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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: SEP 17 2010

IN RE: Petitioner: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her United States lawful permanent resident spouse.

The director denied the petition because the petitioner did not establish that she resided with her husband and that she married him in good faith.

On appeal, counsel submits a brief and additional evidence, including: a photocopy from "Affinity Browser" as evidence of the petitioner's health insurance; a copy of a Form I-797 showing the approval of an I-130 petition that was filed on the petitioner's behalf by her now former spouse; counsel's letter to T-Mobile requesting a record of the petitioner's cellular telephone bills for 2007; copies of the petitioner's high school records and diploma; a copy of counsel's FOIA request for a complete copy of the petitioner's immigration file; a copy of the petitioner's HIPAA request to North Central Bronx Hospital for the petitioner's medical records; and a copy of the petitioner's Judgment of Divorce filed on December 4, 2009.[1]

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further 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

[1] Index No.: [redacted], New York State Supreme Court at the Courthouse, New York County.

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 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.

* * *

(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.

* * *

(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 Antigua and Barbuda, who entered the United States on or around July 13, 2001, as a nonimmigrant B-2 visitor. On January 8, 2007, the petitioner married A-E-[2], a U.S. lawful permanent resident, in New York City, New York.

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

The petitioner filed this Form I-360 on November 6, 2008. On July 16, 2009, the director issued a Request for Evidence (RFE) of, *inter alia,* the requisite joint residence and good-faith entry into the marriage. On October 9, 2009, the petitioner, through counsel, responded with additional evidence. On December 22, 2009, the director denied the petition for lack of, *inter alia*, the requisite joint residence and good-faith entry into the marriage.

On appeal, counsel states, in part, that the petitioner has submitted credible evidence of joint residence and her good-faith marriage. Counsel also states that U.S. Citizenship and Immigration Services (USCIS) approved an I-130 petition filed by the petitioner's husband on her behalf, which "constitutes a convincing presumption of [the petitioner's] good-faith marriage." Counsel states that the purchase of medical insurance by the petitioner's husband during the course of their marriage also establishes the requisite joint residence and good-faith entry into the marriage. Counsel also states that the petitioner's landlord will not provide an affidavit because the petitioner and A-E- "owed a substantial amount of back rent," and that she is awaiting responses from T-Mobile and North Central Bronx Hospital for additional evidence.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- Two affidavits from the petitioner, dated October 16, 2008, submitted at the time of filing, and October 2, 2009, submitted in response to the director's RFE, respectively;
- Two affidavits from the petitioner's half-sister, [redacted], one undated and submitted at the time of filing, and the other dated October 7, 2009, submitted in response to the director's RFE;
- An undated affidavit from [redacted] submitted in response to the director's RFE;
- A Domestic Incident Report dated November 21, 2007, reflecting the petitioner's address as '[redacted]' and A-E-'s address as '[redacted]';
- A bill from Quest Diagnostics Incorporated addressed to A-E- at [redacted] in Bronx, New York, reflecting a service date of November 21, 2007;
- A photocopy of a computer printout related to health insurance, from the "Affinity Browser," containing the names of the petitioner and A-E-, and listing the '[redacted]' address; and
- The petitioner's high school records.

On the Form I-360, the petitioner stated that she resided with her husband from January 2007 until October 2007, and listed the last address at which they resided together as: [redacted], Bronx, New York 10469.

In her October 16, 2008 affidavit submitted at the time of filing, the petitioner states, in part, that after their marriage, she and A-E- moved in with her sister until April 2007, when they moved to an apartment at [redacted] Bronx, New York. The petitioner states that upon A-E-'s return from

Florida "a day or two after her [November 2007] birthday, she removed his belongings from their apartment, and, after a confrontation with A-E-, she changed the locks to the apartment.

In her October 2, 2009 affidavit submitted in response to the director's RFE, the petitioner states, in part, that after she and A-E- were married, he moved in with her at her sister's place at [redacted] in Bronx, New York. The petitioner also states that she and A-E- "viewed [her] sister's residence as [their] permanent address, even after [they] found a place of [their] own at [the [redacted] address] in April of 2007." The petitioner explains that rather than signing a lease for the apartment at the "[redacted]." address, she and A-E- paid the landlord in cash each month. The petitioner also states that she and A-E- "never treated it as [their] permanent residence, and [they] continued to use [her] sister's address as [their] mailing address." The petitioner states that she vacated the "[redacted]" apartment in December 2007, and moved back in with her sister.

In her undated affidavit submitted at the time of filing, the petitioner's half-sister, [redacted] states, in part, that A-E- began to live with her and the petitioner after their marriage in January 2007, and that "[t]hey left in September of 2007, and got a place of their own." [redacted] states further that the petitioner moved back in with her "in early 2008." It is noted that [redacted]'s assertion that the petitioner and A-E- left her place in September 2007 to get their own place, conflicts with both of the petitioner's statements, in which she asserted that she and A-E- moved out of [redacted]'s place in April 2007. The record contains no explanation for these inconsistencies.

In her October 7, 2009 affidavit submitted in response to the director's RFE, [redacted] states, in part, that after the petitioner and A-E- were married, "they lived with [her] for a few months, until April 2007, and then moved out to their own place," which conflicts with her first affidavit, in which she states that the petitioner and A-E- "left in September of 2007 and got a place of their own." The record contains no explanation for this inconsistency.

