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U.S. Citizenship
and Immigration
Services

BA

[Redacted]

FILE: [Redacted]
EAC 01 097 52142

Office: VERMONT SERVICE CENTER

Date: NOV 29 2006

IN RE: Petitioner: [Redacted]

[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:

[Redacted]

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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Acting Director (Director), Vermont Service Center. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke and subsequently revoked the approval of the petition. A subsequent appeal to the Administrative Appeals Office (AAO) was rejected as untimely filed. The director then reopened the case on her own motion and upheld the initial revocation. The matter is again before the AAO on appeal. The appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title.” A director may revoke the approval of a petition on notice “when the necessity for the revocation comes to the attention of this Service.” 8 C.F.R. § 205.2(a). For the reasons discussed below, we find that the approval of the visa petition was revoked in error.

The record reflects that the petitioner married G-Q-¹ a United States citizen, in Manhattan, New York on May 1, 1996. The petitioner’s spouse filed a Form I-130, Petition for Alien Relative, on the petitioner’s behalf on May 30, 1996. The petitioner filed a Form I-485, Application to Adjust Status on that same date. The petitioner and her spouse were first requested to appear before a Service officer on October 15, 1996. The petitioner’s spouse requested that the interview be rescheduled because they did not have their documentation ready. They appeared before the Service on November 21, 1996. On that date, the officer conducting the interview noted several discrepancies in the testimony given and referred the case for a “Stokes” interview, a more in depth interview. The petitioner and her spouse were then requested to appear for the Stokes interview on March 24, 1997. The petitioner’s attorney requested that the interview be rescheduled because the petitioner’s spouse was “sick and unable to attend” The interview was rescheduled for July 9, 1997, but the petitioner’s attorney again requested that the interview be rescheduled, this time due to the petitioner’s illness and inability “to travel to this [interview].” The interview was rescheduled for January 21, 1998 and again rescheduled because the petitioner was “under doctor’s care for an illness.”² The interview was then rescheduled for September 22, 1998, but the petitioner’s spouse requested that the case be transferred as they were “residing in . . . Minnesota.” The case was transferred to Minnesota and the petitioner and her spouse were again requested to appear for an interview on March 24, 1999. When they failed to appear, the Form I-130 and the Form I-485 were denied for abandonment on May 4, 1999 and the petitioner was placed in removal proceedings.

The petitioner filed the instant Form I-360 self-petition on February 2, 2001, 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 during their marriage, 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.³ The petition was initially approved January 4, 2002. On January 28, 2004, the director notified the petitioner of the intent to revoke the approval of the petition. The petition was then revoked on May 27, 2004. On February 10, 2005, the AAO rejected the petitioner’s appeal because it was not timely filed.

¹ Name withheld to protect individual’s identity.

² While the petitioner’s attorney indicated that a doctor’s note would be provided to verify the reason for rescheduling, no such evidence was ever submitted.

³ The petitioner’s removal proceedings were administratively closed by an immigration judge pending reconsideration of the Form I-360.

On March 11, 2005, the director reopened the matter on her own motion⁴ and rendered a new decision revoking the approval of the Form I-360 petition. The petitioner, through counsel, filed a timely appeal of the director's decision to the AAO.

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 or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the 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.

⁴ The director appears to have reopened the matter out of fairness based upon the director's erroneous indication that the time for filing the appeal was 30 days rather than 15 days.

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

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . ., must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

* * *

(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 standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(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.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(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.

Battery or Extreme Cruelty

As evidence to support her claim of abuse, the petitioner initially submitted a personal statement, a letter from a psychotherapist, and a letter from her previous attorney. In her statement, the petitioner indicated that after three months of marriage, "things started to change." The petitioner claims that her spouse was "obsessed" with household chores and that she could no longer send money home to her family because they did not have enough money. The petitioner also claimed that her spouse would yell at her about her cooking, cleaning, and ironing, that he called her names, and insulted her. The petitioner claimed that although she was never physically abused, her spouse did threaten to hit her on occasion. The petitioner claimed that her spouse would often come home late after drinking, refused to call the petitioner or tell her his whereabouts, and that she suspected him of cheating. Finally, the petitioner claims that her spouse failed to show up for their immigration interview and appeared unconcerned that the petitioner might get deported.

The letter submitted by [REDACTED] a psychotherapist, indicates that the petitioner received counseling from December 1999 to July 2000. While [REDACTED] reiterates the petitioner's claims that she was insulted, called names, and that her spouse "jeopardized" and "sabotaged" the immigration process, contrary to the claim made by the petitioner in her personal statement that the problems in their relationship did not begin until about three months into their marriage, [REDACTED] states that the petitioner's spouse was "immediately verbally abusive."

