



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 04 009 50849

Office: VERMONT SERVICE CENTER

Date: NOV 07 2005

IN RE: Petitioner: [REDACTED]

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of the Dominican Republic who is seeking classification as a special immigrant pursuant to section 204(a)(1) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1), as the battered spouse of a U.S. citizen.

The director denied the petition, finding that the petitioner failed to establish that she resided with her United States citizen spouse during the marriage and that she entered into the marriage to the citizen in good faith. The director also determined the petitioner was ineligible for classification based upon section 204(c) of the Act. On appeal, the petitioner submits a statement, two letters from individuals who previously submitted affidavits in support of the petition, and copies of evidence previously submitted.

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

(i) 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 in the United States 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;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; 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 wed United States citizen [REDACTED] on February 16, 1996 in the Bronx, New York. The record further reflects that the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on December 30, 1996. On the same date, the petitioner filed a Form I-485, Application to Adjust Status. The Form I-130 petition was withdrawn by the petitioner's spouse on August 7, 1997 and the Form I-485 was subsequently denied.

On December 5, 1997, the petitioner's spouse filed a second Form I-130 on the petitioner's behalf and the petitioner filed a second Form I-485. The Form I-130 petition and the Form I-485 were denied for abandonment on April 6, 2000, after the petitioner and her spouse failed to appear for a scheduled interview.

On September 25, 2001, the petitioner's spouse filed a third Form I-130 on the petitioner's behalf. The petitioner filed her third Form I-485 on this same date. The Form I-130 petition was denied on June 26, 2003, in accordance with section 204(c) of the Act based upon the finding that the qualifying marriage was entered into for the purpose of evading immigration laws. The Form I-485 was denied on June 26, 2003, because the underlying Form I-130 was denied. On July 22, 2003, the petitioner appealed the director's decision on the Form I-130 petition to the Board of Immigration Appeals (BIA). The record does not indicate what decision was entered by the BIA, if any was entered.

The petitioner filed the instant Form I-360 on October 6, 2003, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse. In her petition, the petitioner claims to have resided with her spouse from February 1996 until March 2002. With the initial filing, the petitioner submitted the following documents:

- The petitioner's statement.
- A police report dated July 6, 2003.
- Court documents.
- A letter from the New York Crime Victims Board.
- A copy of the petitioner's social security and employment authorization documents.
- Copies of the petitioner's passport and birth certificate with translation.
- A copy of the petitioner's spouse's birth certificate and social security card.
- Copies of two leases in the petitioner's and her spouse's names dated November 2000 and December 2002 for the property at [REDACTED] Street, Bronx, New York.
- A letter dated January 28, 2002 from the New York state department of Taxation and Finance.
- A letter from Banco Popular dated June 18, 2003 showing that a savings account held by the petitioner in trust for her spouse was opened in May 2001 and copies of bank statements for the period covering March through May 2003 and July 2003.
- A letter to the petitioner dated April 18, 2003, from the City of New York Department of Health, Bureau of Day Care.
- A letter to the petitioner dated November 20, 2001, from the Social Security Administration.
- A June 18, 2001 letter to the petitioner and her spouse from the Internal Revenue Service.

- A copy of a check from the New York State Department of Taxation and Finance dated May 30, 2000 issued to the petitioner and her spouse.
- A copy of a Bell Atlantic bill for April 1999 in the petitioner's name.
- A copy of a ConEdison bill for June 2003 in the petitioner's spouse's name.
- A copy of a ConEdison bill for August 1999 in the petitioner's name.
- A copy of a Cablevision bill for June 2003 in the petitioner's name.
- Copies of rent receipts dated January and March 1999 in the petitioner's spouse's name.
- A letter from Emigrant Savings Bank dated July 31, 1997 indicating an account held in trust by the petitioner's spouse for the petitioner.
- A copy of the petitioner's spouse's 1996 Form W-2 Wage and Tax Statement showing an address at [REDACTED] New York.
- Copies of the petitioner's earnings statements from [REDACTED] Ltd. and Viele Manufacturing Corp. dated July 1999 and July and December 2000 showing the petitioner's address at the [REDACTED] street address.
- Copies of the petitioner's 2001 and 2002 Form W-2 Wage and Tax Statement.
- Copies of the petitioner's and her spouse's amended 1998, 1999, 2000, 2001, and 2002 joint state and federal tax returns.
- Copies of the petitioner's spouse's 1998, 1999, 2000, and 2001 W-2 Wage and Tax Statements.
- An undated letter to the petitioner's spouse from New York State Department of Labor at the Hughes Ave. address.
- Three affidavits from the petitioner's relatives and acquaintances.

