U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 0 1 2009

EAC 06 141 51488

IN RE: [redacted]

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:

SELF-REPRESENTED

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 on the basis of his determination that the petitioner had failed to establish: (1) that she shared a joint residence with her husband; and (2) that she entered into marriage with her husband in good faith.

Former counsel submitted a timely appeal on June 6, 2007.[1]

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, 8 U.S.C. § 1154(a)(1)(J) 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

> (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.
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> * * *
>
> (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

[1] In a supplemental letter submitted to the AAO on July 10, 2008, the petitioner states that she is no longer represented by legal counsel.

> 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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

> *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.
>
> (ii) ***Relationship.*** A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .
>
> (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.
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> * * *
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> (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 is a citizen of Jamaica who married D-C-,[2] a United States citizen, on November 21, 2000 in Seattle, Washington. D-C- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on October 12, 2001. The petitioner filed Form I-485, Application to Register Permanent

[2] Name withheld to protect individual's identity.

Residence or Adjust Status, on that same date. The Form I-485 was denied on April 19, 2004, on the basis of the petitioner's failure to appear for a scheduled interview. The Form I-130 was denied on May 21, 2004, for the same reason. The record indicates that D-C- and the petitioner divorced in October 2005.

The petitioner filed the instant Form I-360 on April 10, 2006. On August 25, 2006, the director issued a request for additional evidence, and requested additional evidence to establish that D-C- is a citizen of the United States; that the petitioner was in fact married to D-C-; that the petitioner shared a joint residence with T-N-; that the petitioner was subjected to battery and/or extreme cruelty by D-C-; that she is a person of good moral character; and that she married D-C- in good faith. The petitioner responded on October 25, 2006, and submitted additional evidence. On December 28, 2006, the director issued a notice of intent to deny (NOID) the petition, which notified the petitioner of the deficiencies of record and afforded her the opportunity to submit evidence to establish that she petitioner shared a joint residence with D-C-; and that she married D-C- in good faith. The petitioner responded to the director's NOID on February 27, 2007, and submitted additional evidence.

After considering the evidence of record, the director denied the petition on May 7, 2007. On appeal, the petitioner submits a letter.

Joint Residence

The first issue on appeal is whether the petitioner has established that she shared a joint residence with D-C-. In the undated self-affidavit submitted to the service center on October 25, 2006, the petitioner stated, with regard to residence, that after she entered the United States on September 4, 2000, she and D-C- lived together in Seattle, Washington. They married on November 21, 2000. They lived in Seattle until April 2001, when D-C- lost his information technology job. They decided to leave Seattle and move to Florida, as it was close to the petitioner's family in Jamaica, and because D-C- loved beaches and sunshine. The plan was to drive through Arizona, visit D-C-'s family in Arizona for Easter, and then drive to Florida. They left Seattle on April 13, 2001, the day after the petitioner's twenty-third birthday.

When D-C- and the petitioner arrived at his parents' home in Flagstaff, Arizona, D-C'-s father told them they could not stay in his home. They decided to stay with one of D-C-'s friends. Although they initially planned to stay in Arizona for one week, according to the petitioner, that week "soon turned into a month." When the petitioner asked D-C- when they were going to leave Arizona, he informed her that they were going to stay. According to the petitioner, D-C- decided that they should continue staying with his friend, rent free, while he collected unemployment benefits.

Upon the advice and instruction of D-C-, the petitioner began working as a dancer in Phoenix, Arizona. D-C- told the petitioner that because he had financially supported the couple during their first year of marriage, it was now the petitioner's turn to support them. Although D-C- owned a car, the petitioner was forced to take a Greyhound bus from Flagstaff to Phoenix every day. The trip was four hours long

in each direction. The petitioner began sleeping on a friend's couch in Phoenix, although she sometimes took a Greyhound bus to Flagstaff to see D-C-.

Eventually, the petitioner obtained an apartment in Phoenix. She states that they had to put it in her name alone, because D-C- had such a bad credit rating that he could not be approved. The petitioner reported that now that they had an apartment D-C- came to Phoenix more often, although he still had the unpaid "pseudo job" with his friend in Flagstaff.

On October 31, 2001, the petitioner took a Greyhound bus to Flagstaff to attend a Halloween party with D-C-. According to the petitioner, at the party she met a woman who told the petitioner that her family wanted to kill D-C-, because he had given the woman a drug without her knowledge, and that it had caused her to pass out and be rushed to the emergency room. The petitioner asked D-C- about the incident, and he refused to talk about it. The petitioner told him that if he would not talk about it, she was going to leave. D-C- kicked the petitioner, and told her to leave. The petitioner started to leave with a friend, but D-C- said he would take the petitioner home. When they returned "home" (i.e., the home of the friend with whom D-C- was living in Flagstaff), "the real fighting started." The petitioner reported that D-C- started pushing her, and that she hit her head against the thermostat, which fell off the wall and broke. The petitioner stated that she then began screaming for help, and for someone to call the police. The petitioner stated that D-C- called the police himself. The petitioner testified that she and the petitioner gave the police officers their versions of what had happened, and that she was told that although they suspected D-C- was at fault, they could not arrest him because she had no visible cuts or bruises. She stated that, after this incident, she and D-C- did not speak until Christmas 2001.

In finding that the petitioner had failed to establish that she shared a joint residence with D-C-, the director noted in his December 28, 2006 NOID that the petitioner had indicated in an October 31, 2001 police report that although she and D-C- had been married for a year, they had been separated during most of that time, and that she had reported her address as [redacted] in Phoenix, Arizona, while D-C-'s address was indicated as [redacted] in Flagstaff, Arizona. In his May 7, 2007 denial, the director found that the bank statements submitted by the petitioner were in the petitioner's name only; that the insurance policy was obtained after issuance of the director's NOID; that the letter from D-C-'s mother was insufficiently detailed with regard to how D-C- and the petitioner met; and that the e-mails were insufficient documentation of the relationship.

The AAO disagrees with the director's determination. In making this determination, the AAO turns first to the director's statements with regard to the e-mail from D-C- to the petitioner's mother, as well as the copies of the petitioner's bank statements. As indicated, the record contains a printout of a July 15, 2001 e-mail from D-C- to the petitioner's mother. Although the director stated in his denial that this e-mail was sent on January 9, 2007, the director was incorrect. January 9, 2007 was the date that the e-mail was forwarded to the petitioner's e-mail account by her mother. The printout clearly indicates that D-C-'s message was sent on July 15, 2001. In his e-mail, D-C- tells the petitioner's mother that he and the petitioner have just returned from a seven-day trip to Sebasco Harbor, Maine, followed by a three-day trip to Bar Harbor, Maine. The petitioner's banking statement that covered the

period June 23, 2001 through July 24, 2001 corroborates D-C-'s statements, as it indicates that the petitioner made several purchases in that region of Maine between July 1 and July 10, 2001.

The AAO also disagrees with the director's assessment of the automobile insurance policy, which was issued in the names of both the petitioner and D-C-. Although the director is correct that this particular renewal notice was issued after the issuance of the NOID, the AAO notes that the bottom of the page specifically states that the original inception date of the policy was September 6, 2003, a date which precedes not only the NOID but also the initial filing of the Form I-360.

Finally, the AAO turns to the October 31, 2001 police report, in which the petitioner reported her address as [redacted] in Phoenix, Arizona, while D-C-'s address was indicated as [redacted] in Flagstaff, Arizona. While unusual, in this particular case the maintenance of two addresses is consistent with the petitioner's testimony in her self-affidavit. The record indicates that the [redacted] address in Flagstaff was the address at which D-C- was living with a friend, and was the address at which the petitioner was living before she obtained the apartment in Phoenix; and that the [redacted] address in Phoenix was the address at which the petitioner lived in order to work as a dancer in Phoenix.

The AAO notes that the neither the Act nor the regulations prescribe a specific period of time during which the petitioner must establish that he or she shared a residence with the alleged abuser. In this case, the AAO shares the director's concerns with regard to the petitioner's alleged joint residence with D-C- in the period during which D-C- was living primarily in Flagstaff and the petitioner was living primarily in Phoenix. However, a detailed examination of the couple's living situation during this period is unnecessary, as the record does establish by a preponderance of the evidence that the petitioner shared a joint residence with D-C- in Seattle from late 2000 until early 2001, and in Flagstaff in early 2001. The record contains detailed testimony from the petitioner, her mother, and her sister with regard to the petitioner's residence with D-C- in Seattle. The record also contains a February 4, 2007 letter from D-C-'s mother indicating that the petitioner and D-C- shared a joint residence. Finally, D-C-'s July 15, 2001 e-mail to the petitioner's mother regarding a recent vacation to Maine, which is supported by the petitioner's bank statement indicating several purchases by the petitioner in Maine during that time, further supports a period of joint residence.