The letter from the petitioner's former attorney, Robert Shannon, states that the petitioner's spouse "missed all of his interviews." Mr. Shannon then indicates that he explained to the petitioner's spouse:

[T]he consequences of his irresponsible actions, including the fact that his lack of cooperation could place [the petitioner] in deportation proceedings, however he did not seem to care about her fate. [The petitioner's spouse] disregarded both his wife's and my pleadings to cooperate. He seemed disinterested in the welfare of his wife . . . and his actions demonstrated a great lack of responsibility.

In the notice of intent to revoke, the director noted inconsistencies between the evidence in the record and Mr. Shannon's letter which indicated that the petitioner's spouse purposely missed all of the immigration interviews as well as the length of time the petitioner waited to seek counseling as the reasons for determining that the record lacked sufficient evidence and credibility to establish a claim of extreme cruelty.

In response, counsel for the petitioner stated that there was no discrepancy between the returned interview notices and Mr. Shannon's letter and states that the petitioner never returned any of the interview notices. Counsel then argues that we should infer that the petitioner's spouse "was not interested in the welfare of his wife and in fact was sabotaging his wife's ability to gain residency in the United States." We are not persuaded by any of counsel's statements. First, as it relates to the issue of whether there are discrepancies between Mr. Shannon's letter and the evidence in the record, we find that not one of the returned interview

notices indicates that the reason for the petitioner's and her spouse's failure to appear for the requested interview as being caused by the petitioner's spouse. Rather, as discussed previously, the evidence reflects that the petitioner's spouse did appear for at least one interview. The remaining interviews, rather than being cancelled because of the petitioner's spouse's "lack of cooperation," as claimed by Mr. Shannon and counsel, were cancelled due to the petitioner's and her spouse's illnesses. Further, contrary to counsel's claim that the petitioner did not return any of the interview notices, we note that the notice for the interview on January 21, 1998 was signed by the petitioner following the notation that she was "under doctor's care for an illness." That the petitioner would now have us now believe that the failures to appear were attributable to her spouse's sabotage means that the prior claims of illnesses were not true. The fact that the petitioner's current explanation is contradicted by the reasons given on the returned interview notices casts doubt on her veracity and diminishes her claim of abuse.

Even if we were to believe Mr. Shannon's assertions regarding the petitioner's spouse's "irresponsible" actions and counsel's claim that he was not interested in whether the petitioner gained her permanent residence, such facts do not equate to a finding of abuse. The petitioner's spouse's failure to continue with the petitioner's Form I-130 and to "cooperate" with the petitioner can just as easily be attributed to the fact that their marriage was deteriorating. None of the evidence in the record indicates that the petitioner's spouse held her immigration status over her head, or used it to intimidate or coerce her. That he no longer wished to pursue his support of her petition is not sufficient to establish a pattern of abuse.

In response to the director's notation that the petitioner waited more than eight months after her divorce to seek counseling, the petitioner claimed that she was "ignorant," not used to therapy, and did not have the money to seek help. The petitioner submitted a second letter from [REDACTED] who wrote that in her experience Latin American women "have no idea" that the abuse they suffer is criminal, that they are culturally "prohibited" from seeking outside help, and that the lack of health insurance is often a factor for why people do not seek treatment. While we accept the petitioner's claims and [REDACTED] letter as evidence to explain why the petitioner waited to seek counseling, the evidence does not provide any further support for the petitioner's claim of abuse. [REDACTED] does not provide any further detail regarding the petitioner's claims, which as previously noted, were contradicted in [REDACTED] initial letter.

The petitioner has submitted no evidence from relatives, friends, or acquaintances to support her claim of abuse, to include her former landlord. Although the petitioner claims that she does not remember her landlord's name, she submitted a letter and rent receipts from her landlord as evidence of her joint residence. In her response to the director's notice, the petitioner claimed that her brother did not write a letter because she is "a private person" and keeps her problems to herself and that she did not develop a "great enough level of trust . . . to tell him the details or ask him to write a letter." However, in that same paragraph, the petitioner claimed that she did ask her brother to write a letter but that "he did not give [her] any response." Moreover, contrary to her claim that she kept her problems to herself, we note that in her initial statement, she indicated that she and her brother "talked a little about [her] problems."

With the exception of one incident in which the petitioner indicates that she forgot something at a grocery store and was insulted by her spouse, the petitioner does not provide sufficient information or describe any specific incident in detail. The record is devoid both testimonial and documentary evidence of battery or

extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). Accordingly, the petitioner has failed to establish that the her former spouse battered her or subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner's claim that she entered into the marriage in good faith.

As evidence to support a good faith marriage, the petitioner submitted a personal statement, the petitioner's marriage certificate, copies of photographs and a Citibank Bank Statement.

In revoking the petition, the director pointed to inconsistencies noted by the Service officer during the petitioner's interview with her spouse and the lack of evidence to support a finding of a good faith marriage. The director noted the fact that the petitioner's bank account was not a joint account shared by the petitioner and her spouse, but rather an account that was held by the petitioner in trust for her spouse.

On appeal, counsel states that the petitioner has presented "ample evidence" of her good faith marriage. The "ample evidence" referred to by counsel consists of the petitioner's statement, a letter from the petitioner's former landlord and rent receipts, a bank statement and an envelope from a cable company as evidence that the petitioner and her spouse "resided together for over a year and a half." Counsel then claims that as such evidence is credible, the petitioner has established the "'good faith marriage' requirement.

We are not persuaded by counsel's argument. First, while counsel is correct in arguing that the director must *consider* any credible evidence, the mere submission of credible evidence does not establish eligibility. Pursuant to the regulation at 8 C.F.R. § 204.2(2)(i), the determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. In this instance, the majority of the evidence referred to by counsel relates to the petitioner's residence with her spouse. Although a petitioner may submit evidence that she did, in fact, reside with her spouse, that fact does not de facto establish that they were engaged in a bona fide marital relationship. As previously cited, the provisions contained in section 204(a)(1)(A)(iii) require a petitioner to establish, among other requirements, that the petitioner resided with her spouse *and* that she entered into the marriage in good faith. The clause regarding a good faith marriage would be rendered meaningless if, once a petitioner has established residence with her spouse, she need not also establish that she entered into the marriage in good faith.⁵

While counsel also points to the petitioner's marriage certificate and photographs as evidence to support a finding of a good faith marriage, we find such evidence carries little weight in establishing the petitioner's intent at the time of her marriage. Although the marriage certificate is evidence of a legal marriage, the fact that a legal marriage took place does not establish that the marriage was entered into in good faith. Similarly, while the petitioner's photographs are evidence that the petitioner and her spouse were together at a particular place and time, they do not establish that they were engaged in a bona fide marriage. We note that although the petitioner claims that she and her spouse were together from approximately August 1995 until February 1998, the petitioner's photographs are undated and uncaptioned and appear to mostly relate to photographs taken on

⁵ It is noted that the letter from the petitioner's former landlord does not indicate that the petitioner and her spouse actually resided together or provide any descriptions of their activities together, only that they rented a room.

their wedding day. As such, the photographs do not document their life together throughout their nearly three year relationship.

Regarding the in trust for account, counsel alleges, as did the petitioner in her response to the director's intent to revoke, that the petitioner had "no idea that the account was not a regular joint account" and that such evidence while not "typical," in no way "suggests that their marriage was not bona fide." Again, we are not persuaded by counsel's argument. The burden of proof is on the petitioner to prove that her marriage was bona fide. The Service did not find that the marriage was not bona fide, only that the petitioner had failed to prove that it was bona fide. As it relates to the bank account, the fact that the account is not a joint account does not assist in meeting the petitioner's burden of establishing that her marriage was in good faith.

As it relates to the discrepant statements noted by the Service officer during the petitioner's interview, counsel states that the fact that the petitioner failed to recall her date of marriage "hardly seems relevant" and blames the petitioner's lack of recall on "a lack of client preparation" by her attorney. Counsel attributes the rest of the discrepancies to the petitioner's spouse, not the petitioner. Counsel's attempt to dismiss the relevance of the petitioner's failure to recall her wedding date is not persuasive. We can think of few other factors more relevant to the bona fides of a marriage than whether the individual knows the date of their marriage. This hardly seems the type of information that an attorney must prepare a client for. Whether the inconsistencies were attributable to the petitioner's spouse or the petitioner is inconsequential as, as previously noted, the burden is not on the Service to prove that the marriage was not bona fide, but rather on the petitioner to prove that it is.

The "key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage." *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). The lack of any joint financial documents such as taxes, shared bank accounts, insurance information or other documentation of shared assets and liabilities does not support a finding that the petitioner intended to share a life with her spouse and that she entered into the marriage in good faith. Given the inconsistencies noted during the interview which took place only six months after the petitioner's marriage to her spouse and the absence of documentation showing the petitioner's intent to share a life with her spouse, the petitioner has not established that she entered into her marriage in good faith.

In accordance with the above discussion, we concur with the determination of the director that the record is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her spouse and that she entered into her marriage in good faith. The petitioner has not overcome this finding on appeal.

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with her former husband and that the petitioner's former husband battered or subjected her to extreme cruelty during their marriage. Although the petitioner's divorce took place within the two-year period prior to the filing of the petition, because the petitioner was divorced at the time of filing she must demonstrate "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). Because we have determined that the petitioner failed to establish that she was battered or subjected to extreme cruelty,

she is unable to demonstrate a connection between her divorce and her spouse's battery or extreme cruelty. Accordingly, the petitioner has also failed to establish that she was eligible for immediate relative classification based on her relationship to her citizen spouse at the time she filed her petition, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

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).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.