



U.S. Citizenship
and Immigration
Services

(b)(6)



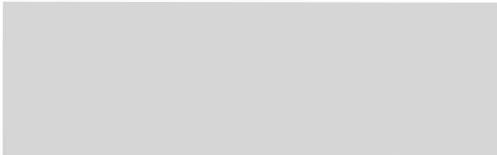
DATE: JUL 17 2015

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:



INSTRUCTIONS:

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 Acting Director, Vermont Service Center (the director), denied 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 her United States citizen spouse.

The director denied the petition, concluding that the petitioner did not demonstrate that she entered into her marriage in good faith. On appeal, the petitioner 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 explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (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 United States 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.

Pertinent Facts and Procedural History

The petitioner, a citizen of the Philippines, last entered the United States on March 18, 2001 as a B-2 nonimmigrant. The record indicates that she was married in the Philippines to G-S¹, whom she divorced in the United States on [REDACTED] 2005. The petitioner married her second husband, L-H², a citizen of the United States, on [REDACTED] 2005. They subsequently divorced on [REDACTED] 2007, and on [REDACTED] 2007, the petitioner married her current husband, L-V-T³, also a U.S. citizen. The petitioner filed the instant Form I-360 self-petition on January 10, 2011 based on her relationship with L-V-T-. The director issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into her marriage. The petitioner responded with additional evidence, which the

¹ Name is withheld to protect the individual's identity.

² Name is withheld to protect the individual's identity.

³ Name is withheld to protect the individual's identity.

director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record, as supplemented on appeal, does not overcome the director's sole ground for denial. Beyond the director's decision, the petitioner has also not established that she resided with L-V-T- as required.⁴ The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal does not demonstrate the petitioner's good-faith entry into her marriage. The record contains the petitioner's personal statements, marriage certificate, photographs, a 2009 joint lease agreement, joint bank statements, life insurance policy documents, a utility bill, a 2009 joint income tax return, an automobile insurance statement, L-V-T-'s driver's license, a vehicle title, Internal Revenue Service (IRS) correspondence, and the letters of two friends.

The petitioner indicated in her statements that she met her third husband, L-V-T- in 2005 when she was purchasing a used car at the dealership where he worked. She stated that they became friends and he would help her whenever she needed repairs for the car. The petitioner recalled that she spoke with L-V-T- over the telephone during this time and considered him a friend. When she ran into him again in June 2006, after her then-husband, L-H-, left her, she and L-V-T- began dating. The petitioner indicated that their first date was in a cafe, where they spoke at length. She generally noted that they started seeing each other two to three times a week and spent Thanksgiving together at his apartment. She indicated that L-V-T- sometimes came to her apartment, where she cooked for him. The petitioner stated that she felt she had found her soulmate. She recalled that in March 2007, L-V-T- proposed marriage to her in his apartment and she accepted. The petitioner's divorce from L-H- was finalized on [REDACTED] 2007, and five days later, she married L-V-T-. The petitioner did not further describe in any probative detail their courtship, wedding ceremony, joint residence or any shared experiences, apart from the abuse.

The record also contains the petitioner's sworn testimony from her February 19, 2009 interview with United States Citizenship and Immigration Services (USCIS), concerning an immigrant petition (Form I-130) filed on her behalf by L-V-T-. During that interview, the petitioner testified twice that she met L-V-T- in March 2004. This testimony is inconsistent with the petitioner's statements in support of the instant self-petition that she and L-V-T- met in 2005. Similarly, while the petitioner went into detail in her second statement in this proceeding about L-V-T-'s March 2007 marriage proposal, she testified during her Form I-130 interview that he proposed to her in January 2007. In addition, in response to a question as to where L-V-T- resided during their courtship, the petitioner responded that she never went

⁴ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

to his apartment while they were dating. This testimony too is inconsistent with the petitioner's second statement in this proceeding, claiming to have visited L-V-T's apartment for Thanksgiving and in March 2007 when he proposed to her. In the instant proceeding, the petitioner offered no probative details about her wedding ceremony. However, she testified during her Form I-130 interview that only three people were in attendance at her wedding, including herself, L-V-T, and his daughter. However, the photographs of her wedding ceremony show two female guests present in addition to the petitioner and L-V-T-, and he testified that his daughter and the petitioner's friend, [REDACTED] were both in attendance at their wedding.

