

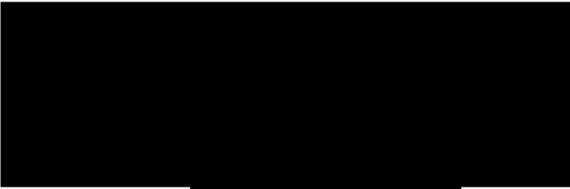


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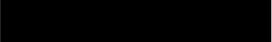
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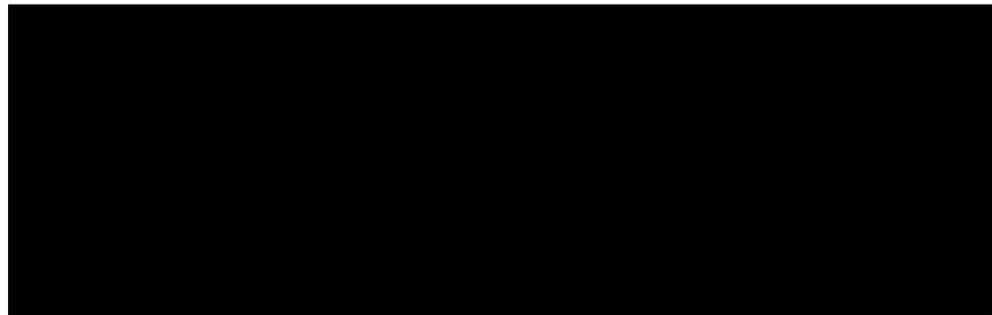
EAC 05 149 52363

Office: VERMONT SERVICE CENTER

Date: **JUL 12 2007**

IN RE:

Petitioner:



PETITION: Petition for 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.

Maura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

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

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 because the petitioner did not establish that she entered into marriage with her U.S. citizen, former spouse in good faith.

On appeal, counsel submits a brief.

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 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:

(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 for a self-petition under section 204(a)(1)(A)(iii) of the Act 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.

* * *

(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 Belarus who entered the United States on January 25, 2003 as the nonimmigrant fiancée (K-1) of R-F-,¹ a U.S. citizen. On April 12, 2003, the petitioner married R-F- in California.² The petitioner filed this Form I-360 on April 28, 2005. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into marriage with R-F-. The petitioner, through counsel, timely responded with further evidence. The petitioner's marriage to R-F- was dissolved on June 16, 2005. On February 1, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite good-faith entry into the marriage. The petitioner, through counsel, responded to the NOID with additional evidence. On July 5, 2006, the director issued a second NOID, provided the petitioner with a copy of derogatory evidence in her file and requested her to submit further evidence of her good-faith entry into the marriage. Counsel timely responded to the second NOID with a brief dated August 15, 2006. On September 15, 2006, the director denied the petition for lack of the requisite good-faith entry into the marriage and counsel timely appealed.

On appeal, counsel claims that the director gave inappropriate weight to derogatory evidence and disregarded other, relevant evidence. Counsel asserts that the petitioner established the bona fides of her marriage. Counsel's claims fail to overcome the ground for denial.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's allegedly good-faith entry into marriage with R-F-:

¹ Name withheld to protect individual's identity.

² The record shows that this marriage was the petitioner's fourth and R-F-'s sixth. In this decision we refer to the petitioner's fourth husband as "R-F-" or her "former spouse."

- The petitioner's affidavits dated April 21, 2005 and March 28, 2006;
- Printouts of one electronic mail message purportedly written by the petitioner to R-F- in Russian and translated into English by a computer program and one message purportedly written by R-F- in English and translated into Russian by the same program;
- Copy of the June 5, 2004 letter of [REDACTED] and copies of photographs of the petitioner with a man other than R-F- submitted by R-F- with his motion to annul the marriage, which was granted at a default hearing on June 14, 2004 by the Superior Court of California, Monterey County;
- The petitioner's motion to set aside the default judgment of nullity filed on July 20, 2004; the responsive declaration of R-F- and the corresponding court minutes documenting the order granting the petitioner's motion;
- Copy of the petitioner's federal tax return transcript from the Internal Revenue Service (IRS) showing that she jointly filed an income tax return with R-F- for the year 2003;
- Copies of hospital bills for services rendered to the petitioner between April 25, 2003 and May 25, 2004, which list R-F- as the guarantor;
- Copy of a voided sales agreement for an automobile, which is dated March 16, 2004 and is signed by the petitioner and R-F- as co-applicants and a corresponding Acknowledgement of Rewritten Contract dated March 19, 2004, which is signed by R-F- and states that the original sale was rescinded to "Lower APR, Remove Wife;"
- Photographs of the petitioner and her husband;
- Affidavit of [REDACTED]
- Letter of [REDACTED]
- Affidavit of [REDACTED] and
- Affidavit of [REDACTED].

