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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services



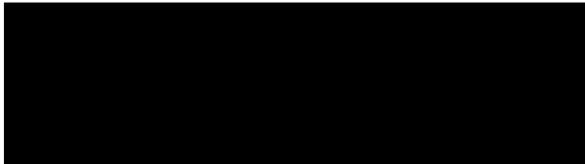
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Office: VERMONT SERVICE CENTER

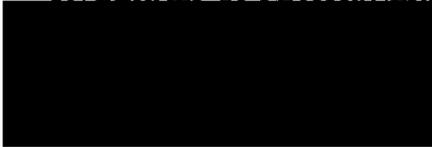
Date: MAR 30 2007

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:



PUBLIC COPY

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 F. 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 resided with her husband and entered into their marriage in good faith.

On appeal, counsel submits additional evidence.

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.

* * *

(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.

* * *

(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 facts and procedural history. The petitioner is a native and citizen of the Dominican Republic who entered the United States on October 9, 1993 as a nonimmigrant visitor (B-2). On July 27, 1994, the petitioner married S-B¹, a U.S. citizen, in New York. S-B- filed a Form I-130, petition for alien relative, on the petitioner's behalf that was denied on March 22, 1996 for failure to establish a bona fide marital relationship. S-B- filed a second Form I-130 on the petitioner's behalf that was denied on October 18, 1999, again for lack of a bona fide marital relationship. On October 24, 2000, the Board of Immigration Appeals (BIA) dismissed the ensuing appeal.

On February 16, 2001, the former Immigration and Naturalization Service served the petitioner with a Notice to Appear for removal proceedings charging her as deportable pursuant to section 237(a)(1)(B) of the Act because she remained in the United States beyond her period of authorized stay. The petitioner remains in proceedings before the New York City Immigration Court and her next hearing is scheduled for July 11, 2007.

The petitioner previously filed a Form I-360 (Receipt Number EAC 03 008 52477) that was denied for lack of the requisite joint residence, good moral character and good-faith entry into the marriage. On September 3, 2004, the AAO dismissed the petitioner's appeal and on February 14, 2005 the AAO

¹ Name withheld to protect individual's identity.

dismissed the petitioner's motion to reopen. The petitioner filed the instant Form I-360 on March 29, 2005. The director subsequently issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite joint residence and good-faith entry into the marriage. The petitioner responded to the NOID with copies of documents submitted with her first Form I-360. On August 9, 2006, the director denied the petition for lack of the requisite joint residence and good-faith entry into the marriage. Counsel timely appealed.

On appeal, counsel claims that the director misevaluated and failed to give proper weight to the evidence and that the denial violated the due process guarantee of the Fifth Amendment because the self-petitions of other, unspecified aliens in the same circumstances have been approved. We concur with the director's determination that the petitioner has not demonstrated that she entered into marriage with her husband in good faith. However, the record establishes that the petitioner resided with her husband.

Joint Residence

The record contains the following evidence relevant to the petitioner's residence with her husband:

- The petitioner's September 18, 2003 and June 20, 2006 statements and her August 24, 2006 affidavit submitted on appeal;
- Letter dated March 28, 1995 from [REDACTED] who states that the petitioner and her husband have lived in her apartment on [REDACTED] in the Bronx since July 1994 and that all bills for the residence are in [REDACTED] name;
- Letter dated January 21, 1996 from [REDACTED] who states that the petitioner and her husband share an apartment with her on [REDACTED] in the Bronx and that except for the telephone, all other bills are in [REDACTED] name;
- Letter dated January 29, 1996 from the Ponce De Leon Federal Bank regarding the former couple's joint account and listing the East Clarke Place residence as their address;
- A copy of the New York 1996 income tax refund check jointly addressed to the petitioner and her husband at a residence on Manor Avenue in the Bronx;
- Letters addressed to the petitioner and her husband individually at the Manor Avenue residence;
- A copy of a lease dated March 17, 1997 for a residence on Marcy Place in the Bronx that lists the petitioner and her husband as tenants, but is signed only by the petitioner;
- A copy of a renewal lease form addressed to the petitioner and her husband for the [REDACTED] residence that is dated November 17, 1997 for a lease term to commence on April 1, 1998 that was signed by the petitioner, her husband and their landlord on May 13, 1998;
- A copy of a renewal lease form addressed to the petitioner and her husband for the [REDACTED] residence that is dated November 17, 1997 for a lease term to commence on April 1, 1998 that was signed by the petitioner and her husband on July 1, 1999;
- A copy of a renewal lease form addressed to the petitioner and her husband for the [REDACTED] residence that is dated November 17, 1998 for a lease term to commence on April 1, 1999 that was signed by the petitioner and her husband on August 22, 1999;

