

139

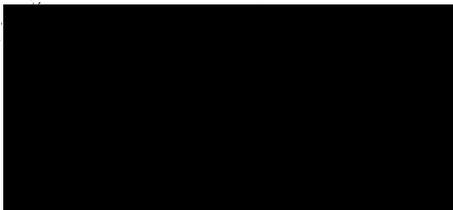
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY



FILE: [Redacted]
EAC 04 164 52879

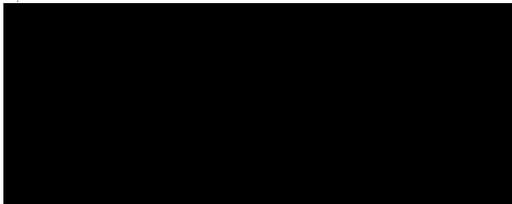
Office: VERMONT SERVICE CENTER

Date: JAN 17 2006

IN RE: Petitioner: [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 Director, Vermont Service Center, denied the preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Colombia who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse. The petitioner filed her Form I-360 on May 4, 2004 with supporting documents. On May 2, 2005, the director denied the petition because the evidence submitted initially and in response to the director's Request for Evidence (RFE) did not demonstrate that the petitioner entered into her marriage with her abusive U.S. citizen spouse in good faith. On appeal, counsel submits additional documents, which he describes as "evidence of the abuse that you previously requested." Yet the director determined that the petitioner had established that her spouse subjected her to battery or extreme cruelty during their marriage. The sole basis for the director's denial was the record's failure to establish the petitioner's good faith marriage. Despite counsel's misdescription, the evidence submitted on appeal is relevant to this issue, but fails to demonstrate that the petitioner entered the marriage in good faith. Accordingly, the appeal will be dismissed for the reasons discussed below.

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 he or she demonstrates that the marriage to the United States citizen spouse was entered into in good faith and that during the marriage, 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 spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The regulation at 8 C.F.R. § 204.2(c)(1)(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.

The regulation at 8 C.F.R. § 204.2(c)(2) further 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 certificate 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 evidence will be considered.

In this case, the record shows that the petitioner married [REDACTED] a U.S. citizen, on December 6, 2002. The petitioner initially submitted photographs of her and her husband and affidavits as evidence of their good faith marriage. The photographs show the petitioner and her husband at their wedding and on one other unspecified occasion. In her first affidavit, the petitioner states that she met her husband in June 2002 in a public place accompanied by her sister, [REDACTED] and friend [REDACTED]. The petitioner explains that after they met, she and her husband became friends and soon began a romantic relationship. She states that at first [REDACTED] was "a special man" who constantly demonstrated that he did not care that she was older than him and that he showed sincere affection and concern for her children. The petitioner explains that because of [REDACTED] behavior, she accepted his marriage proposal.

The only other relevant affidavit submitted with the petition is that of [REDACTED] who states that he formerly employed the petitioner's husband and is the soccer coach of the petitioner's son [REDACTED]. [REDACTED] explains that he introduced the petitioner to [REDACTED] a nightclub in June 2002 and that the couple "hit it off very well together and started dating. Hokar moved in with Fanny soon after and started living together [sic]. Hokar was very in love with her."

Finding this evidence insufficient to establish that the petitioner entered her marriage in good faith, the director issued a Request for Evidence (RFE) on January 6, 2005 for additional evidence that, *inter alia*, the petitioner entered her marriage to her abusive U.S. citizen husband in good faith. In response, the petitioner submitted affidavits, a copy of an automobile repair order, a letter from her bank, copies of the Forms I-130 filed by [REDACTED] on behalf of the petitioner and her children (as well as other immigration-related documents), and copies of materials previously submitted.

