

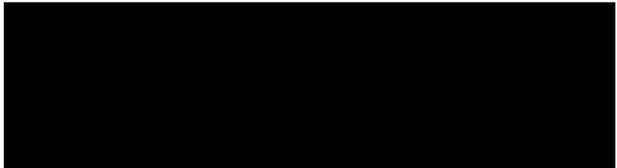
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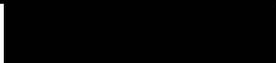
**U.S. Citizenship  
and Immigration  
Services**

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FILE:



EAC 04 102 50220

Office: VERMONT SERVICE CENTER

Date:

**SEP 14 2006**

IN RE:

Petitioner:



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.

A handwritten signature in black ink, appearing to read "R. P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. 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 Nevis who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen. The petition was denied based upon the director's determination that the petitioner failed to establish that she had been battered by or subjected to extreme cruelty by her citizen spouse and that she entered into the marriage in good faith.

The petitioner, through counsel, filed a timely appeal on October 27, 2005.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, 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 . . . 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.

According to the evidence in the record, the petitioner entered the United States on January 21, 1993 as a B-2 nonimmigrant visitor with permission to remain in the United States until July 21, 1993. The petitioner married [REDACTED], a United States citizen, on March 10, 1997 in Queens, New York. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on April 17, 1997. The petition was denied on November 19, 2001 and a subsequent appeal to the Board of Immigration Appeals (BIA) was dismissed on July 2, 2003. On November 3, 2003, the petitioner was placed in removal proceedings.

The petitioner filed the instant Form I-360 on February 17, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage. With the initial filing of her petition the petitioner submitted copies of her spouse's birth certificate and U.S. passport, her marriage certificate, a psychosocial assessment and a doctor's letter, an affidavit from a friend, and letters from her employers. The petitioner also submitted documentation related to bank accounts and her jointly filed 1999 tax returns.

Upon review of this evidence, the director determined that it was not sufficient to establish the petitioner's eligibility. Accordingly, on November 1, 2004, the director requested the petitioner to submit further evidence to establish that she was battered by or subjected to extreme cruelty by her citizen spouse and that she is a person of good moral character. The petitioner responded to the director's request on December 9, 2004, by submitting a police clearance, and a statement from the petitioner.

On June 15, 2005, the director issued a notice of intent to deny (NOID) the petition indicating that there were deficiencies in the petitioner's evidence related to her claim of abuse and that she entered into her marriage in good faith, and inconsistencies related to her claim that she resided with her spouse. The petitioner responded to the (NOID) on July 11, 2005 by submitting two affidavits. It is noted that although counsel claimed that more documentation would be submitted "to follow," the record contained no further submission from the petitioner or counsel.

After reviewing the evidence contained in the record, including the petitioner's response to the director's request for evidence and the NOID, the director denied the petition finding that the record did not establish that the petitioner had been battered by or subjected to extreme cruelty by her citizen spouse and that she entered into the marriage in good faith.

On the Form I-290B, Notice of Appeal to the Administrative Appeals Office, counsel argues that the director's findings were "incorrect on the law and the facts." Counsel does not point to specific provisions or evidence on the Form I-290B or his subsequently submitted brief to demonstrate where the director's decision was incorrect. Counsel then generally asserts that the documentation submitted supports a finding of abuse and that the petitioner entered into a "real marriage." Although counsel also asserts that "additional documentation will be provided," no additional evidence has been received into the record. As will be discussed, the petitioner's appellate decision does not overcome the findings of the director.

*The petitioner's claim that she was battered by or subjected to extreme cruelty by her spouse.*

The psychosocial assessment provided at the time of initial filing generally indicates that "although [the petitioner] was not physically beaten, the psychological, emotional, sexual and financial abuse she suffered are evidence that she was a battered spouse." The assessment goes on to describe the petitioner's spouse's actions in more details. It states:

Her relationship with [her spouse] began to change when he became a charter bus driver, a job that often took him out of state. [The petitioner] would worry about [her spouse] when he came home late, but he would arrive home with "an attitude." He became argumentative, and he would just drop his clothes on the floor for her to pick up. He started treating her like she was a servant. He started to become selfish and withholding. He would not help her carry heavy bags of groceries and he refused to give her money even though he was making significantly more than she did. [The petitioner] had learned that [her spouse's] father had been abusive to his mother, so he had had a poor role model. Then girls started calling the house and asking for him. When [the petitioner] confronted [her spouse] with this, he would get defensive and storm out angrily. When the arguing continued he told her that these women did what she wouldn't do. [The petitioner] tearfully spoke of his trying to force her to perform sexual acts with which she was not comfortable.

In her personal statement, the petitioner claimed that her spouse was "mean and nasty," called her names, made her feel worthless, and withdrew money from their bank account when she was in the hospital. The petitioner also indicated that her spouse had an affair which resulted in a pregnancy.

The petitioner's claim of abuse is based upon her assertion that her spouse had "an attitude," was "argumentative," "selfish and withholding," dropped his clothes on the floor, refused to help carry heavy groceries, and had extramarital affairs. Such claims are not sufficient to establish a claim of abuse as contemplated by the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's claims do not sufficiently demonstrate that she was the victim of any act or threat of violence, that she was forcefully detained by her spouse, that she was psychologically or sexually abused or exploited, or that her spouse's actions were a part of an overall pattern of violence. While the petitioner's claim that her spouse took money from their account without her knowledge appears to be aimed at establishing her spouse's economic control, we find that as the evidence in the record demonstrates that the petitioner had her own job and access to and control over her financial accounts, such facts are not consistent with a claim of control or economic coercion.

Further, although the record also contains a doctor's letter and letters from the petitioner's friends, these documents provide little support for the petitioner's claims. The doctor's letter states only that the petitioner has "been under [sic] medical care since 11/99." The doctor does not indicate the reasons why the petitioner was being treated or provide any other details related to the petitioner's claim of abuse. Similarly, the general statements contained in the affidavits from the petitioner's friends are not sufficient to establish a claim of abuse. For instance, the letter from [REDACTED] indicates that the petitioner's spouse called the petitioner

names, told her that he was with other women and moved out of the house because he got another woman pregnant, and had taken money out of their joint account. Accordingly, we concur with the decision of the director that the petitioner has failed to establish that she has been battered by or subjected to extreme cruelty by her spouse.

Congress's purpose in enacting VAWA of 1994 was, in part, to "permit [ ] battered immigrant women to leave their batterers without fearing deportation." H.R.Rep. No. 103-395. The same House Report explains the purpose of allowing an abused spouse to self-petition: "[t]he purpose of permitting self-petitioning is to prevent the citizen or resident from using the petitioning process as a means to control or abuse an alien spouse." *Id.* In 2000, Congress enacted the Victims of Trafficking and Violence Protection Act of 2000 ("VTVPA"); Division B of the act is the Violence Against Women Act of 2000 ("VAWA 2000").

In this instance, the petitioner's claims regarding her spouse's actions do not reflect that the petitioner is the type of battered immigrant woman with whom Congress was concerned with protecting. There is no indication that the petitioner's actions were used as "a means to control" or abuse the petitioner or to prevent her from accessing the immigration process.

*The petitioner's claim that she entered into the marriage in good faith.*

In his decision, the director indicated that because "the Service previously determined that a bona fide marital relationship did not exist . . . the Service requested clear and convincing evidence that you married your spouse in good faith." Upon review of the record, we find the director's reference to "clear and convincing evidence" is erroneous. In denying the Form I-130, the District Director New York District, did not make any specific determination that the petitioner entered into her marriage in order to evade the immigration laws. Rather, although the director noted "discrepancies" and "inconsistencies," the director concluding by stating that the petitioner and her spouse failed to provide "evidence, either documentary or by testimony given at the time of this interview, that there is, in fact, a bona marital relationship." The district director's finding that the petitioner and her spouse failed to establish a good faith marriage and to produce affirmative evidence of the bona fides of the marriage, by itself, is not sufficient to establish that the marriage is a sham marriage and was entered into in order to evade the immigration laws. *Compare* 8 C.F.R. § 204.2(a)(1)(iii)(B), and (D), *with* 8 C.F.R. § 204.2(a)(1)(ii)." We therefore, withdraw the director's reference to clear and convincing evidence. Despite this error, however, we concur with the director's ultimate finding that the petitioner has failed to establish that she entered into the marriage in good faith.

