

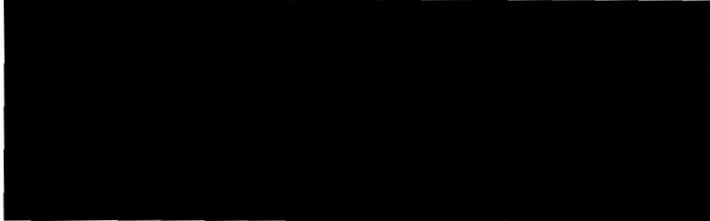


U.S. Citizenship
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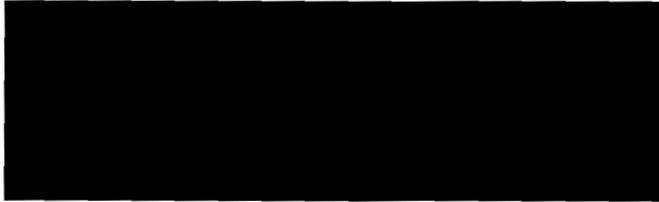


FILE: [Redacted]
EAC 05 189 51779

Office: VERMONT SERVICE CENTER

Date: **APR 07 2008**

IN RE: Petitioner:



PETITION: Petition for Immigrant Abused 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 immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (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 resided with her former spouse and that she entered into marriage with her former spouse in good faith.

On appeal, counsel submits a brief 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:

(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)(A)(iii) of the Act are contained 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 document 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 or 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 facts and procedural history. The petitioner is a native and citizen of Dominican Republic who claims she entered the United States without inspection in 1992 at or near Los Angeles. On December 25, 1993, the petitioner married M-M-¹, a U.S. citizen, in Boston, Massachusetts. On June 16, 1994, M-M- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on February 21, 1995. On November 24, 2000, the petitioner filed a Form I-485, Application to Adjust Status to that of a lawful permanent resident based on the approved Form I-130. On June 25, 2001, the petitioner and her spouse were interviewed for the Form I-485 application in the Boston District office. On November 26, 2003, the district director revoked his approval of the Form I-130 visa petition and denied the petitioner's corresponding Form I-485 application on the ground that the approval of the Form I-130 visa petition had been revoked and no new visa petition had been filed. The petitioner failed to appeal this decision.

On November 26, 2003, the petitioner was served with a Notice to Appear (NTA) for removal proceedings, which charged the petitioner as removable pursuant to section 212(a)(6)(A)(i) of the Act

¹ Name withheld to protect individual's identity.

as an alien present in the United States who had not been admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General. The petitioner failed to appear at the hearing and on February 20, 2004, the petitioner was ordered removed in abstentia by the Boston Immigration Court.

The petitioner filed this Form I-360 on June 20, 2005. On November 13, 2005, the marriage of petitioner and M-M- ended in divorce.² On October 27, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's joint residency with her spouse, her former husband's battery or extreme cruelty and her good-faith entry into the marriage. The petitioner, through counsel, responded with additional evidence. On April 30, 2006, the director issued a Notice of Intent to Deny (NOID) the petition on the bases that the petitioner failed to establish that she and her spouse resided together and that she entered into the marriage in good-faith. The petitioner, through counsel, responded with additional evidence. Finding the additional evidence irrelevant to the requisite residence and good-faith entry into the marriage, on October 11, 2006, the director denied the petition on the grounds cited in the NOID. Counsel timely appealed.

On appeal, counsel claims that the petitioner submitted substantial evidence that showed that she was subjected to abuse by her former spouse and that the marriage was entered into in good faith. Counsel cites the approved Form I-130 petition as evidence of a good-faith marriage, as well as joint tax returns, utility bills, affidavits of friends and family and bank statements from two banks. Counsel does not submit additional evidence relevant to, or even discuss the issue of, the joint residency of the petitioner and her spouse. We concur with the director's determinations.

