



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUN 23 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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), 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 pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her lawful permanent resident spouse.

The director denied the petition based on her determination that the petitioner failed to establish that she resided with her lawful permanent resident spouse.

On appeal, the petitioner submits a brief.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under . . . clause (ii) or (iii) of subparagraph (B), 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)(B)(ii) 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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Russia, entered the United States on September 17, 2008, as a nonimmigrant visitor. The petitioner married G-M-¹, a citizen of Cuba and lawful permanent resident of the United States, on [REDACTED] 2013. The petitioner filed the instant Form I-360 self-petition on July 7, 2014. The director subsequently issued a Request for Evidence (RFE) of joint residence with G-M-, among other documentation. The petitioner timely responded with additional evidence, which the director found insufficient to establish eligibility for the benefit sought. The director denied 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 denial. The appeal will be dismissed for the following reasons.

Joint Residence

The preponderance of the relevant evidence does not establish that the petitioner resided with G-M- during the marriage. In her Form I-360 self-petition, the petitioner indicated that she resided with G-M- from August 2013 until April 2014 in an apartment in [REDACTED] New York. In her detailed personal affidavit, dated July 3, 2014, the petitioner indicated that, when she met G-M- in May 2013, he was living and working in [REDACTED] Pennsylvania. The petitioner recounted that G-M- came to visit her on the weekends during their courtship, and that, in July 2013, she and G-M- decided to get married. The petitioner stated that G-M- paid the August rent for the [REDACTED] apartment, and they planned for him to move to [REDACTED] full-time after he completed the construction project he was working on in [REDACTED] in late-September. The petitioner described the activities that the couple did on weekends when G-M- was in [REDACTED] and indicated that in October 2013 he moved to [REDACTED] with all of his belongings. The petitioner described G-M-'s struggle to find what he considered to be acceptable employment and the resulting financial pressure. The petitioner recounted how the relationship began to deteriorate in December 2013, and that on January 5, 2014, G-M- informed her that he had been reinstated at his previous job in [REDACTED] and would only return to their home in [REDACTED] on the weekends. The petitioner indicated that G-M- again began

¹ Name withheld to protect the individual's identity.

going to [REDACTED] only on the weekends and described the further deterioration and ultimate demise of the marriage. The petitioner stated that G-M- filed for divorce from her on [REDACTED] 2014 in Pennsylvania, and with threats of violence, demanded that she pay for the divorce. The petitioner recounted that she declined to sign the divorce papers on the advice of an attorney but could not afford to file for divorce herself in New York. The petitioner submitted a copy of G-M-'s divorce petition, which indicates that, as of [REDACTED], 2014, G-M- had been a resident of Pennsylvania for the preceding six months.

The petitioner submitted a Certificate of Marriage Registration dated [REDACTED], 2013 showing the address for both her and G-M- as the [REDACTED] apartment, and a lease in both names dated August 1, 2013 for the [REDACTED] apartment. The petitioner also submitted a utility bill in both names, bank statements from February and March 2014 listing both names, and a copy of G-M-'s New York State Identification Card with the [REDACTED] address, issued on October 25, 2013. In addition, the petitioner provided a change of address form showing that G-M- changed his mailing address from [REDACTED] to [REDACTED] in February 2014, and opera tickets for weekend dates in October and November 2013. In response to the RFE, the petitioner explained the difficulties that the couple had obtaining joint documentation due to her lack of a Social Security Number. She reiterated that G-M- resided with her starting in August 2013, and returned to living with her only on the weekends in January 2014. The petitioner also submitted an affidavit from former roommate [REDACTED] who attested to visiting the petitioner and G-M- in the [REDACTED] apartment in fall 2013 to help the petitioner with a computer problem. In addition, the petitioner submitted several affidavits from friends and acquaintances. The affidavits do not definitively attest to the period of time during which the petitioner states that she resided full-time with G-M-.

Upon *de novo* review of all of the evidence submitted below, the record does not establish that the petitioner resided with G-M-. The director erred in finding the petitioner's statements not credible based on an unrelated 2008 consular interview that the petitioner later explained, and further erred by giving substantial weight to G-M-'s assertions regarding his residency in his divorce petition. The record nonetheless does not establish that the petitioner resided with G-M-. 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). The evidence does not demonstrate that G-M-'s principal, actual dwelling place was the petitioner's [REDACTED] apartment.

Although the petitioner submitted a joint lease for the [REDACTED] apartment, she explained that initially G-M- returned to the apartment on the weekends, and intended to move to [REDACTED] when he finished his construction job in [REDACTED]. In her affidavit, the petitioner briefly stated that G-M- moved his belongings into her apartment in [REDACTED] in October 2013, but did not provide a probative account of his move or their residence together. The petitioner provided minimal description of the couple's joint life once G-M- was living full-time in [REDACTED]. The opera tickets submitted to document the couple's activities during this period indicate that they attended two operas on two weekends, and do not help demonstrate that G-M- moved to [REDACTED]. The U.S. Postal Service documentation shows that G-M- did not change his mailing address until February 3, 2014, after the date the petitioner represented that G-M- moved back to [REDACTED] and just two

weeks prior to G-M- filing for divorce. The record contains joint bills with the [REDACTED] address, and G-M-'s New York identification card, issued in October 2013; however, as the petitioner has explained that G-M- did not reside in [REDACTED] for much of the period covered by the joint documentation, these documents do not establish that G-M- actually moved to [REDACTED] and established his residence there. Without a probative account of the petitioner's joint residence with G-M-, when viewed in the totality, the preponderance of the relevant evidence does not establish that G-M- and the petitioner shared a principal, actual dwelling place, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Conclusion

The record, as currently constituted, does not establish that the petitioner resided with G-M- during their marriage. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

In these proceedings, the burden of proof rests solely with the petitioner. 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. The appeal will be dismissed.

ORDER: The appeal is dismissed.