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

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MAY 18 2007

FILE:

EAC 05 218 52233

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

PETITION:

Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

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 Deadnick

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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition because the petitioner did not establish that she married her husband in good faith and resided with him.

On appeal, counsel submits a brief.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(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 clause (ii) or (iii) of subparagraph (B), 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)(B)(ii) 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 Mexico who states in these proceedings that she entered the United States without inspection on February 16, 1989. On March 26, 2001, the petitioner married V-R-¹, a lawful permanent resident of the United States, in New Jersey. The former couple has a daughter, [REDACTED], who was born nearly 11 years before their marriage on March 28, 1990.

The petitioner filed this Form I-360 on August 1, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residence. The petitioner, through counsel, timely responded with additional evidence. 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, through counsel, timely responded to the NOID with additional evidence. The director denied the petition on October 4, 2006 because the petitioner failed to establish that she entered into marriage with her husband in good faith and resided with him.

¹ Name withheld to protect individual's identity.

The petitioner timely appealed. On appeal, counsel claims that the petitioner submitted sufficient evidence to establish her eligibility and asserts that the director did not take into account how the abuse affected the petitioner's ability to document her case. We concur with the director's determinations. Counsel's claims on appeal fail to overcome the grounds for denial.

Entry into Marriage in Good Faith

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

- The petitioner's June 28, 2005 affidavit;
- Affidavit of the petitioner's friend, [REDACTED];
- The birth certificate of the daughter of the petitioner and [REDACTED], who was born nearly 11 years before their marriage;
- Copy of the petitioner's 2001 federal income tax return filed by the petitioner individually as head of household;
- Checking account statements jointly addressed to the petitioner and [REDACTED] for January 1-31, 2005; June 1-4, 2004; September, October and December, 2002 and copies of four withdrawal and deposit slips for the account signed by [REDACTED]- on July 28, August 14, October 1 and November 29, 2001;
- Two school records for the former couple's daughter, Julia, which are dated in 2002 and 2003 and state that [REDACTED] is her father; and
- Copies of four photographs of the petitioner and her husband at their wedding and on one other, unspecified occasion.

In her affidavit, the petitioner states that she met [REDACTED] shortly after her arrival in the United States in 1989 at the shampoo factory where they were both working. The petitioner reports that they began dating and moved in together around May 1989. The petitioner states that [REDACTED] left her when their daughter was about 7 months old, in 1990. The petitioner explains that she reconciled with [REDACTED] in 2001 and they were married. The petitioner does not further describe how she met her husband, their courtship, reconciliation, marriage, joint residence or any of their shared experiences, apart from the abuse. The petitioner's friend, Ms. [REDACTED], also fails to provide probative details to support the petitioner's claim. Ms. [REDACTED] simply states that she knew the petitioner when she met V-R- and after the former couple was married.

As discussed by the director, the documentary evidence fails to establish the petitioner's good-faith entry into the marriage. The former couple's daughter was born 11 years prior to their marriage and the school records confirm that V-R- is [REDACTED] father. Yet [REDACTED] birth in 1990 and her school records' recognition of V-R-'s paternity do not establish the petitioner's good-faith entry into marriage with [REDACTED] in 2001. The photographs show that the petitioner and her husband were together at their wedding and on one other, unspecified occasion, but the pictures are insufficient to establish the petitioner's good-faith entry into their marriage.

The copy of the petitioner's 2001 income tax return indicates that she was not residing with [REDACTED] as a married couple throughout that year and the petitioner submitted no evidence that the former couple ever jointly filed income tax returns during their marriage. In addition, the 2004 and 2005 bank statements are dated after the petitioner states that she and her husband ceased living together in January 2003.

The remaining bank statements also fail to support the petitioner's claim. A single withdrawal of \$40 is the only activity listed on the September 2002 bank statement, which lists an average balance of \$148. The October 2002 bank statement lists no withdrawals or deposits and an average balance of \$144. The December 2002 bank statement only lists withdrawals and deposits shortly before and after the Christmas and New Year's Day holidays and states an average balance of \$242. The bank statements are insufficient to establish that the petitioner and her husband routinely used the joint account. In addition, the 2001 withdrawal and deposit slips are signed only by [REDACTED] - and do not establish that the petitioner also used the account during that year.

The petitioner submitted no other documentary or testimonial evidence of her allegedly good-faith entry into marriage with her husband of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the 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).

On appeal, counsel states:

The officer seems to define a 'good faith' relationship as a marriage where the couple resides together in a stable marriage with conforming documentation. This, however, is exactly what an abusive marriage is NOT. Over the twelve year relationship that the couple has maintained, they have separated and come back together several times [emphasis in original].

We do not read the director's decision as imposing a heightened burden of proof on the petitioner that did not consider the circumstances of the abusive marriage. The director addressed all the relevant evidence submitted by the petitioner in detail.

