



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 14 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 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 for the petitioner’s failure to demonstrate that she entered into the marriage with her spouse in good faith and resided with him during their marriage. On appeal, the petitioner submits a brief.

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 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 is a citizen of Thailand who was last admitted to the United States on July 7, 2001 as a B-2 nonimmigrant. She married D-J,¹ a United States citizen, on [REDACTED] 2011 in Maryland. The petitioner filed the instant Form I-360 self-petition on June 4, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite good-faith entry into marriage and joint residence. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings on a *de novo* basis. 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.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner entered into her marriage in good faith. The evidence includes the petitioner's statements, wedding photographs, and the affidavits of four of the petitioner's friends.

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

In her initial statement, the petitioner stated that she met her husband at a restaurant in August 2009, attended his birthday party the following month, and they had a first date sometime thereafter which she did not describe. She recounted that they talked, became a couple, and that their dates were limited to D-J- picking her up after midnight after which she would cook for him, have sexual relations with him, sleep over, prepare food again in the morning, and he would drop her off at a Buddhist temple. The petitioner indicated that she also slept at D-J-'s apartment on weekends, and in November 2010 they agreed to get married. In her second statement, the petitioner added that she and D-J- had fun together and got together weekly at his apartment and watched movies. She stated that they went to Atlantic City in the Fall of 2010 and decided to marry shortly thereafter. The petitioner explained that D-J- suggested that they purchase a house to live in together and he asked her to contribute financially. She indicated that D-J- bought the house in June 2011, but did not list her as a co-owner. The petitioner added that aside from one trip to a casino, she and her husband did not go out much. The petitioner did not describe in her statements her marital intentions toward her husband or provide probative detail concerning their wedding ceremony, joint residence or shared experiences, apart from the claimed abuse.

The affidavits of the petitioner's friends provided no further probative information regarding the petitioner's marital intentions. [REDACTED] and [REDACTED] asserted that the petitioner was happy and in love with D-J- while dating, and that she told them they planned to marry and buy a house together. Neither Ms. [REDACTED] nor Ms. [REDACTED] indicated that they ever met the petitioner's spouse, attended her wedding, or visited her at her claimed joint residence with him. Aside from relaying what the petitioner told them about her marriage, neither affiant referenced in detail any specific occasions that serve as a basis for their knowledge of the petitioner's intentions in entering the marriage. [REDACTED] indicated that she was present when the petitioner first met D-I- and that when she called the petitioner in the months that followed, D-J- was usually there. Ms. [REDACTED] added that D-J- often telephoned the petitioner who spoke to him in broken English. She indicated that she ran into the former couple once at a restaurant and found them in love and getting along, and that after encountering them once at a friend's house she saw the petitioner and D-J- leave together. Ms. [REDACTED] recalled attending the petitioner's wedding ceremony to D-J- and hearing of their plans to buy a home together. [REDACTED] stated that he met D-J- for the first time at the wedding and that D-J- told him that day that they planned to buy a home. Although both Mr. and Ms. [REDACTED] stated that they have been close personal friends of the petitioner for ten years, their statements indicate that neither had regular interactions with the petitioner and D-J- during their courtship or marriage. Their affidavits relay primarily what the petitioner told them and provide no probative detail about the petitioner's wedding, which they both attended, or of specific events or details supporting their assertion that the petitioner married D-J- in good faith.

The record also contains several photographs of the petitioner's wedding ceremony with two other individuals present, but no photographs from any other time or occasion during the petitioner's relationship with D-J-. While the photographs, along with the petitioner's marriage certificate, establish a legal marriage, they are insufficient by themselves to establish the petitioner's good-faith marital intent. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, 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.” See 8 C.F.R. § 204.2(c)(2)(vii). Here, however, the petitioner’s affidavit and the evidence submitted below and on appeal do not provide sufficient detail to demonstrate her good faith intent upon marrying D-J-. The affidavits of her friends also failed to provide relevant, substantive information and did not show that the authors had any personal knowledge of the relationship. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into the marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The petitioner has also failed to establish that she resided with her husband during their marriage. The petitioner stated on the Form I-360 self-petition that she resided with D-J- from September 2009 until December 2011, but she did not provide the last address at which they resided together as requested on the form. Nor did the petitioner submit any documentary evidence linking her to any address at which she may have resided with her husband. Traditional forms of joint documentation are not required, and 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). Here, however, the petitioner’s statements and the affidavits of her friends do not demonstrate that she resided with her spouse.

In her statements, the petitioner recalled that she stayed overnight and some weekends at D-J-’s apartment. She did not, however, state that she ever resided with her husband, at any address, during their marriage. The petitioner did not indicate, in her statements or on the Form I-360 self-petition, an address at which the couple jointly resided, even after the director requested clarification in the RFE as to when and where the petitioner resided with her husband. Further, both psychological evaluations submitted for the record relay from the petitioner that D-J- refused to let her move in with him to the house he purchased during their marriage. The affidavits of the petitioner’s friends also do not establish the petitioner’s shared residence with her spouse. There is no indication in any of the affidavits that the affiants ever visited the petitioner in her marital home or that they have any firsthand knowledge that the petitioner and her husband resided together. Although Ms. [REDACTED] indicated that on one occasion, she drove the petitioner to what she claimed was her “new residence where [D-J-] lived,” she did not provide the address of the residence, describe its exterior or interior, or indicate whether she entered the home or observed D-J- residing there.

On appeal, the petitioner asserts that she “resided” with her spouse on weekends and some weekdays during their marriage. Although there is no requirement that a self-petitioner reside with his or her abuser for any particular length of time, they must in fact reside together. While the petitioner may have intended to reside with D-J- after they married, 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). Here the petitioner consistently indicated that she “stayed over” on occasion at her husband’s residence, first at his apartment and later at his house, during their marriage. The record contains no evidence demonstrating that the petitioner ever relocated from her own principal, actual dwelling place to either her husband’s apartment or his house. The record does not establish that the petitioner resided with her spouse during their marriage. The petitioner’s statements do not provide any details about her shared marital residence with D-J-, including the address or addresses at which she claims they jointly resided. Further, the

affidavits of her friends do not evidence that they have any knowledge of the petitioner's joint marital residence. The preponderance of the relevant evidence does not demonstrate that the petitioner resided with her spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The petitioner has not established that she entered into the marriage with her spouse in good faith or that she resided with him during their marriage. 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 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 appeal will be dismissed.

ORDER: The appeal is dismissed.