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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED]
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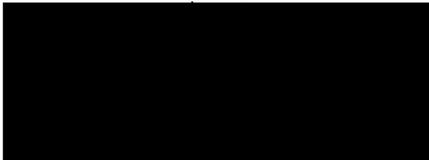
Office: VERMONT SERVICE CENTER

Date: FEB 16 2007

IN RE: Petitioner: [REDACTED]

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 sustained.

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, counsel submits a 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 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 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 pertinent facts and procedural history. The petitioner is a native and citizen of Jamaica who entered the United States on January 5, 2001 as a nonimmigrant visitor (B-2). On May 3, 2003, the petitioner married G-F-¹, who was naturalized on May 16, 2003. The petitioner filed this Form I-360 on April 14, 2005. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good faith marriage to her husband. The petitioner, through counsel, responded with further documentation. On November 22, 2005, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good faith marriage. The petitioner, through counsel, responded to the NOID with additional evidence. On March 15, 2006, the director denied the petition and counsel timely appealed. On appeal, counsel claims that the director erroneously discounted certain evidence and incorrectly deemed the petitioner's explanation insufficient to resolve a discrepancy in the record.

The petitioner submitted the following evidence relevant to the issue of her good faith entry into marriage with her husband:

- The petitioner's first, undated statement; her second, undated and handwritten letter; and her December 19, 2005 affidavit;
- The February 26, 2005 letter from the petitioner's friend, [REDACTED];
- The February 28, 2005 letter from the petitioner's friend, [REDACTED];
- 12 monthly joint checking and savings account statements for the petitioner and her husband from April 7, 2004 to March 14, 2005;
- Copies of photographs, which counsel identifies as pictures of the petitioner and her husband, but many of which are undecipherable;

¹ Name withheld to protect individual's identity.

- A copy of the first page of a residential lease dated August 22, 2001 listing the petitioner and her husband as tenants and stating a lease term of September 1, 2001 to August 31, 2002;
- A copy of a greeting card signed by the petitioner as her husband's "future wife" and a copy of a Christmas card to the petitioner from her husband;
- The September 10, 2005 letter of the petitioner's uncle, [REDACTED];
- The Westchester County, New York Supreme Court transcript of the pistol revocation hearing against the petitioner's husband on November 30, 2005;
- The December 21, 2005 letter of the rector of the petitioner's church, Rev. [REDACTED];
- A letter dated December 19, 2005 that is addressed to the petitioner and states that her name has been removed from her husband's Sears credit card account;
- The January 3, 2006 affidavit of the petitioner's employer, [REDACTED] and
- A copy of the front of a Mother's Day card that states "For My Wife," but contains no signature or other identifying information.

In her handwritten letter submitted with her RFE response, the petitioner explains that her friend introduced her to her husband in 2000 when she was visiting her uncle in the United States. The petitioner states that her husband called her many times at her uncle's home and expressed his desire to start a relationship with her. After the petitioner returned to Jamaica, she states that her husband called her regularly. The petitioner reports that she returned to the United States in January 2001 and that her husband met her at the airport, they went grocery shopping and made dinner at her uncle's home, which marked the beginning of their dating relationship. The petitioner describes in detail the former couple's shared experiences during this time. The petitioner explains that in July 2001, her husband suggested that they move in together and that when she and her husband visited her friend, [REDACTED], in Mount Vernon, they both liked the area and her friend helped them rent an apartment in her building.

The petitioner discusses the former couple's subsequent shared residence and daily life in detail and describes, for example, her daughter's visits from Jamaica and the celebrations of the former couple's birthdays and Christmas in 2001 and 2002. The petitioner states that her husband proposed to her in August 2002 and she accepted. The petitioner describes in detail the preparation for her wedding, the wedding ceremony, reception and the former couple's honeymoon. The petitioner discusses the surprise 21st birthday party the former couple threw for her daughter and she describes the gifts the former couple exchanged on their first wedding anniversary and on other special occasions. The petitioner also explains that when she was preparing to file this case, she realized that her husband removed all of the pictures and films that they took of family events, including her daughter's 21st birthday party, and that the only pictures she has in her possession are those taken by her cousin and her daughter.