Counsel's assertion regarding the former couple's multiple separations and reconciliations is also not supported by the record. In her affidavit, the petitioner states that she first reconciled with [REDACTED] in 2001 when they were married. Subsequent to their marriage, the petitioner states that her husband left their home after an incident of abuse in January 2003 and thereafter "would come and go as he pleased." The petitioner states that another incident of abuse occurred on December 5, 2004 when her husband "showed up at the house drunk." On the Form I-360, the petitioner states that she stopped residing with [REDACTED] in January 2003. The petitioner thus indicated that the former couple ceased living together as husband and wife in January 2003, although her husband would periodically appear at her home and abuse her. The petitioner does not state that she and her husband reconciled and continued their marital relationship at any time after January 2003. Accordingly, the director never requested the

petitioner to submit evidence of her good-faith entry into the marriage dating from after the former couple's separation in January 2003.

The relevant documents do not establish the petitioner's good-faith entry into marriage with her husband. The petitioner also failed to provide probative testimony regarding how she met her husband, their courtship, reconciliation, wedding, joint residence or any of their shared experiences, apart from her husband's abuse. 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)(B)(ii)(I)(aa) of the Act.

Joint Residence

- The petitioner's June 28, 2005 affidavit;
- Affidavit of the petitioner's friend, [REDACTED];
- Copy of the petitioner's 2001 federal income tax return filed by the petitioner individually as head of household;
- Checking account statements jointly addressed to the petitioner and [REDACTED] for January 1-31, 2005; June 1-4, 2004; September, October and December, 2002 and copies of four withdrawal and deposit slips for the account signed by [REDACTED] on July 28, August 14, October 1 and November 29, 2001;
- Two school records for the former couple's daughter, [REDACTED], which state that [REDACTED] is her father;
- Copy of an earnings statements of the petitioner's husband dated June 15, 2001;
- The Form G-325A, Biographic Information, signed by the petitioner's husband on April 18, 2001 and submitted with his Form I-130, Petition for Alien Relative, filed on the petitioner's behalf; and
- The petitioner's Forms G-325A submitted with her husband's Form I-130 and with the instant petition.

On the Form I-360, the petitioner states that she resided with her husband from May 1989 to January 2003. However, in her affidavit, the petitioner states that her husband abandoned her in 1990 and that in 1993, she entered into a relationship with another man with whom she had two children, but who left her in 1996. The petitioner indicates that she did not begin residing with her husband again until they reconciled in 2001 and that they subsequently separated in January 2003. The Forms G-325A submitted with the Form I-130 filed by the petitioner's husband on her behalf show that the former couple resided at an address on [REDACTED] from February 2001 through the date their Forms G-325A were signed on April 18, 2001. However, the petitioner's 2001 income tax return was filed individually as head of household, which indicates that she did not reside with her husband throughout 2001. In addition, the June 10, 2001 earnings statement of the petitioner's husband is addressed to him at another residence and the record contains no evidence that the petitioner ever lived with her husband at that address.

The remaining relevant evidence fails to establish that the petitioner resided with her husband. Ms. [REDACTED] states that she knew the petitioner in 1989 when she met [REDACTED] and moved in with him and that

Ms. [REDACTED] lived nearby the former couple after they were married. Yet Ms. [REDACTED] does not indicate that she ever visited the former couple at their home and she provides no further, probative information regarding their allegedly joint residence. The school records simply state that the petitioner and her husband are Julia's parents. The documents are not addressed to the former couple and do not otherwise establish their joint residence.

The 2004 and 2005 bank statements are dated after the petitioner states that she and her husband separated in January 2003. The September, October and December 2001 bank statements are jointly addressed to the former couple at the Jersey Avenue residence, but, as discussed in the preceding section, the evidence does not show that the account was actually used by both the petitioner and her husband and these three statements alone are insufficient to establish the former couple's joint residency.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and in the RFE and 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).

On appeal, counsel suggests that the cycle of abuse prevented the petitioner from submitting further evidence of her residence with her husband. Counsel states, "While the petitioner may have stated that she was 'separated', [sic] in reality her husband and she would reunite and the abuse cycle would begin again. She moved several times in order to escape him and yet he would find her again. It was an 'on-again-off-again' relationship at best[.]" The record does not support counsel's assertion that the couple separated and reunited multiple times. As discussed in the preceding section, the petitioner, in her affidavit, states that she first reconciled with her husband in 2001 when they were married and she indicates that they resided together until an incident of abuse in 2003, which caused their separation. Although the petitioner states that her husband would thereafter "come and go as he pleased," she does not indicate that they ever reconciled and continued to reside together after their separation in January 2003. Even if the former couple did reside together after 2003, the petitioner submits no testimony regarding the effect of her husband's abuse on her ability to document their joint residency either before or after that date. The petitioner also failed to explain the discrepancy noted by the director in his October 4, 2006 decision regarding the petitioner's residence in 2001 at the Jersey Avenue address and her husband's June 2001 earnings statement addressed to him at a different residence.

In sum, the relevant evidence fails to establish that the petitioner resided with her husband, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

The petitioner has not established that she entered into marriage with her husband in good faith and resided with him. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) 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 appeal will be dismissed.

ORDER: The appeal is dismissed.