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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3.042  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: [REDACTED]  
EAC 03 142 52179

Office: VERMONT SERVICE CENTER

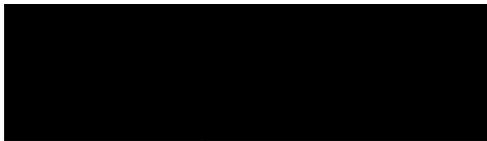
Date: MAY 20 2005

IN RE: Petitioner:  
Beneficiary:



PETITION: Petition for Special Immigrant Battered 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Mari Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Acting Director, Vermont Service Center, denied the preference visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 40-year old native and citizen of Jamaica who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

On July 23, 2004, the director denied the petition, finding that the petitioner failed to establish that she entered into the marriage to the citizen in good faith.

Counsel for the petitioner filed a timely appeal on August 25, 2004 and indicated that he would submit a brief to the AAO within thirty days of filing the brief. On September 24, 2004, counsel for the petitioner requested an extension of time to submit a brief and additional evidence. The AAO received the brief and additional evidence on November 16, 2004, almost three months after the petitioner filed the instant appeal.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

- (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
- (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant 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) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided . . . with the citizen or lawful permanent resident spouse;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been

the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

\* \* \*

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the evidence on the record, the petitioner last entered the United States as a J-1 exchange visitor on May 21, 1989. She wed U.S. citizen [REDACTED] on September 29, 2004 in Bronx, New York. On November 29, 1994, the petitioner's spouse filed a Form I-130 petition on her behalf. On March 27, 2003, the petitioner filed a self-petition, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

On the Form I-360, the petitioner indicated that she had resided with her U.S. citizen spouse for a few months after they wed in 1994. She stated that her husband spent the next two years in jail. She further stated that she and her spouse were reunited for two months at the end of 2000.

Because the director determined that the petitioner had failed to submit sufficient evidence to establish that she had resided with her spouse, the director requested that she submit additional evidence (RFE). The director listed the types of evidence the petitioner could submit to establish that she had resided with his spouse.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including the evidence furnished in response to her request for additional evidence. The discussion will not be repeated here.

The director determined that the petitioner failed to establish that she had entered into the marriage in good faith, as required by 8 C.F.R. § 204.2(c)(1)(i)(H).

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

*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.

In a request for additional evidence, the director listed the types of evidence that would show that the petitioner had married her spouse in good faith. The petitioner provided Citizenship and Immigration Services (CIS) with the following evidence:

- An undated Con Edison bill addressed to the petitioner's spouse alone at [REDACTED]. An undated item cannot be considered.
- A Comcast bill, dated March 12, 2001, addressed to the petitioner's spouse alone at [REDACTED].

- A Pepco bill, dated April 9, 2002, addressed to the petitioner and spouse at the Riverdale address.
- A Pepco bill, dated February 6, 2003, addressed to the petitioner and her spouse at the Riverdale address.
- Copies of two Master Cards: one in the petitioner's name, dated May 2002 until April 2004 and another in the petitioner's spouse's name dated August 2001 to April 2002.
- Four pieces of correspondence dated 2002 or 2003 from the U.S. Department of Education and a collection agency addressed to the spouse alone at the Riverdale address.

All of the above documentation post-dates the date that the petitioner and her husband separated; hence, it is not evidence of the bona fides of the marriage. The petitioner failed to submit evidence of activity on the Master Card accounts. The correspondence from the Department of Education is about the spouse's student loan and is not evidence that the petitioner and her spouse shared financial responsibilities.

The petitioner also submitted her own affidavits and those of friends. [REDACTED] wrote that he could attest to the fact that the marriage was bona fide and that he had visited the petitioner and her spouse at their matrimonial home. [REDACTED] wrote that he personally knew the petitioner and her spouse and that their relationship was "genuine but violent." On appeal, the petitioner submitted additional affidavits from [REDACTED] and [REDACTED] that state that they went out with the petitioner and her spouse while they were dating and opined that the relationship was genuine. She wrote, "I know that my marriage is a real marriage entered into for the right reasons." She stated: "The circumstances of our relationship made it impossible for me to have the type of documents you are requesting. One normally does not commingle a tremendous amount of assets and liabilities with convicts. I had the right to observe his behavior before moving into that phase."

The petitioner did not submit documentary evidence to establish that her husband is a convict and that he was incarcerated for approximately two years of their ten-year marriage. She did not describe their courtship. She did submit four photographs to CIS. Photographs are not persuasive evidence of the bona fides of the marriage. The petitioner failed to submit evidence of joint ownership of property. She did not submit evidence that she or her spouse were the named beneficiary of any insurance policies. She did not submit evidence that they commingled their assets and shared financial responsibilities while residing together. No children were born of the marriage. In review, the evidence is insufficient to establish that the petitioner wed her spouse in good faith.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.