In her April 21, 2005 affidavit, the petitioner states that she met R-F- through the Internet in April 2002. The petitioner reports that her former husband called her three times a day and wrote her three to six letters a day. In August 2002, the petitioner states that she met R-F- in Poland. She explains, "We spoke together with the help of two translators, as I did not speak any English. We spent five days together, and it was fun and interesting. We went to museums and historical sites, always with the translators to help us communicate." The petitioner states that after their trip, she and R-F- corresponded for six more months and then R-F- proposed marriage. The petitioner explains that she agreed to the marriage because R-F- was intelligent and handsome and she was in love with him. The petitioner reports that after her arrival in the United States, she moved into R-F-'s apartment. The petitioner states that for a month after her arrival, "[i]t was like a fairy tale with the man of my dreams."

In her March 28, 2006 affidavit, the petitioner explains that during their courtship, her neighbor translated for the former couple when they spoke by telephone and that the former couple used translating software to and from English and Russian to communicate by electronic mail. The petitioner submitted a printout of one electronic mail message purportedly written by her to R-F- in Russian and translated into English by the software. However, the header with the electronic mail

addresses of the sender and recipient and the date of transmission is torn off. The petitioner also submitted a printout of an electronic mail message purportedly written to her by R-F- in English and translated into Russian by the software. Although the two messages are not dated, their text indicates that they were written during the former couple's marriage.

In her June 5, 2004 letter [REDACTED] states that the petitioner once told [REDACTED] that she never loved R-F- and only married him to get a "green card." [REDACTED] further states that the petitioner asked [REDACTED] to introduce her to another man who would help her get a green card. [REDACTED] reports that she introduced the petitioner to a friend and took several pictures of them together, copies of which accompanied her letter. The record shows that [REDACTED] letter and the copied photographs of the petitioner and another man were submitted by R-F- in support of his motion to have the former couple's marriage annulled.

In her motion to set aside the default judgment of nullity obtained by R-F-, the petitioner states:

I even found out that he had an affair with our English/Russian interpreter and that he and she conspired to make it appear that I was unfaithful! They told me to pose for that photo, she took it, and then they said it was proof that I was unfaithful with that man. That is a lie! In fact, I now know the man is actually the former live-in lover of the married interpreter [REDACTED]. She willingly lied to the court in her June 5, 2004 statement. A statement she and [R-F-] fabricated and submitted to the court after he had again beat me up and decided to move his fraud plan to its final phase.

The court set aside the judgment of nullity obtained by R-F- on August 26, 2004. On appeal, counsel states that the court "set aside the default judgment on the annulment because the default judgment had been obtained in a fraudulent manner." Counsel further notes that R-F- withdrew his request for annulment and the parties then began dissolution proceedings. However, the minutes of the motion hearing on August 26, 2004 simply state that the motion to set aside the judgment of nullity was granted. The record contains no documentation of the basis for the court's order. Accordingly, the evidence concerning the petitioner's alleged fraud in entering the marriage is equivocal and we address the remaining, relevant evidence.

The remaining documentary evidence does not sufficiently support the petitioner's claim. The IRS transcript shows that the petitioner jointly filed a federal income tax return with R-F- for 2003. The hospital bills show that the petitioner was covered by her former husband's health insurance policies, which may be relevant to his intentions regarding their marriage, but does not establish the petitioner's own good-faith in entering the marriage. The copied photographs show the petitioner and her former husband on their wedding day and on other, unspecified occasions, but the pictures are of little probative value in demonstrating the petitioner's entry into the marriage in good faith. The automobile sales agreement was voided three days after it was entered, in part, to remove the petitioner from the contract and the petitioner submitted no evidence that she and R-F- jointly purchased an automobile or had any other joint financial assets or liabilities.