The AAO finds that the petitioner has established by a preponderance of the evidence that she shared a joint residence with D-C- in 2000 and early 2001. The petitioner has satisfied section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The director also found that the petitioner had failed to establish that she married D-C- in good faith. The AAO disagrees. The petitioner has provided detailed testimony with regard to the circumstances surrounding the couple's first introductions; their courtship; and their cohabitation prior to marrying. In her affidavit, the petitioner testified that she and D-C- met in Jamaica in June 2000, when D-C- was a guest at the resort in which she was working. According to the petitioner,

D-C- pursued her relentlessly, and they spent his entire stay together. The petitioner stated that she risked her employment by staying with D-C-, as employees were not permitted to fraternize with guests of the resort. However, according to the petitioner, they were unable to resist each other. The petitioner testified that she never expected to see or hear from D-C- again after he left Jamaica, as the people who came to the resort at which she worked (she described it as a "swingers' resort") "usually just came there for fun[,] and when they went home all was forgotten."

However, when D-C- returned home to Seattle, he called the petitioner every day, and their relationship soon became serious. They made plans for the petitioner to go and visit D-C- in Seattle. She did not think D-C- was serious about her, and felt he saw their relationship as "just a passing phase." However, D-C- repeatedly told the petitioner that he was in love with her, wanted to be with her, and could not wait to see her again.

The petitioner stated that D-C- mailed her a plane ticket in July 2000, and that she flew to Seattle for a week. D-C- took a week of leave from work, and the couple spent the entire week together. D-C- took her sightseeing and, according to the petitioner, "[w]e had so much fun." D-C- told the petitioner that he did not want her to return to Jamaica. They decided that she would return home to Jamaica to pack her things, and then return to Seattle so that she and D-C- could marry. The petitioner reported that she returned to Jamaica, gave two weeks' notice that she was leaving her place of employment, and told her family goodbye. The petitioner stated that, although her family became upset, and begged her to reconsider such a rash decision, she was in love.

The petitioner testified that she "arrived in Seattle on September 4, 2000 to start my new life with [D-C-]." They went to his sister's wedding in Flagstaff, Arizona in October 2000. According to the petitioner, everyone in D-C-'s family, except for his father, tried to make her very comfortable. D-C-'s father, however, was a racist, and did not know that the petitioner was Black until she and D-C- arrived. According to the petitioner, D-C-'s father asked D-C- why he had brought the petitioner to such a happy family occasion. However, the petitioner testified that D-C- was very supportive and reassuring during their time in Flagstaff, and they returned to Seattle "with our love stronger than before."

The petitioner stated that she and D-C- married on November 21, 2000. According to the petitioner, the ceremony was romantic, spontaneous, and quick. They spent Thanksgiving with D-C-'s cousins, and it was the first time she had ever experienced a traditional American Thanksgiving with turkey, as well as the first time she had ever seen snow.

In her February 4, 2007 letter, D-C-'s mother confirms that D-C- and the petitioner were married on November 21, 2000, and that the couple visited D-C-'s family in Flagstaff, Arizona for the wedding of D-C-'s sister in October 2000. The petitioner's mother and sister confirm the testimony of the petitioner in their affidavits.

The AAO finds that the unique fact pattern presented in this case supports a finding that the petitioner entered into the marriage in good faith. The testimony of the petitioner's mother, the

petitioner's sister, and D-C-'s mother supports the testimony of the petitioner. D-C-'s e-mails to the petitioner's mother discussing events in the couple's life are evidence of a shared life together, and the record of the petitioner's debit card transactions in Maine confirms that the vacation discussed by D-C- in one of those e-mails in fact occurred. The joint automobile insurance policy is further evidence of jointly shared financial obligations.

The regulations contain no specific formula for determining whether a petitioner has entered into his or her marriage in good faith. Rather, pursuant to the statute and regulation, the determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. *See* Section 204(a)(1)(J) of the Act, 8 U.S.C. §1154(a)(1)(J); 8 C.F.R. § 204.2(2)(i). In this instance, although the petitioner has submitted little probative documentary evidence to support her claim of a good faith marriage, the AAO finds that the combination of the evidence of record and the petitioner's testimony sufficiently establishes that she entered into the marriage in good faith. The petitioner, therefore, has established that she entered into marriage with D-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

Upon review of the entire record of proceeding, the AAO finds that the petitioner has established that she shared a joint residence with D-C-, and that she married him in good faith. The AAO concurs with the director's determination that the petitioner meets all other statutory requirements. Accordingly, the petitioner has established that hse is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition will be approved.

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 sustained that burden.

ORDER: The director's decision is withdrawn. The appeal is sustained, and the petition is approved.