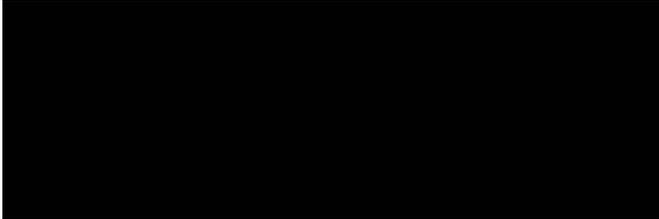


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**U.S. Citizenship
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Services**



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FILE: [REDACTED]
EAC 04 267 52954

Office: VERMONT SERVICE CENTER

Date: **JAN 09 2008**

IN RE: Petitioner: [REDACTED]

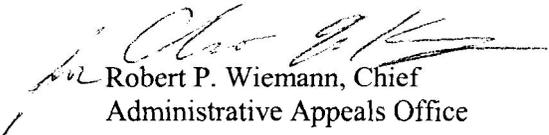
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 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 on April 16, 2007, finding that the petitioner failed to establish that she entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

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 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Vietnam who entered the United States on October 20, 2001 as a nonimmigrant fiancée (K-1). On January 8, 2002, the petitioner married H-T-¹, a U.S. citizen, in Texas. The petitioner and her former spouse were divorced on May 2, 2003 by order of the District Court, 158th Judicial District, Denton County, Texas.² On March 29, 2004 a Notice to Appear was issued charging the petitioner under section 237(a)(1)(B) of the Act for remaining in the United States beyond her period of authorized admission.³ The petitioner filed this Form I-360 on September 27, 2004. On March 25, 2005, the director issued a Request for Evidence (RFE) of *inter alia*, the requisite good faith marriage. The petitioner timely responded. On December 11, 2006, the director issued a Notice of Intent to Deny (NOID) based on the lack of evidence of, *inter alia*, the petitioner's good-faith entry into the marriage. The petitioner timely responded to the director's NOID. The director denied the petition on April 16, 2007, finding that the petitioner failed to establish that she entered into her marriage in good faith. The petitioner, through counsel, submits a timely appeal.

On appeal, the petitioner does not allege any error of fact or law on the part of the director but submits an additional statement to clarify inconsistencies and to provide a "valid and reasonable explanation" of her good faith marriage. As will be discussed, the additional evidence submitted on appeal is insufficient to overcome the findings of the director and to establish that the petitioner entered into her marriage in good faith.

As testimonial evidence of her good faith marriage, with the initial filing, the petitioner submitted a

¹ Name withheld to protect individual's identity.

² No. [REDACTED].

³ The petitioner remains in proceedings and is scheduled to appear before an immigration judge in Dallas, Texas on February 27, 2008.

personal statement, dated September 14, 2004, in which she states:

In 1999, [my former spouse] went to visit his family in Vietnam. I happened to meet him; we soon fall in love and engaged [sic] in February, 2001. I entered into the United States with K1 fiancé[e] visa on October 20, 2001 and was admitted until January 18, 2002. On January 8, 2002, I married [my former spouse] and lived with him as husband and wife.

Apart from the claimed abuse, the petitioner provided no further details of her courtship with her former spouse or their shared life together except to state that when she married her former spouse she “dreamed that the marriage would change his attitude and we would have a happy family.” The petitioner did, however, indicate that she paid her former spouse \$10,000, \$5,000 of which she borrowed from her father-in-law for her former spouse to apply for her permanent residence status.

In addition to her testimony, the petitioner submitted affidavits from friends. The affidavits submitted on the petitioner’s behalf describe her as a “kind,” “friendly lady,” and “an optimistic person,” but do not offer any probative details regarding how the petitioner met her spouse and the life they shared together after their marriage to establish the petitioner’s claim of a good faith marriage.

As documentary evidence, the petitioner submitted undated and uncaptioned photographs and copies of envelopes postmarked from January 2000 through April 2001. 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. Similarly, while the envelopes document that there was communication between the petitioner and her former spouse between January 2000 and April 2001, the petitioner does not provide evidence of their correspondence or otherwise describe the contents of the envelopes.