In a notice dated August 5, 2004, the director noted the fact that the petition previously filed in the petitioner's behalf had been denied based upon a finding that the petitioner had entered into the marriage in order to circumvent immigration laws. The director also noted his own findings of discrepancies in the record regarding the petitioner's claim that she entered the marriage in good faith and that she resided with her spouse. The director specifically noted the fact that numerous documents submitted by the petitioner indicated that the petitioner's spouse resided at a different address than the petitioner. Accordingly, the director requested the petitioner to submit further documentation to overcome the noted discrepancies and to demonstrate that she entered her marriage in good faith and resided with her spouse. The director also requested a specific statement from the petitioner detailing the dates in which the petitioner actually resided with her spouse.

Additionally, the director noted that the record did not contain sufficient information regarding the incidents of the claimed abuse to make a determination and requested the petitioner to submit additional evidence to establish that she had been battered by or subjected to extreme cruelty by her spouse. The director specifically requested the petitioner to indicate whether she attended a hearing regarding a restraining order and to provide "documents relating to the outcome of these proceedings." The director also noted that the affidavits submitted to support the petitioner's claims did not contain sufficient detail to make a finding regarding the petitioner's claimed abuse. Therefore, the director also requested the following:

- Reports and affidavits from police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that the petitioner has sought refuge in a shelter for the abused.
- Photographs of injuries and affidavits from witnesses.
- A detailed and specific statement from the petitioner describing her relationship with her spouse and the type of abuse suffered and any after effects.
- Affidavits from persons with personal knowledge of the incidents claimed by the petitioner.

On October 4, 2004, the petitioner responded to the director's request by providing:

- A new statement.
- Two affidavits from relatives of the petitioner.
- A letter addressed to the petitioner at the [REDACTED] Street address from the Child Care Support Services.
- A copy of the petitioner's paystub dated June 4, 2003 showing an address at [REDACTED]
- Copies of court documents that were previously submitted.
- A letter dated September 28, 2004 from Safe Horizon indicating that the petitioner "is presently receiving services" for domestic violence counseling.
- A Temporary Order of Protection issued against the petitioner's spouse by the Family Court of the State of New York for an order of protection on September 24, 2004.

The director reviewed and discussed the evidence furnished by the petitioner to establish eligibility for the benefit sought, including documents contained in the petitioner's record of proceeding. The director found such evidence was sufficient to establish the petitioner's claim of abuse, but the director specifically noted the numerous discrepancies contained in the record related to the petitioner's spouse's residence and determined that such discrepancies cast doubt on the petitioner's credibility and supported a finding that the petitioner entered into the marriage with Mr. [REDACTED] merely to obtain immigration benefits.

On appeal, the petitioner submits a new statement, additional statements from her son and daughter-in-law, and copies of documents previously submitted. The petitioner also submits additional evidence that does not pertain to the issue of the bona fides of her marriage and joint residence, such as a letter from her case manager at [REDACTED] a letter from the city of New York Office of Child Care indicating that the petitioner's "provider enrollment" as a child care provider has been approved, and evidence related to a 2004 protection order. Accordingly, such evidence will not be considered.