To support the filing of the Form I-360 petition and her claim of a good faith marriage, the record contains the following documents:

- Chase bank statement dated December 2003 for an account held in trust for the petitioner's spouse.<sup>1</sup>
- Evidence of a bank account in the petitioner's name at Brooklyn Ecumenical Credit Union since September 28, 1999.
- A letter indicating a joint bank account at GreenPoint Bank since October 16, 1997.
- Evidence of the payment of joint taxes for the 1991 tax year.

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<sup>1</sup> A letter submitted in support of the Form I-130 petition indicates that this account was opened on March 10, 1999.

In support of the previously filed Form I-130 petition, the record also contains:

- MCI Worldcom statement in the petitioner's name for August 2000.
- Sprint statement in the petitioner's name for August 2000.
- Jointly filed taxes for the 1998 tax year.

We do not find such evidence is sufficient to find that the petitioner entered into her marriage in good faith. The "key factor in determining whether a person entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of marriage." *Bark v. INS*, 511 F.2d 1200 (9th Cir. 1975). None of the petitioner's evidence dates back to the inception of her marriage in March 1997. While the record does contain evidence that a joint account was opened in October 1997, the petitioner has failed to provide evidence of the joint use of this account by both the petitioner and her spouse. The fact that the petitioner shares a joint account with her spouse is not sufficient if the petitioner is unable to show that both people had access to and use of the account.

Although the petitioner also submits evidence of the filing of joint taxes, we find several deficiencies which diminish the significance of these documents in demonstrating a good faith marriage. First, although the petitioner submitted documents from the IRS indicating that the petitioner jointly filed taxes in 1991 with her citizen spouse, the record reflects that the petitioner was still living in [REDACTED] at this time. Given that the petitioner had not entered the United States or married her spouse in 1991, the documentation regarding her 1991 tax returns does not establish that she entered into the marriage in good faith. Second, the evidence related to the petitioner's 1998 tax returns lists an address for the petitioner and her spouse at [REDACTED]. We can find no explanation for this address given the petitioner's claim that she and her spouse continuously resided at her spouse's mother's home at [REDACTED] since they were married. Without an explanation for these inconsistencies as well as other evidence to establish the filing of taxes throughout the petitioner's claimed five-year marriage, the petitioner's tax documents are not sufficient to establish that she entered into the marriage in good faith.

The remaining evidence, which consists of evidence of an account held in trust by the petitioner for her spouse, an account in the petitioner's name only, and two utility bills do not establish that the petitioner intended to establish a life with her spouse at the time of her marriage. The record reflects that the account held in trust for the petitioner's spouse was opened two years after the petitioner's marriage and the utility bills cover only a single month out of the claimed five-year relationship.

While the record also contains the petitioner's statement, her statement as described in the psychosocial assessment, and letters from the petitioner's friends, the statements do not contain sufficient evidence to establish that the petitioner entered into her marriage in good faith. The petitioner's own statement contains no description of her feelings or intent at the time of her marriage. Further, regarding the petitioner's state of mind when deciding whether to marry her spouse, the assessment states:

[The petitioner] was not interested in [her spouse] at first, but he pursued her persistently. Eventually, he grew on her as he plied her with flowers and told her he loved her.

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The couple went out together for several years . . . . They moved in together . . . . [Her spouse] proposed to [her] many time, and finally she agreed to marry him.

While the statement indicates that the petitioner's spouse loved the petitioner, there is no such indication of the petitioner's feelings for her spouse other than that he "grew on her." Despite a claimed courtship of "several years", the statement allots one sentence to their courtship. Similarly, the letters offered by the petitioner's friends provide no specific details about the petitioner's relationship with her spouse during this time and give no indication as to the petitioner's intent at the time of her marriage. Although one of the petitioner's friends, [REDACTED], states generally that the petitioner entered her marriage in good faith, Ms. [REDACTED] provides no statement regarding the petitioner's feelings or intent at that time and does not elaborate on her claim that the marriage was in good faith.

Based upon the above discussion, we concur with the finding of the director that the record is not sufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her spouse and that she entered into her marriage in good faith. 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.