On appeal, the petitioner disputes the director's determination that her personal statements provide little insight into her relationship with L-V-T- and her good-faith marital intentions. Although the petitioner did provide some details about her early relationship with L-V-T-, as discussed, her statements raise a number of discrepancies in the record that have not been resolved, and lack probative details about her courtship, wedding ceremony, joint residence and the couple's shared experiences.

The petitioner also submitted below the letters of two friends, [REDACTED] and [REDACTED]. Aside from generally asserting their belief that the petitioner entered into her marriage with L-V-T- in good faith, the brief letters provided no probative details of the petitioner's relationship with L-V-T-, including any specific occasions or shared experiences with the couple, to demonstrate the petitioner's good-faith marital intentions.

The remaining documents in the record, considered cumulatively, also do not establish the petitioner's good-faith intention in marrying L-V-T-. The petitioner's marriage certificate evidences a legal marriage, but does not demonstrate her good-faith intent. The photographs of the petitioner's wedding ceremony, along with other photographs of the petitioner and L-V-T- together at an unspecified time and location, without probative testimony, are also insufficient to establish the petitioner's good-faith marital intent. L-V-T-'s life insurance policy shows that the application was executed February 18, 2008, just a few days after he was notified of the Form I-130 interview scheduled for March 18, 2008. Other life insurance policies were issued in May and in June 2008, following the first Form I-130 interview and before the second Form I-130 interview in February 2009. The record contains no evidence that the life insurance policies were maintained or continued after the initial filing process. The joint residential lease agreement, signed by the petitioner and L-V-T- in November 2009, is for a residence on [REDACTED]. However, this is inconsistent with the Form I-360 self-petition in which the petitioner indicated that she and L-V-T- last resided together in April 2010 on [REDACTED], where L-V-T- resided even before they married. It is also inconsistent with both the petitioner's Form G-325A, Biographic Form, submitted in October 2007, in which she asserted that she began residing at the [REDACTED] address in July 2007, and with her February 2009 sworn statement that she was living with L-V-T- at that address at the time of her Form I-130 interview. According to her second personal statement, the petitioner only resided at the [REDACTED] residence prior to marrying L-V-T-, and again when she left L-V-T- in April 2010. The petitioner did not indicate that she and L-V-T- ever resided together on [REDACTED].

The three joint bank statements from 2007 and 2008 reflect only minimal activity and do not establish the petitioner's good-faith marital intentions. The IRS correspondence, issued in the petitioner's and L-V-T-'s names, is dated several months after the petitioner indicated that she left him, and was mailed

to her [REDACTED] address. Further, the correspondence relates to an inquiry about the 2002 tax year, at which time the petitioner and L-V-T- had not yet met. Likewise, the 2012 vehicle registration record is issued in the couple's name at the [REDACTED] address after the petitioner had already left L-V-T-. The record also contains a 2009 joint income tax return. However, there is no evidence that the return was ever filed, and it too bears the [REDACTED] address. In addition, the 2009 IRS Form 1099-MISC, for the petitioner and L-V-T-, shows different addresses for each. In response to the RFE, the petitioner accounted for this discrepancy by explaining that the two 2009 IRS Forms 1099-MISC issued to her reflected her former addresses, including the [REDACTED] address, and that she had forgotten to advise her former employers of her new address after marrying and moving in with L-V-T-. However, the petitioner's October 2007 Form G-325A did not list either of the two addresses reflected on the two IRS Forms 1099-MISC as her former residences. Moreover, her explanation does not fully address the discrepancy in addresses for L-V-T- and herself, because the record indicates that she had claimed to have already been residing with him for more than two years at the [REDACTED] address by the time the 2009 IRS Forms 1099-MISC were issued.⁵ All the remaining relevant evidence, including a single utility bill from February 2008, L-V-T-'s driver's license issued prior to his marriage to the petitioner, an automobile title and a single automobile insurance statement from 2008, also fails to establish the petitioner's good-faith marital intentions.