- A copy of a renewal lease form addressed to the petitioner and her husband for the Marcy Place residence that is dated November 12, 1999 for a lease term to commence on April 1, 2000 that was signed by the petitioner and her husband on December 15, 2000;
- A copy of a renewal lease form addressed to the petitioner and her husband for the Marcy Place residence that is dated December 19, 2000 for a lease term to commence on April 1, 2001 that was signed by the petitioner only on an unspecified date (submitted on appeal);
- Copies of renewal lease forms addressed to the petitioner and her husband for the Marcy Place residence that are dated November 17, 1998 and January 18, 2002 that neither the petitioner nor her husband have signed (submitted on appeal);
- Copies of rent receipts dated June 13, 1997 and May 13, 1998, which list the petitioner and her husband as the tenants of the Marcy Place residence;
- Copies of bills jointly addressed to the petitioner and her husband for unpaid rent dated June 1, 1997, June 1, 1998 and March 1, 2000 and a notice to the petitioner and her husband regarding unpaid rent and possible eviction for the Marcy Place residence that is dated August 2, 2000 (2000 bill and notice submitted on appeal);
- Copies of the 1997 and 2000 New York Annual Apartment Registration of the Marcy Place residence listing the petitioner and her husband as tenants (2000 notice submitted on appeal);
- November 28, 2003 letter of the petitioner's friend, [REDACTED] who states that she has known the petitioner and her husband for four years and that they reside at the Marcy Place residence;
- An H&R Block guarantee certificate listing the petitioner's husband as the client and the petitioner as his spouse, but signed only by the petitioner in March 1999; an H&R Block receipt dated March 8, 1999 and listing the petitioner and her husband as the clients; and a tax preparation summary and receipt dated March 8, 1999 issued jointly to the petitioner and her husband at the Marcy Place residence (submitted on appeal);
- Copy of a letter dated February 11, 2002 jointly addressed to the petitioner and her husband at the Marcy Place residence from the Internal Revenue Service (IRS) regarding their 2000 income tax return and an April 4, 2005 notice of taxes owed for 2000 on the joint account of the former couple (submitted on appeal);
- Copy of a notice of overpayment of 1997 income taxes jointly addressed to the former couple at the Marcy Place residence and dated December 31, 1997;
- Copy of a Notice and Demand for Payment of Tax Due jointly addressed to the petitioner and her husband at the Marcy Place residence and dated August 15, 2003, which is from the New York State Department of Taxation and Finance and identifies the petitioner's husband as the taxpayer (submitted on appeal); and
- Letters dated August 26, 1997, July 21, 1998 and April 12, 1999 from the Ponce De Leon Federal Bank stating that the petitioner and her husband maintain a joint account which was opened on March 15, 1995 and listing the Marcy Place residence as their address.

On the Form I-360, the petitioner states that she resided with her husband from July 27, 1994 to August 8, 2002 and that they last lived together at the Marcy Place residence. In her September 18, 2003 statement, the petitioner reports that after their marriage and "months of living together," her husband

began to abuse her. The petitioner does not further describe her residence with her husband. In her June 20, 2006 statement, the petitioner explains, "it has been practical impossibility [sic] for me to obtain more documents in both names in addition to the ones already submitted, because my spouse took with him almost all our papers, and I have been suffering of [sic] severe depression which precluded me to [sic] keep track of the few papers which he left me." In her August 24, 2006 affidavit, the petitioner explains that she is submitting additional evidence of her residence with her husband and that because she has been ill, she was unable to submit the required evidence below.

