. Reg. 13061, 13065 (March 26, 1996), states that there is no specific length of time to demonstrate a joint residence and that it could be for only a short time. The petitioner further asserts that the definition of the term "residence" at section 101(a)(33) of the Act does not indicate a minimum period of residence, nor limit a marital residence to a single location. The petitioner claims that for a few days at a time the [REDACTED] residences were used "interchangeably" as their principal residence during their marriage, where she and D-A- "resided at the same location concurrently."

There is no requirement that a petitioner reside with his or her spouse for any particular length of time, however, they must in fact reside together. Section 101(a)(33) of 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." 8 U.S.C. § 1101(a)(33). The preamble to the interim rule further clarified that "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home . . . while continuing to maintain a general place of abode or principal dwelling place elsewhere." 61 Fed. Reg. at 13065. In making a decision on a self-petition, U.S. Citizenship and Immigration Service (USCIS) has sole discretion to determine what evidence is relevant and credible and the weight to be given that evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Although the petitioner claims that the [REDACTED] residences were their "interchangeable" principal residences, the record reflects that D-A- had his own residence at [REDACTED] residence was not his principal, actual dwelling place. The petitioner attended school in [REDACTED] and she stated in her second affidavit that D-A- told her that he intended to "move in with [her]" when he found a job in [REDACTED]. The text messages dated December 2011 further indicate that D-A- intended to move from [REDACTED] when he found a job in [REDACTED]. Moreover, the affidavit from Ms. [REDACTED] and the [REDACTED] invoices further indicate that D-A-'s principal, actual dwelling place was at [REDACTED] and not the [REDACTED] residence.

The record also establishes that the [REDACTED] residence was the petitioner's own separate residence, and the [REDACTED] residence was not her principal, actual dwelling place. The petitioner signed a Biographic Information (Form G-325A) on May 12, 2012 in which listed her residence from August 2010 until May 2012 at the [REDACTED] address. She did not include the [REDACTED] address as her former residence. The petitioner was a student in [REDACTED] during this time period. In her second affidavit she mentioned to D-A- that she would move to [REDACTED] when she graduated from school. The [REDACTED] wireless account invoice addressed to [REDACTED] the photographs of a key and other items, and the credit card invoices and bank statement showing purchases in [REDACTED] are not sufficient to demonstrate that the [REDACTED] residence was the petitioner's principal, actual dwelling place.

The petitioner claims that the director erred in giving more probative value to the third-party statement of Ms. [REDACTED] rather than the petitioner's "primary evidence" consisting of her own detailed statements describing her marital residences, her phone records, credit card invoices, and bank statements. The petitioner further claims that the evidence in her case is similar to a recent unpublished decision in which we stated that traditional forms of documentation are not required to demonstrate joint residence. Although 8 C.F.R. § 103.3(c) states that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The petitioner correctly states that traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). In this case, although the petitioner claims that she shared a marital residence with D-A- for a few days, that they frequently visited each other and intended to live together, the record shows they maintained a separate, principal dwelling place during their marriage. Consequently, the preponderance of the relevant evidence fails to demonstrate that the petitioner resided with D-A- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.