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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 06 062 51845

Office: VERMONT SERVICE CENTER

Date: APR 17 2007

IN RE:

Petitioner:



PETITION: Petition for 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.

Maura Deadrick

Robert P. Wiemann, Chief
Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and 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 a United States citizen.

The director denied the petition because the petitioner did not establish that she entered into marriage with her husband in good faith.

On appeal, the petitioner submits a statement and additional evidence.

Section 204(a)(1)(A)(iii) 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 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:

(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:

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.

* * *

(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.

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of Jamaica who entered the United States on February 1, 2002 as a nonimmigrant visitor. On August 29, 2002, the petitioner married C-J-¹, a U.S. citizen, in Florida. The petitioner filed this Form I-360 on December 19, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into marriage with her husband. The petitioner timely responded with additional evidence. The director then issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good-faith entry into the marriage. The petitioner timely responded to the NOID with additional evidence. The director denied the petition on October 3, 2006 and the petitioner timely appealed.

On appeal, the petitioner asserts that hers was not a marriage of convenience and she submits a letter from her sister. We concur with the director's determination. The petitioner's statements and the additional letter submitted on appeal fail to overcome the ground for denial.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's allegedly good-faith entry into marriage with her husband:

- The petitioner's two, undated letters submitted in response to the RFE and NOID respectively;
- The undated letter of Playthawel Blue, the petitioner's sister-in-law;
- The October 16, 2006 letter of the petitioner's sister, [REDACTED];
- Copy of a Palm Beach County, Florida Sheriff's Office Offense Report dated July 16, 2004.

¹ Name withheld to protect individual's identity.

In her first letter, the petitioner states that she met her husband in 2000 at a house party where they had a long conversation and exchanged telephone numbers. After the petitioner returned to Jamaica, she states that she and her husband would speak on the telephone about two times a week. The petitioner explains that she had planned to return to the United States to visit a friend and see her husband in 2002, but that he called on December 21, 2001 and told her he had been injured at work. The petitioner states that she went ahead with her plans and visited her friend in Georgia and then went to Florida to see her husband. The petitioner explains that she was only authorized to stay in the United States for a short period of time, but her husband asked her not to leave and because she had feelings for him, she decided to stay.

The petitioner reports that the former couple courted for about six months and then her husband proposed to her, she accepted, they got married and "things went well." The petitioner states that her husband would give her breakfast in bed and do things to make her happy. The petitioner reports that she accompanied her husband on all his appointments with doctors, therapists and his lawyer. The petitioner describes the first few months of their marriage as "a very happy time" and states that she and her husband did most things together, went out for dinner, went to visit relatives and would have his family visit their home.

The petitioner then describes several incidents of abuse and does not further discuss any of the former couple's other shared experiences. The petitioner states that just after the former couple had moved to Georgia, she left her husband secretly after an incident where her husband hit her in the same place where he had recently fractured her rib. She explains that she left with just her handbag and left all of her clothes and other things at her husband's home. The petitioner states that she did not have time to get things such as papers and photographs and that she never returned to her husband's home.

In her second letter submitted in response to the NOID, the petitioner further explains why she does not have documentation to show her good-faith entry into marriage with her husband. The petitioner states that she was unable to work until October 2004 because the former couple did not have the money to pay the fees for filing her immigration papers. The petitioner explains that prior to 2004, when her husband tried to add her name to his residential lease and bank account, he was unable to do so because she did not have any identification, proof of immigration status or a social security number.

The petitioner further explains that some of her wedding pictures were destroyed when a window of the former couple's home was broken in the storm and water blew through. The petitioner states that she saved two big wedding pictures in glass frames, but those photographs were moved to her husband's home in Georgia, from which she fled and never returned. The petitioner also explains that her husband last filed income taxes in 2002 and listed her as a dependant. The petitioner states that she thought she could not jointly file taxes with her husband because she was not working.

The petitioner further states that by the time the former couple moved to Georgia in March 2005:

I was trying so hard to save my married [sic]. This was the first time I had ever married. All I need is for my husband to stop hitting [sic] on me. I love him so much that half had [sic] never been told to police or anyone. I did not want him to go to jail. All I want was a good life just like we had started. Two things that made me cry is when I remember the good times we spend together and the second one is when I remember the pain he put me through.

The petitioner's sister-in-law, Ms. [REDACTED] states that the petitioner "was a very nice and devote [sic] wife. It was my brother. Everything she say [sic] is true." Ms. [REDACTED] does not provide any further, probative information regarding the petitioner's good-faith entry into the marriage.

The petitioner's sister, Ms. [REDACTED], states that she knew the petitioner and her husband as "a sweetly married couple living together, I even knew of their courtship. They were always together; my family and I nicknamed them peas in the pod." Ms. [REDACTED] states that the former couple frequently visited Ms. [REDACTED] home where she and her husband and the former couple would play dominos and cards. Ms. [REDACTED] states that sometimes the two families would go out for lunch or cook in the backyard. She concludes, "To my knowledge there [sic] were very happy and loving couple, until [the petitioner] found out that [her husband] had other women." Ms. [REDACTED] does not, however, provide any probative details about the petitioner's behavior and intentions, as observed by Ms. [REDACTED] during the former couple's courtship and wedding.

The petitioner submitted no other documentary or testimonial evidence of her allegedly good faith entry into marriage with her husband of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the director's RFE and NOID. In her letters, the petitioner explains in detail why she does not have any documentary evidence of her shared life with her husband and explains that she endured repeated abuse from her husband because she loved him and did not want him to go to jail.

The July 16, 2004 offense report states that the petitioner told the reporting officer that she did not want her husband arrested, she just wanted to make a report and stop the violence. However, the offense report also states, "I asked her why she stayed in the relationship and she told me that she does not have a green card and not a legal citizen [sic]. She told me that she expects to get a green card in a week or so and she wanted to wait until that time before she left the relationship." This statement indicates that the petitioner's primary motivation for remaining in the relationship was to obtain immigration status through her husband.

On appeal, the petitioner asserts, "If this was a marriage of convenience [sic], I would not have waited almost two years to file for adjustment all the while being abuse by my abuse [sic]." While a self-petitioner's fear of deportation and uncertain immigration status may often be related to the abuse they endure, the record in this case does not indicate that the petitioner's husband ever threatened to have her deported or otherwise used her immigration status as a means to exert control over her. Rather, the petitioner's statements to the reporting officer on July 16, 2004 indicate that her own desire to obtain

immigrant status through her husband was her primary motivation for remaining in the relationship. The petitioner's testimony and the statements of her sister and sister-in-law do not overcome this discrepancy and do not establish that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has not established that she entered into marriage with her husband in good faith and she is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. Her petition must therefore be denied.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.