

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

B9

PUBLIC COPY



FILE: [REDACTED]
EAC 04 085 53823

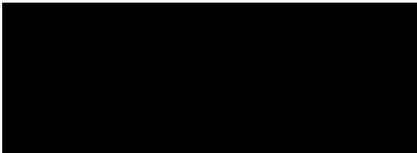
Office: VERMONT SERVICE CENTER

Date: SEP 28 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for Special 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, Director
Administrative Appeals Office

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

The petitioner is a native and citizen of the Dominican Republic who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that she entered into the marriage with her citizen spouse in good faith.

The petitioner, through counsel, files a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided in the United States with the citizen or lawful permanent resident spouse;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The record reflects that the petitioner married her United States citizen spouse on March 28, 1997, in Salem, New Hampshire. The petitioner's spouse filed a Form I-130 in the petitioner's behalf on January 29, 2001. On this same date, the petitioner also filed a Form I-485, Application to Adjust Status. Both the application and petition remain pending.

The instant Form I-360 petition was filed on January 30, 2004.¹ On her petition, the petitioner indicates that she resided with her spouse from March 1997 until March 2001. In a decision dated November 19, 2004, the director denied the petition, finding that the petitioner failed to establish that she entered into the marriage in good faith as required by the regulation at 8 C.F.R. § 204.2(c)(1)(i).

The regulation at 8 C.F.R. § 204.2(c)(2)(ix) states:

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.

In support of the initial filing, as it relates to a good faith marriage, the petitioner submitted the following documentation:

- A copy of the petitioner's marriage certificate.
- The petitioner's sworn statement.
- Two sworn statements from acquaintances of the petitioner.

Because the director found this evidence to be insufficient to establish that the petitioner entered into the marriage in good faith, on July 7, 2004, the director requested the petitioner to submit additional evidence. The director listed the evidence the petitioner could submit to establish that she entered the marriage in good faith, to include:

- Insurance policies which list the petitioner or her spouse as the beneficiary.
- Bank statements, tax records and other documents to show shared accounts and responsibilities.
- Evidence of the courtship, wedding ceremony, residences, special events, etc.
- Evidence of joint ownership of property (such as a home, automobile, etc.).
- Birth certificates of children born to the petitioner and her spouse.

¹ The petitioner had previously filed a Form I-360 petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse during their marriage. The petition was denied based upon the petitioner's failure to respond to the director's notice of intent to deny.

- Affidavits of friends and family that provide specific information verifying the petitioner's relationship with her spouse.

On September 17, 2004, the petitioner responded to the director's request by submitting:

- A second statement from the petitioner.
- Copies of four envelopes, dated between 2001 and 2002, from the petitioner's spouse while he was in jail.
- Copies of six Sovereign bank statements, dated between March 2001 and August 2002, in both the petitioner's and her spouse's names.

On September 28, 2004, the petitioner also submitted a second statement from [REDACTED]."

The director reviewed and discussed the evidence furnished by the petitioner, including the evidence furnished in response to the request for additional evidence, and found it insufficient to establish that the petitioner entered into the marriage in good faith. In her decision, the director cited the lack of detail contained in the statements of the petitioner and her acquaintances and noted discrepancies that were contained in the evidence submitted by the petitioner.

On appeal, counsel argues that the director "discounted the affidavits"² submitted on behalf of the petitioner because they "omitted dates . . . because the dates of separation [claimed by the petitioner] differed between her April 2002 submission and the January 2004 submission." Counsel further argues that the director "abused her discretion" and "committed errors by placing undue emphasis on a statement taken out of context and alleging that the signatures and spelling of [REDACTED] sic] . . . were suspect." Counsel makes no attempt to clarify the discrepancies noted by the director or to provide an explanation for such discrepancies and simply states that the petitioner "provided a substantial amount" of evidence to support a claim of a good faith marriage. We do not agree.

Upon review, we find the petitioner's statements and those of her acquaintances lack the specificity necessary to support a claim of a good faith marriage. In her initial statement, the petitioner states that she was introduced to her husband by a friend and that "after several months of dating we decided to marry." Although the petitioner's second statement provides a few more details regarding their courtship, because of the discrepancies noted by the director, such as the fact that the petitioner initially claimed she resided with her spouse until March 2001 and in response to the request for evidence claimed that she remained with her spouse "until the end of 2001," we do not find the petitioner's statements to be sufficiently reliable. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Even though discussed by the director in her decision, counsel fails to address this point on appeal.

² Although counsel refers to these statements as "affidavits" we note that the petitioner's statements and the statements of [REDACTED] and [REDACTED] are not considered affidavits as they were not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who, after confirming the declarant's identity, administered the requisite oath or affirmation. Only the second affidavit provided by [REDACTED] can be properly considered an affidavit as it contains the signature of a notary public.

Moreover, the statements made by the petitioner's acquaintances do not corroborate the petitioner's statements. The statement provided by [REDACTED] does not indicate that she knew the petitioner or her spouse prior to their marriage. Instead, [REDACTED] indicates that after getting married, the petitioner and her spouse moved into a room they rented from [REDACTED]. Similarly, the statement from [REDACTED] indicates that she met the petitioner and her spouse when she moved into their building. Neither of the petitioner's acquaintances provides any details about the petitioner's courtship, gives any specific dates or indicates that they knew the petitioner prior to her marriage such that they can make the claim regarding the petitioner's good faith intent at the time she entered her marriage. The petitioner provides no further clarification or specificity on appeal.

Moreover, as noted by the director, the discrepancies between the signatures on the statements submitted by [REDACTED] and [REDACTED] raise further questions about the petitioner's claims. On appeal, counsel does not attempt to refute the discrepancies noted or provide an explanation for the different spellings and signatures on the two affidavits in question. We note that doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Finally, the petitioner has failed to demonstrate the commingling of assets and liabilities which would indicate that the marriage between the petitioner and her spouse was bona fide. Despite the petitioner's initial claim that she resided with her spouse from March 1997 until March 2001, the petitioner does not submit any financial documentation, tax documentation, insurance policies, utility bills, or rental agreements to document a bona fide marriage from the beginning of her marriage, lasting to March 2001. Although the petitioner submitted copies of bank statements, the bank statements cover the period from March 2001 through March 2002, a time in which the petitioner indicated she no longer resided with her spouse. Further, although the petitioner submitted copies of envelopes sent to her from her spouse while he was in jail, the envelopes are all postmarked after the time the petitioner claims she stopped residing with her spouse. Additionally, we note the fact that the petitioner does not include the actual letters sent from her husband. Accordingly, the evidence contained in the record is insufficient to establish the commingling of financial assets and liabilities normally expected in a marriage of four years, or other objective evidence to indicate that the petitioner intended to establish a life with her spouse.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed