

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9



FILE:



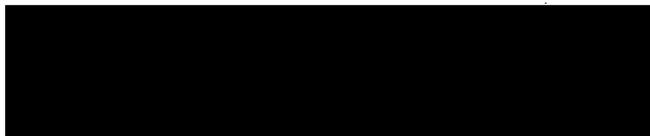
EAC 06 030 51919

Office: VERMONT SERVICE CENTER

Date: APR 23 2007

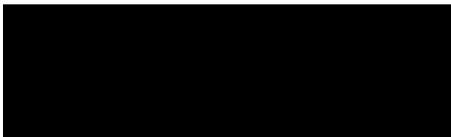
IN RE:

Petitioner:



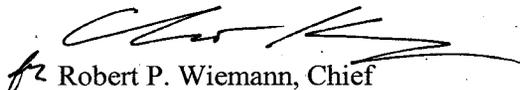
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



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 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 classification as an immigrant pursuant to 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 record did not establish that the petitioner entered into her marriage in good faith.

The petitioner submits a timely appeal with copies of documents that were previously submitted as well as new documents.

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].

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 standard and 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 petitioner in this case was born in Argentina and is a citizen of Canada. On April 8, 2005, the petitioner married J-R-¹, a United States citizen, in Las Vegas, Nevada. On the Form I-360, the petitioner indicates that she entered the United States in June 2005 as a nonimmigrant visitor.

The petitioner filed this Form I-360 on November 4, 2005.² With her initial filing the petitioner submitted copies of her birth certificate with translation, her passport, marriage certificate, her and J-R-'s divorce decrees, and a copy of J-R-'s birth certificate. Additionally, the petitioner submitted a "Certificate of Title" for a car and a manufactured home, a copy of an "Application for Residency" at [REDACTED] copies of a utility bill, a closing statement, a savings account statement from Coast Capital, and three letters from friends.

On February 17, 2006, the director issued a Request for Evidence (RFE) to the petitioner requesting the petitioner to submit additional evidence of, *inter alia*, her good faith marriage to J-R-. The petitioner responded to the director's RFE on April 12, 2006. As it relates to her claim of a good faith marriage, the petitioner submitted an unsworn personal statement and a compact disc with photographs of the petitioner and J-R- at their wedding.

On June 8, 2006, the director issued a Notice of Intent to Deny (NOID) informing the petitioner that, *inter alia*, the record was insufficient to establish that she entered into her marriage in good faith. In response to the NOID, the petitioner submitted a second unsworn statement and documents unrelated to the issue of a good faith marriage.

After reviewing the evidence submitted, including the evidence submitted in response to the RFE and NOID, the director denied the petition on September 15, 2006, finding that the petitioner failed to establish that she entered into her marriage with J-R- in good faith. The director's discussion will not be repeated here.

On October 16, 2006, the petitioner submitted a timely appeal. As will be discussed, we concur with the director's determinations and find that the petitioner's appellate submission does not overcome the grounds for denial of the petition.

In her first statement the petitioner indicated that she met J-R- over the Internet "sometime in 2004" and that in August of 2004, J-R- gave the petitioner his cell phone number. The petitioner indicated that she and J-R- would talk on the telephone and that she came to meet J-R- in California on April 8, 2005. The petitioner stated:

¹ Name withheld to protect individual's identity.

² The director's reference to a filing date of November 6, 2005, appears to have been made in error.

... [H]e met me at the airport and had nothing in his hands, and we were supposed to drive to Las Vegas, and decide if we were going to get married right there or wait a few months.

As noted by the marriage certificate, the petitioner and J-R- decided to marry each other on the very date they met in person for the first time.

In the statement provided by the petitioner in response to the director's NOID, the petitioner stated:

We started talking long distance about a year before we met and we talked about a relationship, we discussed the things we learned in religion, and it all seemed ok . . . When we met, instead of getting to know each other some more, we got to the conclusion that we wanted to have sexual relations and we could not do that unless we got married and we did not want to wait so we just went ahead and got married on a whim.

The petitioner's statements provide no probative information regarding her feelings for J-R- or her intent in marrying him. The petitioner's own statements indicate that she married J-R- "on a whim" because she "wanted to have sexual relations" with him. Although the petitioner also submitted unsworn statements from three friends, like the petitioner's statements, the friends' statements offer no information regarding the petitioner's relationship with J-R- and her good faith marriage. In fact, the statements do not mention J-R- or even indicate awareness that the petitioner was married to him.

As documentary evidence to support her claim of a good faith marriage, the petitioner submitted documents signed by J-R- and the petitioner on August 11, 2005 for property at the De Rancho Y Mobile Villa. While these documents support a finding that the petitioner and J-R- did reside together for a period of time, they do not support a finding that the petitioner entered into her marriage in good faith. The remaining evidence submitted by the petitioner does not demonstrate shared assets in the relationship. Rather, the documents show that the petitioner had utility bills, savings accounts, and a home title in her name only. Although the petitioner submitted a car title in both her name and J-R-'s name, the title was issued on October 7, 2005, one month *after* she indicates that they no longer resided together and wanted to obtain an annulment. Accordingly, this title contains little probative weight regarding the petitioner's good faith intent. The petitioner blames the lack of joint assets on the fact that J-R- had bad credit. While we do not dispute her justification, J-R-'s bad credit does not explain why the petitioner was unable to furnish copies of taxes showing that she filed as married, or married filing separately, or other evidence such as health, car, or life insurance. Although the petitioner also submitted photographs that were taken on their wedding day, the petitioner has not submitted any other photographs documenting other shared events or occasions during their short courtship and marriage.

On appeal, the petitioner resubmits copies of documents related to her application for residency with De Rancho Y Mobile Villa. In addition, the petitioner submits documents which appear to be irrelevant to her claim of a good faith marriage, such as envelopes addressed to the petitioner only, a document from the Department of Treasury issued to the J-R- and his *ex-wife*, and information regarding J-R-'s internet profile on "[REDACTED]". We note that even if these remaining documents were relevant to the petitioner's claim of a good faith marriage, in instances where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. In this instance the petitioner was given several notices regarding the deficiency in the record related to her good

faith marriage and afforded the petitioner ample opportunity to submit evidence. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's RFE or NOID. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Accordingly, the AAO need not consider the sufficiency of the new evidence submitted on appeal.

Although the petitioner does not specifically address the director's findings on appeal, she states that, "[a]s a Jehovah Witness, I take marriage very seriously and went into the marriage thinking that it would last forever." She also poses the following questions:

Why would I leave my children and promise them that they could move and stay with me if I was not serious? And put myself in this position to lose everything I have worked for all these years?

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. See *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). As discussed above, the testimonial evidence submitted by the petitioner contains little probative value in establishing the petitioner's claim of a good faith marriage. Further, despite the submission of three statements on the petitioner's behalf, not one of the statements contains any reference to J-R- or the petitioner's good faith marriage. While it is not required, we also note that the petitioner has failed to submit any statements from her or J-R-'s family members regarding their relationship and married life. The statements contained in the record offer no specific details regarding the petitioner's life with J-R- either prior to or after their marriage, shared events, trips, or other information pertinent to finding that she intended to establish a life with J-R-. The sole documentary evidence of a shared possession is the copy of the title to the car issued after the petitioner indicated the relationship had already ended. The record does not contain any evidence of shared financial or bank accounts, health or life insurance, tax documentation or any other evidence relevant to shared assets and liabilities. Accordingly, the petitioner has failed to establish that she entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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.