The petitioner claims that the first address she shared with her husband after their marriage in February 1996 was [REDACTED]. To support her claim of a good faith marriage and joint residence at this address, the petitioner submitted tax documents and bank letters. In addition to this evidence, the record contains a letter submitted in support of the Form I-130 filed in the petitioner's behalf. The letter is dated August 6, 1997 and is written by [REDACTED] who claims that the petitioner and her spouse were "living in a rent room in [her] apartment above, and they paid \$70.00 every week." We find this documentation is not only insufficient, but also casts doubts upon the petitioner's claims of a joint residence and good faith marriage.

Although the two letters from Emigrant Savings Bank dated July and August 1997, indicate a shared residence at [REDACTED] the record does not contain any evidence of the petitioner's and her spouse's joint access to and use of this account. The record contains no other evidence, such as credit card statements, utility bills, or correspondence issued to the petitioner's spouse at this address. The record does not contain a lease, evidence of cancelled checks, or rent receipts to support the letter submitted by Ms. [REDACTED] nor does Ms. [REDACTED] provide any dates documenting how long the petitioner and her spouse rented Ms. [REDACTED] apartment.

More importantly, contrary to the petitioner's claim of their joint residence at this address, the petitioner's spouse's 1996 W-2 Wage and Tax Statement tax, state and federal tax forms and employment forms all list the petitioner's spouse's address as [REDACTED] his premarital address.¹ We also note that the petitioner has submitted a copy of her paycheck from Viele Manufacturing Corp. dated July 1999, which indicates the petitioner's marital status as single. In light of the contradictory information regarding the petitioner's spouse's residence during this time, the lack of documentary evidence related to their bona fide marriage and claimed joint residence of more than three years casts further doubts on the petitioner's assertion that she resided with her spouse at this address and that she entered into the marriage in good faith.²

On appeal, the petitioner submits a copy of a document entitled "Installation/Maintenance Visit Charges" from NYNEX for the installation of a plate jack, wire and bridge. The document is dated September 20, 1996 and the customer is listed as [REDACTED] at [REDACTED] Apt [REDACTED]. The petitioner provides no explanation for the submission of this document and we find that rather than definitely resolving the issue of the petitioner's spouse's residence at this address, the document only serves to cause more confusion as it contradicts the petitioner's claims regarding her spouse's residence at this address. The petitioner's contention is that she first began residing with her spouse at [REDACTED] Street *after* their marriage in February 1996. The document from NYNEX, however, is dated more than five months *before* their marriage.³

The record also contains insufficient and contradictory evidence regarding the petitioner's claim of a joint residence at [REDACTED] Street from September 1999 until March 2002. First, although the petitioner has submitted two signed leases for the [REDACTED] Street address with both the petitioner's and her spouse's names covering the period from December 2000 to November 2004, the record does not contain a lease for this address dating back to September 1999, the date the petitioner claims she first began residing at this address. We note that although the record contains two monthly rent statements for this address issued in the

¹ As indicated on the marriage certificate, the petitioner's address prior to their marriage was at [REDACTED]

² The Form G-325A signed by the petitioner on September 8, 2001, indicates that she resided at the [REDACTED] Street address until September 1999.

³ It is noted that even if the documented was dated at a time the petitioner claimed she was residing with her spouse, as the document was signed by the petitioner, not her spouse, it would not be considered sufficient evidence of his residence.

petitioner's spouse's name, the receipts are January and March 1999, more than six months prior to the date the petitioner claims to have begun residing at the address.⁴

Further, while the record contains a letter dated June 18, 2003, signed by [REDACTED] Sales and Service Banker at the Banco Popular, which indicates that the petitioner opened a savings account in trust for her spouse on May 11, 2001, such evidence does not establish the petitioner's intent at the time of her marriage. If the marriage was indeed bona fide at its inception, the petitioner provides no explanation for the lack of any joint accounts in the five years of their marriage prior to the opening of this account. Further, although the record contains four bank statements for this account, dated March, April, May, and July 2003, showing the [REDACTED] Street address, the statement carries little evidentiary value as they are dated *after* the time in which the petitioner claims she no longer resided with her spouse. Even if the statements were dated at a time in which the petitioner claimed her spouse was living with her, the statement does not indicate that any activity took place on the account. As such, the evidence from Banco Popular is not considered as persuasive evidence of the petitioner's and her spouse's joint access to and use of this account or of the bona fide nature of their marriage.