In his decision, the director indicates that he only considered the renewal lease forms for the Marcy Place residence signed by the petitioner and her husband on July 1, 1999 and August 22, 1999, one bill addressed to the petitioner's husband individually at the Marcy Place residence and the 1996 New York State income tax refund check. The director does not discuss any of the other evidence listed above that was submitted below. A full review of the relevant evidence, including the evidence submitted on appeal, demonstrates that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The record does not establish, however, that the petitioner entered into marriage with her husband in good faith. In addition to the evidence listed above in the preceding section, the record also contains the following evidence relevant to the petitioner's alleged good faith in marrying her husband:

- Letters of the petitioner's friends, [REDACTED] dated November 28, 2003;
- Unsigned copies of the former couple's joint federal income tax returns for 1994, 1996 and 1997;
- Unsigned copies of the former couple's joint New York State income tax return for 1994 and 1996;
- Copies of two joint savings account passbooks of the petitioner and her husband showing frequent transactions from June 9, 1995 through November 7, 1997 and November 18, 1997 through February 22, 2000 (the latter passbook submitted on appeal); and
- Three photographs of the petitioner and her husband.

In her September 18, 2003 statement, the petitioner explains that when she first met her husband in December 1993 he seemed like a gentleman and very kind. The petitioner does not further describe how she met her husband, their courtship, wedding, joint residence or shared experiences (apart from the abuse) in any detail. [REDACTED] simply states that she knows that the petitioner is married to S-B-, but does not provide any probative information about the petitioner's marital relationship. Ms. [REDACTED] offers a similarly brief statement attesting to her knowledge of the petitioner's marriage and residence with her husband. [REDACTED] states that she has known the petitioner and her husband as a couple and participated in family activities and get-togethers with them for approximately three years. Yet [REDACTED] does not describe any of those events in detail or provide any further, probative

information about the petitioner's marriage. None of the petitioner's three friends indicate that they knew the petitioner at the time of her courtship and marriage.

The relevant evidence shows that the petitioner and her husband maintained a joint bank account from 1995 to 2000; jointly filed income taxes in 1996, 1997 and 2000; resided together and were photographed together on two unidentified occasions. However, that evidence fails to overcome the lack of any probative, detailed testimony regarding the petitioner's acquaintance with her husband, their courtship, wedding, joint residence and any of their shared experiences (apart from the abuse). The bank, tax and residence documents also fail to outweigh the fact that on two occasions, separate interviews of the petitioner and her husband failed to establish a bona fide marital relationship and resulted in the denial of the two Form I-130 petitions filed by the petitioner's husband on her behalf. The March 22, 1996 denial of the first Form I-130 cites 20 discrepancies between the testimony of the petitioner and her husband. The October 18, 1999 denial of the second Form I-130 petition details 33 discrepancies between the testimony of the petitioner and her husband. The transcript of the interviews conducted on April 14, 1999 and the officer's notes of the February 1, 1996 interviews include the cited discrepancies and support the decisions denying both Form I-130 petitions. The record also indicates that not all of the discrepancies can be attributed solely to the petitioner's husband, but that several significant discrepancies arose from the petitioner's own lack of pertinent knowledge and marital intimacy.

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

Counsel's Remaining Claim on Appeal

On appeal, counsel states, "There is an infringement of due process guaranteed by the 5th amendment [sic] to the US Constitution, since other aliens who have been in the same circumstances, they have been granted sel-fpetition [sic] as victim of domestic abuse, in addition that the appellants' evidence was ignored and not taken into sufficient consideration." Counsel implies that the director's adjudication of the petition was unfair, but fails to fully articulate his claim. We have determined that the evidence submitted below, combined with the relevant evidence submitted on appeal, establishes that the petitioner resided with her husband and overcomes one of the director's ground for denial. Counsel has not demonstrated any other error by the director in conducting his review of the petition. Nor has the petitioner demonstrated any resultant prejudice that would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

The record fails to establish that the petitioner entered into marriage with her husband in good faith. 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.

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.