On appeal, the petitioner resubmits duplicates of evidence already in the record, in addition to 2010 correspondence from the IRS and two joint bank statements from 2011. Both the IRS letters and the bank statements are addressed to the petitioner at the [REDACTED] address during a period after she claimed that she and L-V-T- separated and where there is no indication that L-V-T- ever resided. The petitioner also asserts that the joint bank statements from 2009, 2010, and 2011 show automatic life insurance policy withdrawals, evidencing that she and L-V-T- maintained the policies beyond the initial application process. However, a review of the record shows five bank statements in total from the years 2007, 2008, and 2011. The three statements from 2007 and 2008 do not indicate any such withdrawals and the 2011 statements, while reflecting the withdrawals, are from a period after the filing of the instant petition when the petitioner had already left L-V-T-. Moreover, there is no indication that the account is or was utilized by L-V-T- at any time, and the statements themselves reflect only minimal activity. A review of the petitioner's personal statements, the letters of two friends, and the remaining evidence submitted below and on appeal do not provide sufficient detail to establish her good-faith intent in marrying L-V-T-. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into the marriage with L-V-T- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

Beyond the director's decision, the petitioner has also not established that she resided with L-V-T- as required. The petitioner asserted, on the Form I-360 self-petition, that she resided with L-V-T- from July 28, 2007 until April 2010 and that their last joint residence was on [REDACTED]. The relevant

⁵ The petitioner's October 2007 Form G-325A indicated that she had resided at the [REDACTED] address since July 2007, and her Form I-360 self-petition indicated that she last resided with her husband at that address in April 2010. Similarly, the petitioner testified in a sworn statement in February 2009 that she was residing at that same address with her husband.

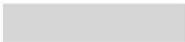
evidence in the record includes the petitioner's personal statements, letters from two friends, joint bank statements, life insurance policy documents, a utility bill, a 2009 joint income tax return, joint automobile insurance statements, L-V-T-'s driver's license, a vehicle title, and correspondence from the IRS. The evidence of record does not establish the petitioner's joint residence with L-V-T-, as several of the documents are inconsistent with the petitioner's assertion that she last resided with L-V-T- in April 2010 on [REDACTED] or reflect dates after the couple's separation in April 2010. For instance, the November 2009 joint residential lease agreement is for a residence on [REDACTED] in contrast to the petitioner's assertions on her October 2007 Form G-325A and the Form I-360 self-petition that she began residing on [REDACTED] in July 2007 and last resided there with L-V-T- in April 2010. The petitioner also provided a sworn statement during her Form I-130 proceedings that she was residing there with her husband at that time in February 2009. Similarly, the IRS correspondence, issued to the petitioner and L-V-T-, is dated after the couple's separation, and was also mailed to the [REDACTED] address. The correspondence also related to an inquiry about the 2002 tax year, before the petitioner and L-V-T- even met. The 2012 joint vehicle registration record was also issued to the [REDACTED] address after the petitioner's separation from L-V-T-. Likewise, the 2009 joint income tax return bears the [REDACTED] address and is dated April 2010, the same month the petitioner claimed to have left her husband. In addition, the 2009 IRS Forms 1099-MISC for the petitioner and L-V-T- reflect different addresses, namely the [REDACTED] and [REDACTED] addresses for the petitioner and the [REDACTED] address for L-V-T-. As previously discussed, the petitioner's explanation that she forgot to update her former employers of her new address at [REDACTED] after her marriage to L-V-T- is insufficient to overcome the noted discrepancy, given that at the time the IRS Forms 1099-MISC were issued in early 2010, the record indicates she had claimed to be living at the [REDACTED] residence for well over two years since her July 2007 marriage. Further, the petitioner's explanation is inconsistent with her October 2007 Form G-325A on which she did not list either the [REDACTED] address or the [REDACTED] address as her former residences.

The remaining documentary evidence, including three joint bank statements from 2007 and 2008 reflecting minimal activity, also does not demonstrate the petitioner's residence with L-V-T-. Lastly, Ms. [REDACTED] letter is brief and did not provide probative details of any of the occasions she claimed to have visited the petitioner and L-V-T- at their residence. Mr. [REDACTED] letter is similarly brief and did not indicate that he ever visited them at their home. The remaining bills and documents in the record, considered cumulatively, also do not establish that the petitioner resided with L-V-T-. The petitioner's own statements do not detail her history of shared residences with L-V-T-. Further, as discussed, her statement and assertion on the Form I-360 self-petition that she and L-V-T- last resided together in April 2010 at [REDACTED] are inconsistent with other evidence she submitted to establish joint residence. Upon *de novo* review of the entire record, the petitioner has not established by a preponderance of the evidence that she resided with L-V-T- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has not established that she entered into the marriage with L-V-T- in good faith. Beyond the director's decision, the petitioner has also not demonstrated that she jointly resided with L-V-T-. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds. In these proceedings, the petitioner bears the

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NON-PRECEDENT DECISION

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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.

ORDER: The appeal is dismissed.