The statements of the petitioner's friend, uncle and employer support the petitioner's account of her courtship and marital relationship. Ms. [REDACTED] confirms that she invited the petitioner and her husband over for dinner, that they fell in love with Ms. [REDACTED]'s apartment and neighborhood and that she found an apartment in her building for them. Ms. [REDACTED] states that after the former couple

moved in, they visited regularly and she observed that they were living happily together. Ms. [REDACTED] reports that she witnessed the former couple's wedding and that "they both were happy." Ms. [REDACTED] states that in the summer of 2003 she overheard the petitioner's husband yelling at her and that the petitioner later came and confided in Ms. [REDACTED] and explained why she gave in to her husband's demand by saying, "I want my marriage because I love my husband."

The petitioner's uncle, Mr. [REDACTED], confirms that the petitioner met her husband through her friend during her visit to Mr. [REDACTED] in 2000. Mr. [REDACTED] confirms that the petitioner's husband called her during her stay and that when the petitioner returned in 2001, her husband called and visited her regularly to the point where the petitioner's husband spent most of his time at Mr. [REDACTED] home with the petitioner. Mr. [REDACTED] states that the former couple developed a good relationship and seemed to be very happy. Mr. [REDACTED] reports that the petitioner's husband would occasionally speak to Mr. [REDACTED] about his love for the petitioner. Mr. [REDACTED] confirms that the former couple eventually moved in to their own apartment in Mount Vernon and got married. Mr. [REDACTED] explains that he did not attend the wedding due to his illness, but kept in touch with the former couple after their marriage.

The petitioner's employer, Ms. [REDACTED] states that she and her family took the petitioner, her husband and her daughter out for dinner to celebrate the former couple's marriage, that she gave the petitioner a week of paid vacation so that she could enjoy her honeymoon and that during the former couple's marriage, the petitioner's husband would call the petitioner at work. Rev. [REDACTED] confirms that the former couple was married in his church and that he counseled them prior to their marriage on April 2, 2003.

Ms. [REDACTED] letter, the largely indecipherable copies of photographs, the partial copy of the former couple's residential lease and the greeting cards, are of little probative value. The transcript from the pistol revocation hearing against the petitioner's husband contains statements by both the petitioner and her husband, which acknowledge their shared residence and intimate relationship, but the transcript provides little probative evidence of the petitioner's good faith entry into her marriage. However, the joint bank account statements, nine of which date prior to the breakdown of the marriage, and the letter regarding the Sears Card account show that the petitioner and her husband shared financial assets and responsibilities during their marriage.

The director denied the petition because documentation from a Form I-140, immigrant petition for alien worker previously filed on the petitioner's behalf, included evidence that the petitioner's husband employed her as a housekeeper from 1978 to 1984 in Jamaica, but the petitioner in this case stated that she did not meet her husband until 2000. In her December 19, 2005 affidavit, the petitioner explains:

When I stated that I met [my husband] in August of 2000, I meant that was the defining moment for the beginning of our relationship that would lead to our marriage. I had known [him] as my employer previously, but that's not when I met him. Met in my culture and what that means to me is when we began our relationship as a couple. I had merely been an employee for [him] in Jamaica and from the time I stopped being an employee for [him], I

maintained no other contact with him. So, when I came to New York in August 2000, I met the man . . . that would be my husband through a mutual friend because I went to her house and he was there. There was not relationship [sic] between us until that point. Only then, we became intimate, lived together, and subsequently got married. When I think of our relationship, I think of him from the time we began courting, not the time I was an employee to him. That is not part of this relationship.

The director found the petitioner's explanation insufficient to resolve the discrepancy in her statements regarding the date that she met her husband and the director determined that the remaining relevant evidence did not overcome that inconsistency. However, even if unresolved, the discrepancy regarding the date that the petitioner first met her husband does not detract from her detailed and probative discussion of the former couple's courtship, shared residence, marriage, honeymoon and other shared experiences. The statements of Mr. [REDACTED], Ms. [REDACTED] and Ms. [REDACTED] support the petitioner's testimony. In addition, the petitioner submitted statements of the joint bank accounts that she held with her husband and evidence that they shared a credit card account during their marriage. In sum, the relevant evidence demonstrates 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 burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal is sustained.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.