In response to the director’s RFE, the petitioner submitted additional photographs and affidavits from friends and relatives. The photographs are undated and the petitioner fails to describe their relevance to her claim of marrying in good faith other than to indicate that they were “engagement ceremony pictures.” While the petitioner also claimed to have submitted letters that she wrote to her former spouse and photographs that they both took during his trip to Vietnam, the record contains only envelopes and a single undated, uncaptioned photograph of what appears to be the petitioner’s former spouse. Other than the “engagement ceremony pictures” the record contains no photographs documenting events or times the former couple shared together. While the petitioner submitted affidavits from family members and a friend attesting to her engagement ceremony, the affidavits do not provide any probative details regarding the petitioner’s relationship with her former spouse. Similarly, the affidavits submitted by [redacted] and [redacted] indicate that they met the petitioner and her former spouse after their marriage when the former couple came to the home of the petitioner’s mother-in-law. The affiants do not indicate that they knew the petitioner or her former spouse prior to their marriage and provide no details regarding their relationship together or

the interactions between them to establish the petitioner's claim of a good faith marriage.

In response to the director's NOID, the petitioner submitted the results of two polygraph tests as "valid proofs to show that [the petitioner] did not marry her husband to circumvent immigration laws" We are not persuaded by this evidence. First, the value of the polygraph is diminished given that "the polygraph has not yet been accepted . . . as a scientifically reliable method of ascertaining truth or deception." *United States v. Gloria*, 494 F.2d 477, 483 (5th Cir. 1974). Although we acknowledge that immigration proceedings do not follow the same strict rules of evidence as those of the federal courts, we find the value of the polygraph is lessened for the same reasons that have led the federal courts to find them inadmissible. *See United States v. Bowen*, 857 F.2d 1337, 1341 (9th Cir. 1988)(the results of a polygraph test are inadmissible and may not be "introduced into evidence to establish the truth of the statements made during the examination."); *see also United States v. Frogge*, 476 F.2d 969 (5th Cir. 1973), *cert. denied*, 414 U.S. 849 (1974). Moreover, the general questions posited during the polygraph examinations offer no probative details regarding the petitioner's good faith marriage. While the polygraphs indicated that the petitioner married for "legitimate reasons" and not to "circumvent the immigration laws," they do not provide any probative details regarding the petitioner's actual intent or what her "legitimate" reason was for marrying her former spouse. Neither the petitioner's testimony nor any of the testimony submitted on her behalf demonstrates that she entered into her marriage with the intent to establish a life with her former spouse or discusses the petitioner's intent in marrying her spouse.

In his denial, the director found the testimonial evidence submitted in support of the petition to be insufficient to establish her claim of abuse. In addition, the director found the petitioner's statements regarding payment to her former spouse in order to obtain permanent resident status as well as her contrary statements regarding her social security card discredited her claim of a good faith marriage.

On appeal, the petitioner attempts to resolve the inconsistencies noted by the director regarding the petitioner's social security card and to provide an explanation for the petitioner's statements regarding the \$10,000 payment to her former spouse. On appeal, the petitioner claims that she initially said her former spouse "withheld" her documents because that is what he told her. The petitioner states that she now realizes that he never stole these documents from her, but rather that he failed to apply for them. Contrary to her appellate statement, the petitioner's initial statement indicates that her spouse "took" her temporary work permit and social security card away from her and that even though she begged him to return them, he "refused coldly." This statement implies that she once had physical possession of these documents but that they were taken from her. Other than to bolster her claim of abuse, it is unclear why the petitioner originally claimed that the documents were taken from her. The inconsistency does, however, lessen the petitioner's credibility. As it relates to the petitioner's payment to her spouse, while we concur with the director's concern regarding this payment, we do not find the record sufficiently clear to make a determinative finding that the petitioner's marriage was a sham.

However, while we are unable to make a finding that the petitioner entered into her marriage in order to circumvent the immigration laws, we do find that the petitioner has failed to sustain her burden of

establishing that she entered into her marriage in good faith. The petitioner has submitted no documentary evidence of a good faith marriage such as bank statements or other financial documents. We note that although the judge who granted the petitioner's Final Decree of Divorce decreed that the petitioner and her former spouse were "equally responsible for all federal income tax liabilities . . . from the date of marriage through December 31, 2002 . . .," the petitioner has not submitted any tax documents or evidence of tax returns filed during the period that she was married. Although she claims that she "never saw these documents during the time that [she] lived with [her former spouse]," she does not provide any explanation for the absence the tax return decreed by the court *after* she no longer resided with her spouse. While the short duration of the petitioner's relationship might also explain the lack of documentation, the testimonial evidence provided by the petitioner and on her behalf fails to provide any probative details to establish her claim of a good faith marriage. The testimonial evidence lacks specific and probative details regarding the petitioner's interactions with her former spouse, shared events and other details to show that the petitioner intended to establish a life together with her former spouse. Accordingly, we concur with the finding of the director that the petitioner has not demonstrated that she entered into marriage with her former spouse 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.