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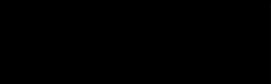
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Office: VERMONT SERVICE CENTER

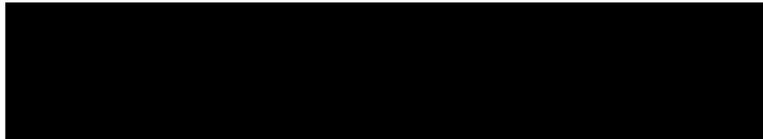
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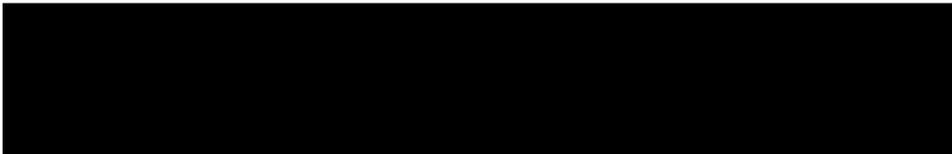
IN RE:

Petitioner:



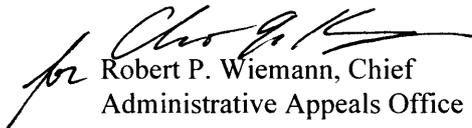
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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 immigrant classification under section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition finding that the petitioner did not establish that she resided with her spouse and that she entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under . . . clause (ii) or (iii) of subparagraph (B), 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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(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)(B)(ii) 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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 pertinent facts and procedural history. The petitioner is a native and citizen of Colombia who entered the United States on August 17, 2000 as a nonimmigrant visitor (B-1). On November 30, 2002, the petitioner married A-A-¹, a U.S. citizen, in Florida. Their marriage ended in divorce on August 16, 2004.² The petitioner filed this Form I-360 on February 9, 2006. On April 30, 2006, the director issued a Request for Evidence (RFE) notifying the petitioner that the evidence submitted was insufficient to establish her claims. The petitioner responded to the RFE on July 10, 2006 by submitting additional evidence. On August 10, 2006, the director issued a Notice of Intent to Deny (NOID) the petition based upon the petitioner's failure to establish the requisite residence and good faith marriage. The petitioner responded to the NOID on September 19, 2006. The

¹ Name withheld to protect individual's identity.

² Family Division Case No.: [REDACTED] Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida.

director denied the petition on October 31, 2006 finding that the petitioner failed to establish that she resided with her spouse and that she entered into her marriage in good faith. The petitioner submitted a timely appeal with additional evidence.

On appeal, counsel argues that the director committed error in denying the petition and states that the petitioner has submitted sufficient evidence to establish that she resided with her spouse and that she entered into her marriage in good faith. In addition to the statements made by counsel on appeal, the petitioner submits additional evidence to include affidavits from acquaintances and medical bills. It is noted that 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. If the petitioner had wanted the submitted evidence to be considered, she had every opportunity to submit such evidence in response to the director's RFE and NOID. Accordingly, the AAO will not review this new evidence on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533, 537 (BIA 1988). As will be discussed, upon review, we concur with the findings of the director.

Residence

On the Form I-360, the petitioner indicated that she resided with her spouse from November 2002 until August 2004 and that she last resided with him at [REDACTED]. Although the petitioner submitted a personal statement at the time of filing, the statement did not provide any details regarding her residence with her spouse. In the psychological evaluation provided by [REDACTED], [REDACTED] stated that the petitioner informed her that the petitioner resided with her spouse "from Friday night until Sunday nights when she was not at work" and that she last resided with her spouse in December 2003 when her spouse "took everything out of their house, including her belongings, and abandoned her." The petitioner then indicated that "she never saw him again." Because of the lack of testimonial and documentary evidence regarding her residence with her spouse, as well as the noted discrepancy in dates, the director's RFE requested the petitioner to submit "a sworn affidavit listing the dates . . . and addresses of [the petitioner's] joint residency with [her spouse]." The director also provided a list of documentary evidence that could be submitted to establish their residence together. Although the petitioner submitted a new statement in response to the director's RFE, the petitioner did not provide any information regarding her residence other than to state that "we moved in together" and that their "living arrangements were somewhat weird [as she] would only stay in [her] house on the weekends..." Again, despite being notified of the deficiency in her testimonial and documentary evidence, the petitioner submitted no further evidence in response to the director's NOID.

While the petitioner also submitted statements from two friends, like the statements submitted by the petitioner, their statements lack probative information regarding the petitioner's residence with her spouse such as the dates that they resided together, the addresses at which they resided, and whether they rented an apartment or resided with friends or relatives. In addition to failing to provide any testimonial or documentary evidence regarding her residence with her spouse, the petitioner failed to

provide any explanation for the noted discrepancy in the final date of her alleged residence with her spouse as stated on the Form I-360 and in the psychological evaluation provided by [REDACTED]. Accordingly, we concur with the finding of the director that the petitioner has failed to establish that she resided with her spouse, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Good Faith Entry into Marriage

As documentary evidence of her good-faith entry into her marriage, the petitioner submitted photographs of what appear to be the petitioner's wedding ceremony and several other uncaptioned photographs. While the photographs are evidence that the petitioner and her spouse were together at particular places and times, they add little probative value to the petitioner's claim of a good faith marriage. The petitioner fails to describe the photographs, the date, time and importance of the events, or any other information about the photographs to establish their relevance to her claim of a good faith marriage. Similarly, while the petitioner also submitted copies of greeting cards that she and her spouse received at the time of their wedding, the cards carry little evidentiary weight in establishing that the petitioner was marrying her spouse with the intent of sharing a life with him. The record contains no other documentary evidence of the petitioner's good-faith entry into the marriage such as tax documents, car, health or life insurance other than a single bank account. However, while the record does demonstrate that the petitioner and her spouse opened a joint account for two months during their marriage, the evidence does not demonstrate that the account was even used, much less accessed by both parties. We note that the account was opened in May 2003, nearly six months *after* their marriage. While the short duration of the former couple's marriage may explain the petitioner's lack of joint documentation with her husband as counsel argues, the petitioner's testimony is not sufficient to establish her claim of a good faith marriage.

At the time of filing, the petitioner submitted no testimonial evidence of her good faith marriage to her spouse. Rather, her statement focused on the abuse. Similarly, while the petitioner submitted statements from two friends who indicated their awareness of the petitioner's marriage, the statements do not provide any details regarding how the petitioner met her spouse or any other information about their courtship and life together after their marriage other than as it relates to the abuse. In response to the director's RFE, the petitioner submitted a statement in which she indicated that she met her spouse when she was invited to his birthday party by her landlords. The petitioner claimed that it "was like love at first sight," and that they got "very close and decided to get married." She provided no other description of their life together prior to their marriage, her feelings for him at that time, or reasons for marrying him. Accordingly, we concur with the finding of the director that the petitioner has not demonstrated that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

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. Accordingly, the appeal will be dismissed.



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ORDER: The appeal is dismissed.