The testimony of the petitioner's friends and acquaintances also does not fully support the petitioner's claim. [REDACTED] states that she was the manager of the apartment complex where the petitioner formerly resided with R-F-. [REDACTED] states that she saw the former couple in their apartment on several occasions, during one of which they showed her pictures of their wedding. [REDACTED] states that the former couple came to see her at her office and she also saw them on the property premises on other occasions. While [REDACTED] attests to the couple's joint residence, she provides no probative details regarding the petitioner's behavior towards R-F- or other manifestations of the petitioner's alleged good-faith in marrying R-F- that [REDACTED] witnessed.

The remaining affiants all attest to the petitioner's professed love for her former husband even after he abused her. [REDACTED] states that she interpreted for the petitioner at several court hearings and other meetings. [REDACTED] states that when she asked the petitioner why she endured her husband's abuse, the petitioner "said that she loved him and believed that he would change" and said "he would always beg her on his knees for forgiveness, explain that he was like this because of his previous tough military life and then promise not to hit her again." [REDACTED] states that one day he visited the petitioner at work and saw that her face was badly bruised and she told [REDACTED] that R-F- had hit her, but that "she loved him very much and that she thought he would change because the next day he would say he was sorry and bring her flowers." [REDACTED] also reports that when he observed bruises on the petitioner's face and asked her why she stayed with R-F-, she said, "she loved him very much and she thought that he would change. She also mentioned that he would never do it again," but that when [REDACTED] continued to see the petitioner bruised every month, he states, "She again would explain to me that she loved him and she wanted to be a family."

The petitioner's own description of her former husband's remorse and their reconciliations after incidents of battery is not wholly consistent with that of [REDACTED] and [REDACTED]. The petitioner states that about a month after her arrival, her former husband attacked her, but later begged for her forgiveness and said he was not in control of his acts. The petitioner states, "I asked why he was so cruel to me, but he answered that he didn't know." The petitioner reports that her former husband then threw her out of the house and she states, "I asked him to take me back because I could not survive alone." In April 2003, the petitioner states that her former husband beat her, but the next day begged her to forgive him and not to leave the country. The petitioner reports that her husband prepared documents to annul their marriage, but then begged "for forgiveness, cried, and promised that he would never hurt or humiliate me again. I believed him and I returned to him." The petitioner states that sometime between December 2003 and February 2004, her former husband kicked her out of the house, but that in "March 2004, he allowed me to come back to our apartment . . . and he beat me again."

Unlike [REDACTED] and [REDACTED], the petitioner does not explain that she returned to her husband because she loved him. Rather, the petitioner states that on one occasion she asked the petitioner to let her return because she could not survive by herself and that in March 2004, R-F- "allowed" her to go back to their apartment. The petitioner also does not state that her former husband always promised to change and not hurt her again and that she continued to believe he would change.

Instead, the petitioner describes only one occasion where her former husband promised never to hurt or humiliate her again and that she believed him. The petitioner's brief descriptions of the former couple's reconciliations after incidents of abuse does not indicate that she repeatedly returned to her former husband because he always expressed remorse and due to her enduring love and belief that he would change. Although such feelings often occur in abusive, intimate relationships, the petitioner fails to convey her own feelings and reactions in probative detail that is consistent with the testimony of [REDACTED] and [REDACTED] and is sufficient to establish her good-faith entry into the marriage.

The petitioner submitted no other documentary or testimonial evidence of her allegedly good-faith entry into marriage with her former husband of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the director's RFE and July 5, 2006 NOID. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The petitioner submitted evidence that she jointly filed a 2003 federal income tax return with her former husband. The tax documentation alone, however, does not establish that the petitioner married R-F- in good faith due to the insufficiencies of the remaining relevant documentary evidence and the inconsistency between the petitioner's statements and those of [REDACTED] and [REDACTED]. The petitioner has not demonstrated that she entered into marriage with R-F- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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.