The petitioner's eldest daughter, [REDACTED] confirms that her mother was in love with her stepfather and that he treated her and her younger siblings kindly before he and her mother were married. In her first affidavit, the petitioner's sister, [REDACTED] affirms that she and the petitioner met [REDACTED] at a club in June 2002 and that from that moment, he and the petitioner got deeply involved and were married in December 2002. In her second affidavit submitted with her RFE response, the petitioner explains that she married [REDACTED] because she was "deeply in love and with the hope of being able to re-do my life and offer my children a home with principles and securities, and a man to support and help us move forward."

The copies of the Forms I-130 filed by [REDACTED] on behalf of the petitioner and her three children are dated December 16, 2002, ten days after the couple was married. The automobile repair order is dated March 20, 2003 and lists both [REDACTED] and the petitioner, but the title to the car referenced in the repair order lists only the petitioner as the owner of the vehicle. The letter from the petitioner's bank is addressed only to her and indicates that she has an individual account. Documents submitted on appeal show that the petitioner opened a money market savings account by herself on July 22, 2002 at the same bank, which was closed on December 11, 2002. The bank letter initially submitted shows that the petitioner opened a checking account on December 10, 2002. In her third affidavit submitted on appeal, the petitioner explains that she changed her account type because her old account only allowed six checks to be processed each month and that she intended to add her husband to her new account but did not realize that he had to be present in order to do so. She states that he later decided to go with her to the bank to add his name to the account, but then "the problems had already started and [they] just never again made it to the bank."

The petitioner further states that she married her husband because she thought she was going to be with him forever and never imagined that she would have to document her intentions. The petitioner also explains that she never met her husband's family because he told her they would never accept her because she had three children already and was of a different race, culture and religion.

The petitioner submits four additional affidavits on appeal. [REDACTED] states that he knew the petitioner's husband before he married the petitioner and that the petitioner "is a very nice person that found a way to love [REDACTED] discusses [REDACTED] abuse of the petitioner, but provides no details concerning the couple's courtship, wedding or other aspects of their marital relationship. In her second affidavit submitted on appeal, the petitioner's daughter, [REDACTED] states that she was 15 years old when her mother married her stepfather. [REDACTED] explains, "My mother was very happy and we as a family enjoyed [REDACTED] company. . . . I was ecstatic because my mother was in love, and to see my mother so overly in love made me smile because I knew my mother was happy. She was always in a good mood because we as a family were one." In her second affidavit submitted on appeal, the petitioner's sister, [REDACTED] explains that her sister and [REDACTED] seemed very much in love and willing to form a family and I can not think that a couple in love would not have had good faith while marrying." [REDACTED] states that he was a friend of the petitioner and her husband before their marriage and that "[t]hey seemed full of love and ready to share a life together. I give certification that they married in Good Faith, and completely in love."

The petitioner submits no additional documentation to corroborate these brief statements. Apart from the bank account, the petitioner does not explain why she and her husband did not jointly lease or own residential property, have joint utilities accounts, file joint income taxes, share health insurance coverage, list each other as beneficiaries on their life insurance policies, or have other documentation of their shared life together as specified in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). If the couple did commingle their assets or share other responsibilities, the petitioner does not explain why such documentation does not exist or is unavailable. The petitioner states that she resided with her husband from October 2002 until May 2003. While the short duration of their shared residence may explain the lack of documentation regarding the couple's formal marital relationship, the petitioner submitted little evidence regarding the couple's courtship, wedding and other shared experiences. Consequently, the record does not persuasively establish that the petitioner entered into her marriage with [REDACTED] in good faith.

While we concur with the director's determination that the petitioner met all the other statutory eligibility criteria, the record, as supplemented on appeal, does not demonstrate that the petitioner entered into her marriage to her abusive U.S. citizen husband in good faith and she is thus ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. Her petition consequently must be denied.

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 not met that burden. Accordingly, the appeal will be dismissed. This decision is rendered without prejudice to the filing of a new petition under section 204(a)(1)(A)(iii) or (v) of the Act with the requisite supporting documents and filing fee or a documented request for a fee waiver.

ORDER: The appeal is dismissed.