Residence

The petitioner in her Form I-360 petition claimed that she resided with her husband on [REDACTED] in East Boston, Massachusetts from December 1993 until January 2002. In response to the RFE and NOID, the petitioner submitted documentary evidence as well as statements from friends to support her claim that she and her former husband resided together during their marriage. The relevant evidence submitted however, contradicted the petitioner's statement in her Form I-360 petition. The certificate of marriage dated December 25, 1993 shows that the petitioner resided on [REDACTED], in Boston, Massachusetts and her husband resided on [REDACTED], in Boston, Massachusetts. The letter from Boston Housing Authority dated July 23, 2002 shows that only the petitioner resided at the [REDACTED] apartment as her name was the only one on the lease. The Housing Authority manager states "Tenant has been married for 7 years; (husband never on lease)." The letter further shows that the petitioner first moved into the said apartment on May 1, 1995. This document from the Boston Housing Authority contradicts the petitioner's claim that she resided together with her former husband at the said address beginning in December 1993. The petitioner submitted a statement from her friend [REDACTED] dated February 23, 2005. Ms. [REDACTED] states that she has known the petitioner and her former

² The Trial Court, Probate and Family Court Department of the Commonwealth of Massachusetts, Suffolk Division, and Docket Number [REDACTED].

husband since 1998 and that they resided on [REDACTED] in Roslindale. In her second letter dated February 28, 2005, [REDACTED] recants the statement she made on February 23, 2005 and states that she knows the petitioner resides on [REDACTED] in Roslindale, and that she does not know the address of the petitioner's spouse. The petitioner presented a partial copy of a joint savings account booklet from Roxbury-Highland Bank with an address on [REDACTED], in Jamaica Plains, Massachusetts. The petitioner submitted a Criminal Offender History of her former spouse dating from 1996 to 2003, to show his violent nature and as evidence of present and continuous residence. However, a review of that record shows that during that time, the petitioner's spouse lived at various addresses, none of which was the allegedly shared residence on [REDACTED] in East Boston.

These contradictions and inconsistencies detract from the credibility of the petitioner's claim that she resided with her former spouse. These issues were brought to the petitioner's attention in the NOID by the director and she was given the opportunity to provide evidence to resolve the inconsistencies. The petitioner presented this contradictory evidence and it is her burden to resolve these inconsistencies by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1998). The petitioner did not provide evidence to resolve the inconsistencies. Based on the relevant evidence in the file, the petitioner failed to establish that she resided with her former spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The petitioner submitted the following evidence relevant to her claim that she entered into marriage with her former husband in good-faith:

- December 25, 1993 Marriage Certificate of the petitioner and her former spouse;
- The petitioner's undated sworn statement;
- Sworn statement by the petitioner's daughter, [REDACTED], dated January 27, 2006;
- Sworn statement by the petitioner's daughter, [REDACTED], dated January 26, 2006;
- Sworn statement by the petitioner's friend, [REDACTED], dated January 21, 2006;
- Copy of Personal Regular Savings account statement from Fleet Bank dated June 30, 1999;
- Regular savings account statement from Sovereign bank from July 1 through September 30, 2001;
- Partial copy of a savings account passbook from Roxbury-Highland Bank;
- Internal Revenue Service (IRS) tax liability statement dated May 2, 2001;
- Copies of unsigned joint income tax returns for 1999, 2000, and 2001;
- Copy of Cablevision bill;
- Copy of Boston Housing Authority Public Housing Lease dated August 2002 in the petitioner's name, submitted on appeal;
- Form I-797C, Notice of Action of the approval of the Form I-130 petition filed by the petitioner's former spouse on her behalf.

In her personal statement, the petitioner merely says: "I married [M-M-] on December 25, 1993 in

good-faith.” The petitioner does not describe how she met her former husband, their courtship, wedding, honeymoon (if any), their joint residence or any shared experiences, apart from her husband’s alleged abuse.

The relevant statements of the petitioner’s friend and family fail to provide probative details sufficient to support her claim. The statement of [REDACTED] does not provide any details of the relationship, or interactions of the petitioner and her spouse despite the fact that she claims to have known them personally since 1999, and knows about M-M-’s alleged drinking problems and abuse of the petitioner. Ms. [REDACTED] states that “I... attest that their marriage was contracted in good faith” with no details as to how she arrived at that conclusion. The statement from [REDACTED] the petitioner’s daughter, states that her mother’s marriage to M-M- was a “very stable relationship until she saw her mother “suffering with her husband.” [REDACTED] also provides no details of the petitioner’s relationship with her former spouse, and no details as to how [REDACTED] arrived at the conclusion. The statement from the petitioner’s other daughter, [REDACTED] does not say anything about the way her mother and her husband related to each other as husband and wife other than recanting how the petitioner was abused by her spouse.

The remaining, relevant evidence also does not demonstrate the requisite good-faith entry into the marriage. The marriage certificate simply shows that the petitioner and her former husband got married in December 1993 and is not evidence of the petitioner’s good-faith entry into the marriage. The undated Cablevision bill was addressed to the petitioner and cannot be viewed as evidence that the former couple shared financial responsibilities together. The Boston Housing Authority letter dated July 23, 2002 shows the petitioner as the only one on the lease. The manager’s comment shows that the petitioner has been living at the [REDACTED] apartment since May 1, 1995 and although the petitioner claims to be married, the former husband’s name was never on the lease. The petitioner did not submit a joint lease signed by the petitioner and her former spouse, and provided no explanation why such evidence was unavailable or unobtainable, despite the fact that the petitioner submitted a lease of her current residence from the same Housing Authority. The statement of account from Fleet Bank, dated June 30, 1999, with an ending balance of \$10.82, is not evidence of joint account ownership and a commingled financial asset. During the period covered by this statement there were no activities on the account like deposits made into the account or withdrawals to pay for living expenses. The only activities for that period were two bank debits of \$4.00 each to pay for the monthly service fee. The statement of account from Sovereign bank with ending balance of \$0.02, covers the period July 1, 2001 to September 30, 2001. This statement presents the same problems as the Fleet bank account statement. Although the account has the names of the petitioner and her spouse, there is no evidence to show that the account was maintained for the benefit of the couple. There is no evidence of withdrawals reflecting payments for basic living expenses such as utilities, rent, car or insurance payments. There is also no evidence of deposits made into the account by either party, or no other evidence of shared use of the account. The petitioner submitted what appears to be the cover page of a savings account booklet from Roxbury-Highland Bank, addressed to the petitioner and her former spouse, however, there is no activity whatsoever listed on this account. These documents fail to provide probative evidence to establish the petitioner’s claim.

On appeal, counsel argues that the prior approval of the petitioner's Form I-130 petition is evidence that the petitioner's marriage was bona fide. We disagree. The approval of a Form I-130 petition does not automatically entitle the alien to any other immigration benefit. *INS v Chadha*, 462 U.S. 919, 937 (1983). The Ninth Circuit Court of Appeals has found that the fact that an alien had an approved Form I-130 petition did not mean that the evidence submitted in support of the Form I-130 was conclusive evidence in perpetuity that the marriage was bona fide. *Agyeman v. I.N.S.*, 296 F.3d 871, 879 (9th Cir. 2002). Although the alien had an approved Form I-130 petition, his corresponding application for adjustment of status was denied because the couple failed to attend the scheduled interview and to submit the requisite medical examination. *Id.* at 875. The alien argued that because he had an approved Form I-130 petition on file and his marriage was consummated prior to his being placed in deportation proceedings, he was not required to prove his bona fide marriage to a United States citizen. *Id.* at 879 n.2. The court rejected the alien's argument that "no other evidence of the marriage is ever necessary" and stated that: "the approved petition might not *standing alone* prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws." *Id.*

In the present case, the approval of the Form I-130 petition was revoked. In her sworn statement, the petitioner provides no probative testimony regarding her intentions in entering into her marriage and the remaining relevant evidence is of no probative value. Accordingly, counsel's reliance on the prior approval of the Form I-130 petition that was subsequently revoked as evidence of the petitioner's good-faith entry into the marriage is without merit.

Counsel further argues that the joint tax returns of the petitioner and her former spouse for 1999, 2000 and 2001 are evidence of her good faith marriage. The returns are unsigned and the record contains no evidence that the returns were actually filed with the proper authorities. The only evidence that a joint tax return was actually filed is the IRS tax liability statement showing the amount of tax owed by the petitioner and her former spouse for 1999. This single statement alone is not sufficient to establish the petitioner's good faith entry into her marriage.

As discussed above, the relevant statements of the petitioner's friend and family and the relevant documentary evidence fail to provide probative information sufficient to establish that the petitioner entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The denial of the petition will be affirmed for the reasons stated above, with each considered an independent and alternative basis for denial. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden.

ORDER: The appeal is dismissed.