The utility bills submitted by the petitioner also carry very little evidentiary value. The single Cablevision bill submitted by the petitioner is not only issued after the time the petitioner claims she no longer resided with her spouse, but is also in the petitioner's name only.⁵ Similarly, the Bell Atlantic bill dated April 1999 and the ConEdison bill dated September 1999 are in the petitioner's name only. Interestingly, the record also contains a ConEdison bill, dated July 2003, more than a year after the time which the petitioner states her spouse no longer resided with her and that her spouse's residence was "unknown,"⁶ issued in the petitioner's spouse's name.

The petitioner's explanation for the contradictory information regarding her spouse's addresses is that the [REDACTED] address is the petitioner's spouse's mother's address and "he never [transferred] his documents and correspondence to our address." The record reflects that the petitioner's spouse's 1998, 1999, 2000, and 2001 W-2 Wage and Tax Statement all show his address at [REDACTED]. Further, the record contains a copy of the petitioner's spouse's driver's license, issued on January 18, 2002, showing the petitioner's spouse's address at [REDACTED].

⁴ It is noted that both rent receipts contain a "past due" amount indicating that the previous month's rent was not paid. Thus, even if the receipts covered the period of joint residence claimed by the petitioner, the fact that the rent had not been paid for at least three months, is not persuasive evidence of either the petitioner's or her spouse's residence at this address, much less their joint residence.

⁵ The bill, dated May 2003, also shows that the bill is past due.

⁶ In the incident report and the petition for protective order filed by the petitioner in July 2003, the petitioner indicates the petitioner's address is "unk [unknown]". It should be additionally noted, however, the petitioner submits a copy of her spouse's paycheck from Secure Resources and Communications LLC dated June 2003 which lists his address at [REDACTED].

Although the petitioner submitted copies of amended tax returns in an attempt to remedy the inconsistencies noted in the record regarding her spouse's tax information, the amended returns do not contain the petitioner's spouse's signature, nor is there evidence that these amended tax returns were actually filed with the Internal Revenue Service.⁷ Regardless, despite the petitioner's attempt to explain the inconsistencies regarding her spouse's addresses in his tax documentation, the petitioner fails to provide any explanation for the inconsistencies that are not tax-related or for the lack of documentary evidence.

The affidavits provided by the petitioner, her son, daughter-in-law, and acquaintances fail to resolve the inconsistencies noted. The affidavits do not provide any details regarding specific dates and locations of the petitioner's joint residence with her spouse.

As discussed in detail above, the record contains numerous inconsistencies in the evidence submitted by the petitioner. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits.⁸ However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591.

Based upon the above discussion, we find the petitioner has not established that she is eligible for the classification under section 204(a)(1)(A)(iii) of the Act. More significantly, we find that the lack of evidence related to the petitioner's good faith marriage, combined with the numerous discrepancies in the record, support a separate and independent finding that the petitioner entered into marriage with Mr. Rivera for the purpose of evading immigration laws.

Section 204(c) of the Act provides, in part:

[N]o petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws....

The regulation at 8 C.F.R. § 204.2(a)(1)(ii) provides, in part:

Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification

⁷ The petitioner's amended 2002 federal and state returns are the only returns that are signed and the amended 2002 federal return is the only one that contains a stamp from the Internal Revenue Service indicating that the amended return was actually filed.

⁸ See, e.g., *Spencer Enterprises Inc. v. U.S.*, 345 F.3d at 694.

filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

For all of these reasons, the petitioner may not be approved. 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.