In her undated affidavit submitted in response to the director's RFE, [redacted] states, in part, that she met the petitioner in 2007, and that the petitioner and A-E- "were living in a basement apartment on [redacted] in the Bronx, very close to [her and her husband]." [redacted] however, does not provide specific dates or other detailed information as to when she met and spent time with the petitioner and A-E- when they reportedly lived on [redacted]" In sum, [redacted] affidavit is general and vague and provides minimal information pertinent to the circumstances of the petitioner's claimed joint residence with her spouse.

The information reflected in the Domestic Incident Report, dated November 21, 2007, is also inconsistent with the petitioner's testimony. For example, the petitioner reported her address as the "[redacted]" address and the A-E-'s address as the "[redacted]." address, which conflicts with both of the petitioner's affidavits wherein she states that she was living at the "[redacted]" address during the time period of the Domestic Incident Report. It is also noted that the information provided by the petitioner to the reporting officer is inconsistent, as she provided separate addresses for herself and A-E-, yet stated they were currently living together. Again, the record contains no explanation for these inconsistencies.

The record also contains a bill from Quest Diagnostics Incorporated addressed to A-E- at the "[redacted]" address, reflecting a service date of November 21, 2007. In a letter dated October 8, 2009, submitted in response to the director's RFE, counsel states, in part, that the bill was mailed to the "[redacted]" address because "[A-E-] still treated the couple's first joint residence as his permanent address." Given the inconsistencies in the record, discussed above, however, including the conflicting testimony from the petitioner's half-sister, regarding the dates that the petitioner and A-E- reportedly lived with her at the "[redacted]" address, the bill addressed to A-E- at the "[redacted]" address is insufficient to establish that the petitioner resided with her husband.

The record also contains a photocopy of a computer printout related to health insurance from the "Affinity Browser," containing the names of the petitioner and A-E-, and listing the "[redacted]" address. Again, given the inconsistencies in the record, discussed above, this information is insufficient to establish that the petitioner resided with her husband.

It is also unclear how the submission of the petitioner's high school records reflecting the "[redacted] address" demonstrates that the petitioner resided with her husband.

In sum, the relevant evidence contains numerous inconsistencies and deficiencies regarding the petitioner's alleged residence with her husband. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her husband, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In addition to the documentation listed above, the record contains the following evidence relevant to the petitioner's claim that she married her husband in good faith:

- Greeting cards; and
- Photographs.

At the outset, the AAO disagrees with counsel's assertion on appeal that an approved I-130 petition filed by the petitioner's husband on her behalf "constitutes a convincing presumption of [the petitioner's] good-faith marriage." While relevant, the approved I-130 petition filed by the petitioner's husband on her behalf is not prima facie evidence of her good faith in entering their marriage, as required by section 204(a)(1)(B)(ii))(I)(aa) of the Act. The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. *See INS v. Chadha,* 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "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."). As discussed below, the petitioner has not met her burden of proving that she entered into her marriage in good faith.

In her October 16, 2008 affidavit submitted at the time of filing, the petitioner states, in part, that she first met A-E- in 1997, when she was nine years old and living in Antigua. The petitioner states that she came to the United States in 2001, and shortly after seeing A-E- again in 2002 in a shopping center in the Bronx, they began dating and she fell in love. The petitioner states that immediately after they were married on January 8, 2007, "[A-E-] took [her] to a party that he had planned for afterwards at 'our' house."

In her October 2, 2009 affidavit submitted in response to the director's RFE, the petitioner states, in part, that A-E- visited her at her sister's house "almost every day since [they] met in 2002 until [they] were married in 2007." The petitioner states, "Everyone seemed to have a good time at our party at [redacted] father's house." It is noted that the petitioner stated in her first affidavit that the wedding party was at "our" house, not at [redacted] father's house." The record contains no explanation for this inconsistency.

In her undated affidavit submitted at the time of filing, the petitioner's half-sister, [redacted] states, in part, that she "had known [A-E-] for years, since he and [the petitioner] began dating." [redacted] also states that the petitioner lived with her, that A-E- would visit often, and that the petitioner and A-E- were inseparable. [redacted] states that she did not attend the petitioner and A-E-'s wedding, though she attended their wedding reception, where there was dancing and cake. In her October 7, 2009 affidavit submitted in response to the director's RFE, [redacted] states, in part, that the petitioner "dated [A-E-] on a consistent basis for almost five years before their wedding in winter of 2007." It is noted that both of [redacted] affidavits are general and vague and provide minimal information pertinent to the circumstances of the courtship and marriage of the petitioner and A-E-.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The petitioner's testimony, however, fails to support a finding that she entered into her marriage in good faith. The statements from the petitioner and on her behalf are general and vague and provide minimal information pertinent to the circumstances of the courtship and marriage of the petitioner and A-E-. The AAO also acknowledges the photographs of the petitioner and A-E- together and the three greeting cards allegedly from A-E-. The photographs confirm that the petitioner and A-E- were pictured together, but these documents, along with the greeting cards, do not establish the petitioner's good-faith entry into the marriage. Moreover, the numerous inconsistencies and deficiencies, discussed above, and the scant testimony in the record regarding the petitioner's decision to marry A-E-, their wedding, and their shared experiences, apart from the abuse, significantly detract from the credibility of her claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

The petitioner has not demonstrated that she resided with her husband and that she married him in good faith. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.