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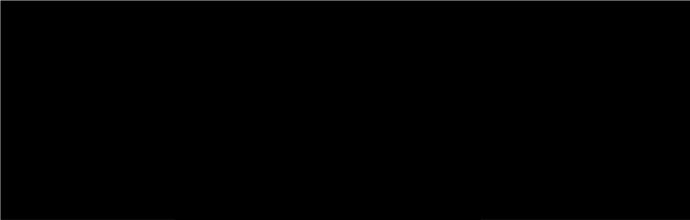


U.S. Citizenship
and Immigration
Services

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JUN 22 2007



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
EAC 02 197 53399

IN RE: Petitioner: [REDACTED]

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.

Laura Deadrick
fr Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The December 19, 2006 decision of the director will be affirmed and the petition will be denied.

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(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.

* * *

(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.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(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 the Dominican Republic who states in these proceedings that she entered the

United States in March 1997. On June 28, 1997, the petitioner divorced her first husband, R-N-¹, in the Dominican Republic. On January 13, 1999, the petitioner married, J-F-², who the petitioner claims is a U.S. citizen, in New York. The petitioner filed this Form I-360 on May 20, 2002. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the citizenship or immigration status of J-F-, her entry into their marriage in good faith, her residence with J-F- and battery or extreme cruelty. The petitioner, through counsel, requested and was granted additional time to respond and subsequently submitted additional evidence. The director denied the petition on March 4, 2004 for lack of a qualifying relationship with a U.S. citizen and eligibility for immediate relative classification based on such a relationship; the requisite good-faith entry into the marriage, battery or extreme cruelty and joint residence. On appeal, the AAO largely concurred with the director's determinations but remanded the petition because the director had denied the petition without first issuing the requisite Notice of Intent to Deny (NOID). On July 19, 2006, the director issued a NOID and counsel timely responded with further evidence. On December 19, 2006, the director denied the petition for lack of a qualifying relationship with a U.S. citizen and eligibility for immediate relative classification based on such a relationship; the requisite good-faith entry into the marriage, battery or extreme cruelty and joint residence. The petition is now before the AAO upon certification and neither counsel nor the petitioner has submitted a brief or additional evidence.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

On the Form I-360, the petitioner states that J-F- is a U.S. citizen who was born in the United States. The petitioner's marriage certificate to J-F- states that he was born in the United States, however that statement alone is insufficient to establish that J-F- is a U.S. citizen. In the RFE and NOID, the director requested the petitioner to submit further evidence of J-F-'s citizenship or immigration status. The petitioner submitted no additional evidence. A search of Citizenship and Immigration Services (CIS) records based on information supplied by the petitioner also provided no evidence of J-F-'s citizenship. Accordingly, the petitioner has failed to establish that she had a qualifying spousal relationship with a United States citizen, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.

The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. As the petitioner has failed to establish a qualifying relationship a U.S. citizen through her marriage to J-F-, she has also failed to demonstrate her eligibility for immediate relative classification based on their relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Good Faith Entry into Marriage

Section 204(a)(1)(A)(iii)(I)(aa) of the Act requires a self-petitioning alien to demonstrate that "the marriage or the intent to marry the United States citizen was entered into in good faith by the alien[.]"

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

Because the petitioner has failed to demonstrate that J-F- is a U.S. citizen, she does not meet this requirement. Yet even if the record established J-F-'s citizenship, we concur with the director's determination that the relevant evidence does not demonstrate that the petitioner entered into marriage with J-F- in good faith.

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

- The petitioner's March 29, 2004 affidavit;
- Copy of the birth certificate of the petitioner's son, [REDACTED];
- The August 17, 2001 and February 19, 2004 Family Offense Petitions filed by the petitioner against J-F-;
- November 30, 2002 psychological evaluation of the petitioner by [REDACTED] CSW, BCD;
- August 22, 2006 letter from the Urban Center for Change;
- Copy of the first page of the petitioner's 2001 federal income tax return indicating her filing status as head of household; and
- Copies of four photographs of the petitioner and J-F- at their wedding.

In her affidavit submitted in response to the NOID, the petitioner states, "I married my husband [J-F-] in good faith. I do not have many documentary evidence [sic] because he took most of my personal documents when he left the household." The petitioner further states that J-F- is the father of her son, [REDACTED] but J-F- is not listed as the father on [REDACTED] birth certificate because J-F- "was not present when the child was born." The petitioner explains that she and J-F- were separated when [REDACTED] was born, but then reconciled. The petitioner provides no testimony regarding how she met her husband, their courtship, wedding, joint residence or any of their shared experiences and her brief attestation alone is insufficient to establish the requisite good-faith entry into the marriage.

The other relevant evidence fails to establish the paternity of the petitioner's son, [REDACTED]. The child's father is not identified on his birth certificate. On her Family Offense Petitions, the petitioner states that [REDACTED] is her second husband's son, but in [REDACTED]'s evaluation, she states that the petitioner "has two children from her first marriage." In addition, the August 22, 2006 letter from the Urban Center for Change identifies [REDACTED] with a surname that is neither the petitioner's maiden name nor the surname of her second husband. Accordingly, the record does not establish that [REDACTED] is the son of the petitioner and her second husband.

The remaining, relevant evidence also fails to establish the petitioner's claim. The copy of the first page of the petitioner's 2001 federal income tax return shows her filing status as head of household and indicates that she did not share tax liability with her second husband for that year. The record also contains no evidence that the petitioner jointly filed taxes with her second husband for either of the prior two years of their marriage. Although the petitioner explains that her second husband took most of her personal documents, she does not state that she was unable to obtain documentation of their

shared assets or liabilities from third parties. The copied photographs show the petitioner and her husband on their wedding day, but the pictures alone do not establish the petitioner's entry into marriage with her second husband in good faith.

Accordingly, the petitioner has not demonstrated that she entered into marriage with her second husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

Section 204(a)(1)(A)(iii)(II)(dd) of the Act requires a self-petitioning alien to have resided with his or her U.S. citizen spouse or intended spouse. As the petitioner has failed to establish that her second husband is a U.S. citizen, she has not demonstrated her eligibility under this provision of the Act. Yet even if the record established J-F-'s citizenship, we concur with the director's determination that the relevant evidence does not demonstrate that the petitioner resided with her second husband.

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

- The petitioner's March 29, 2004 affidavit;
- The marriage certificate of the petitioner and her second husband;
- Letter of [REDACTED];
- Letter of [REDACTED];
- Copy of the first page of the petitioner's 2001 federal income tax return indicating her filing status as head of household; and
- Bill collection notice dated September 20, 2001 and addressed to the petitioner's second husband individually.

On the Form I-360, the petitioner states that she resided with her second husband from January 1999 until July 2001 and that their last joint residence was on [REDACTED] in the Bronx, New York. The former couple's marriage certificate is the only document in the record which states the [REDACTED] address (or any other address) as the former couple's joint residence. The copy of the first page of the petitioner's federal income tax return lists the [REDACTED] residence as her address, but the petitioner checked her filing status as head of household. The bill collection notice is addressed to the petitioner's second husband individually and is dated two months after the petitioner states that the former couple separated. The petitioner submitted no other documentation of her alleged residence with her second husband. Although the petitioner explains that her husband took most of her personal documents when he left, she does not state that she was unable to obtain verification of their joint residence from third parties.

The testimonial evidence also fails to establish the petitioner's claim. [REDACTED] states that she was the petitioner's neighbor during the petitioner's marriage to her second husband, but she does not state the petitioner's address or provide any other, probative details regarding the former couple's

purportedly joint residence. [REDACTED] states that the petitioner styled [REDACTED] hair during the petitioner's marriage and that there were many times when she had to stop doing [REDACTED] hair because J-F- came home. [REDACTED] does not state the address, approximate dates of the petitioner's alleged residence with her second husband, or provide any other, pertinent information.

Accordingly, the petitioner has failed to demonstrate that she resided with her second husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

Section 204(a)(1)(A)(iii)(I)(aa) of the Act requires the self-petitioning alien to demonstrate that he or she was battered or subjected to extreme cruelty by his or her U.S. citizen spouse or intended spouse during the qualifying relationship. Because the petitioner has failed to establish that her second husband is a U.S. citizen, she has not demonstrated her eligibility under this provision of the Act. Yet even if her second husband's citizenship were established, we concur with the director's determination that the relevant evidence fails to demonstrate that the petitioner's second husband subjected her or any of her children to battery or extreme cruelty during their marriage.

The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- The petitioner's March 29, 2004 affidavit;
- Letter of [REDACTED]
- Letter of [REDACTED]
- Letter of [REDACTED]
- March 9, 2005 and August 22, 2006 letters from the Urban Center for Change;
- The August 17, 2001 and February 19, 2004 Family Offense Petitions filed by the petitioner against J-F- and the corresponding Temporary Orders of Protection entered *Ex Parte*; and
- November 30, 2002 psychological evaluation of the petitioner by [REDACTED] CSW, BCD.

In her August 17, 2001 Family Offense Petition, the petitioner stated that on August 11, 2001, her second husband wanted to force himself into the petitioner's apartment to see one of her children. The petitioner further states that in May 2001, her second husband hit her in the face and bent her knee because she did not want to engage in intimate relations with him. The corresponding Temporary Order of Protection was entered *ex parte*, indicating that the court's order was based on the petitioner's testimony alone. The August 17, 2001 order expired on October 9, 2001, the date a hearing was scheduled for the petitioner's second husband to respond to the Family Offense Petition. The petitioner submitted no evidence or testimony regarding the outcome of that hearing.

In her affidavit, the petitioner states that her husband continues to abuse her even after their separation and that on February 14, 2004, he wanted to force himself into her home and verbally

threatened her life. In her February 19, 2004 Family Offense Petition, the petitioner states that on February 14, 2004, her second husband visited her home and threatened to physically assault her when she refused to "be with" him. The corresponding Temporary Order of Protection was entered *ex parte*, indicating that the court's order was based on the petitioner's testimony alone. The February 19, 2004 order expired on April 20, 2004, the date a hearing was scheduled for the petitioner's second husband to respond to the Family Offense Petition. The petitioner submitted no evidence or testimony regarding the outcome of that hearing.

The testimony of the petitioner's friends fails to provide probative information to fully support her claim. [REDACTED] states, "I hear a lot of scream [sic] and fighting and few times I saw her living [sic] the house with the kid trying to run away from [her second husband]." [REDACTED] does not describe in detail any verbal or physical disputes that she witnessed. [REDACTED] states that the petitioner would leave her hair styling work unfinished when her husband came home or she would abruptly leave the salon and go home because she was scared her husband would hurt her. [REDACTED] states that the petitioner's second husband "would hit her in front of people at work and anywhere he felt the need." Yet [REDACTED] does not describe in detail any particular incident where she witnessed the petitioner's second husband physically assault the petitioner. [REDACTED] states that she was deeply hurt when she saw the petitioner "in an abusive relationship; her lips busted her eyes all black and blue." However, [REDACTED] fails to state the name of the petitioner's abuser or provide any other, probative details.

The letters from the Urban Center for Change (UCC) state that the petitioner and her three children were admitted to a shelter on September 23, 2004 "due to Domestic Violence" and were discharged on April 4, 2005. The letters do not identify the abuser and provide no further, probative details. Moreover, the letters show that the petitioner and her children did not enter the shelter until over three years after the petitioner states that she separated from her second husband. The letter also identifies the petitioner's youngest child, born in August 2002, by the surname of her first husband. Accordingly, the UCC letters do not establish that the petitioner's second husband, rather than her first husband or another individual, inflicted the domestic violence causing the petitioner and her children to seek shelter at UCC.

[REDACTED]'s evaluation also fails to support the petitioner's claim. [REDACTED] states that she first met with the petitioner on May 14, 2002, eleven months after the petitioner states that she separated from her second husband. [REDACTED] diagnoses the petitioner with generalized anxiety and reports that the petitioner sought help "after an exacerbation of depression, anxiety, and diminished self esteem that she has linked to her 'failure in marriage,' left over anxiety over the 9/11 terrorist attack to the City, and the general state of her life." [REDACTED] discusses the petitioner's first marriage, but does not discuss the petitioner's second marriage in any detail and [REDACTED] does not state that the petitioner reported any abuse by her second husband.

The petitioner obtained two temporary orders of protection against her second husband. However, these orders were issued *ex parte* and the petitioner submitted no evidence that the orders were

extended after hearings where her second husband was present. The petitioner provides only a brief description of three incidents of alleged abuse in her Family Offense Petitions and submitted no probative testimony describing any incidents of abuse in detail in these proceedings. The remaining, relevant evidence fails to support the petitioner's claim. Accordingly, the petitioner has not demonstrated that her second husband subjected her or any of her children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has failed to establish that she had a qualifying relationship with a U.S. citizen, was eligible for immediate relative classification based on such a relationship, entered into marriage with her second husband in good faith, resided with her second husband and that her second husband subjected her or any of her children to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) 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 December 19, 2006 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The December 19, 2006 decision of the director is affirmed.