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U.S. Citizenship
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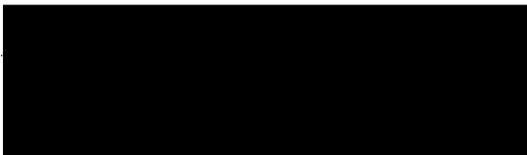
FILE: [REDACTED] Office: VERMONT SERVICE CENTER
EAC 06 057 51883

Date: FEB 02 2007

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:



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 a special 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, through counsel, submits a timely appeal and brief.

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 is a native and citizen of Uganda who indicates on the Form I-360 that she entered the United States on December 25, 2003. The petitioner married B-F-,¹ a United States citizen, in Inglewood, California on March 18, 2005. The petitioner filed this Form I-360 on December 12, 2005.

With the initial filing, to support her claim of a good faith marriage, the petitioner submitted a personal statement and an affidavit from her spouse's niece, [REDACTED]. In her personal statement, the petitioner generally describes how she met her spouse and their approximate one-month courtship. She states:

[B-F-] and I were introduced by my cousin. She had met him at the swap meet market in Crenshaw. She told me he asked her out on a date but that she declined because she was married. He then asked if she had any sisters so my cousin suggested that he meet up with me.

About three weeks after we had been dating, [B-F-] suggested that I move in with him. I accepted the offer immediately because we were getting along really well and my cousin's three bedroom house was rather cramped with twelve relatives all sharing the same living space. It was around April 2005² when I moved in with [B-F-].

I had fallen in love and when [B-F-] proposed marriage to me in May and, without even thinking, I accepted.

The petitioner offered no further details regarding her courtship and married life, other than the claimed abuse. The affidavit from [REDACTED] states generally that the petitioner and her spouse "have been married and living as a couple from the middle of 2004 to early 2006." Although Ms. [REDACTED] claims to have visited the couple at their home "a few times," she does not provide any details regarding their courtship or their life together after their marriage.

On February 13, 2006, the director issued a request for evidence (RFE) of, *inter alia*, further evidence that she married her spouse in good faith. The petitioner, through counsel, responded to the director's RFE on April 11, 2006 and requested additional time to respond to the RFE. The director issued a Notice of Intent to Deny (NOID) on May 16, 2006, again indicating, *inter alia*, that the evidence contained in the record was insufficient to establish a claim of a good faith marriage.

¹ Name withheld to protect individual's identity.

² The petitioner appears to have mistakenly indicated that she moved in with her spouse in 2005. Her Form I-360 indicates that it was actually April 2004.

The petitioner responded to the director on July 10, 2006 by submitting a copy of correspondence issued in the petitioner's and her spouse's names on April 4, 2006, several copies of undated, uncaptioned photographs, presumably of the petitioner, her spouse, and friends and family, greeting cards, a second personal statement from the petitioner, and an affidavit from the petitioner's Aunt.

After reviewing the evidence contained in the record, the director denied the petition on August 16, 2006, finding that the petitioner failed to establish that she entered into her marriage with B-F- in good faith. In discussing the evidence submitted by the petitioner, the director noted that the correspondence issued in the petitioner's and her spouse's names was issued *after* the petitioner had indicated that she had separated from her spouse. The director also noted that a majority of the petitioner's photographs "appear to be from [the petitioner's] wedding ceremony." Regarding the affidavits submitted on the petitioner's behalf, the director found the affidavit from [redacted] related only to the petitioner's claim of residence, while the affidavit from [redacted] contained illegible dates. The director then found the affidavits were not "sufficiently credible" to establish the petitioner's claim of a good faith marriage.

On appeal, counsel disputes the director's finding and states:

The inference that the parties never intended a bona fide marriage from proof of separation is arbitrary unless we are reasonably assured that it is more probable than not that couples who separate after marriage never intended to live together.

It appears that counsel has misinterpreted the director's decision. Contrary to counsel's assertion that the director found the petitioner "never intended a bona fide marriage," there was no finding of a sham marriage in the director's decision. The fact that a petitioner fails to establish a good faith marriage and to produce affirmative evidence of the bona fides of the marriage, by itself, is not sufficient to establish that the marriage is a sham marriage and was entered into in order to evade the immigration laws. *Compare* 8 C.F.R. § 204.2(a)(1)(iii)(B), and (D), *with* 8 C.F.R. § 204.2(a)(1)(ii)."

Counsel further argues that the director offered "no valid reason" for finding that the testimonial evidence is not genuine and claims that the petitioner has provided "unrefuted evidence" that she "intended on establishing a life together with her spouse." Counsel points to the petitioner's marriage certificate and the description in the petitioner's statement of "the circumstances of their courtship" to support his argument. Upon review, we concur with counsel's argument regarding the veracity of the testimonial evidence and find no reason to doubt the credibility of the petitioner and her affiants. While the statements may lack evidentiary value due to the insufficiency of the information contained therein, we find no evidence that the statements are not credible. Accordingly, we withdraw the finding of the director that the petitioner failed to provide sufficient "credible" evidence to support her claim that she entered into the marriage in good faith. We are not persuaded, however, by counsel's remaining arguments. First, while the petitioner's marriage certificate is evidence of a *legal* marriage, it provides no probative value in demonstrating that the marriage was in good faith. Second, we do not agree that the petitioner's statement offered sufficient information regarding her courtship with her spouse. Despite a claimed courtship of "nearly eight months," the petitioner's statement dedicates a single line to describing the date she moved in with her spouse and his subsequent proposal. The petitioner provided no details of the time spent together during those eight months, shared events, or other information to indicate that she entered into her marriage in good faith. The remaining testimonial evidence, which consists of affidavits submitted on the petitioner's behalf, offer no further probative evidence other than to describe the petitioner's and her spouse's search for living accommodations and to state that the petitioner and her spouse lived "as a

couple.” The remaining documentary evidence consists of a single piece of correspondence containing the petitioner’s and her spouse’s names, photographs, and greeting cards. The correspondence is dated nearly one year after the petitioner’s claims to have stopped residing with her spouse and was sent to an address the petitioner never claimed to have shared with her spouse. Thus, while the evidence is considered, it will be afforded minimal evidentiary value. Similarly, the photographs submitted by the petitioner, while evidence that the petitioner and her spouse were together at a particular place and time, contain little probative value in establishing her good faith intent. The petitioner fails to describe the photographs, the date, time and importance of the events, and to provide any other information about the photographs to establish their relevance to her claim of a good faith marriage. Finally, the greeting cards sent to the petitioner and her spouse, while some acknowledge the petitioner’s relationship with her spouse, do not provide any probative details or information relevant to her good faith marriage.

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.