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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
EAC 06 153 51357

Office: VERMONT SERVICE CENTER

Date: DEC 03 2008

IN RE: Petitioner: [Redacted]

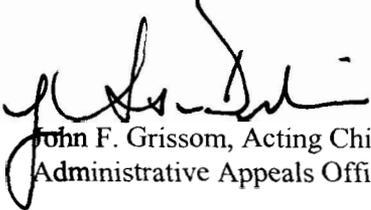
PETITION: Petition for Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


John F. Grissom, Acting 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 is a native and citizen of Jamaica who seeks classification as an immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the abused spouse of a United States citizen.

The director denied the petition because the record failed to establish that the petitioner had a qualifying relationship with a United States citizen.

The petitioner timely appealed.

Section 204(a)(1)(A)(iii) of the Act states:

(I) An alien who is described in subclause (II) may file a petition with the [Secretary of Homeland Security] under this clause for classification of the alien (and any child of the alien) 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.

(II) For purposes of subclause (I), an alien described in this subclause is an alien –

(aa)(AA) who is the spouse of a citizen of the United States;

(BB) who believed that he or she had married a citizen of the United States and with whom a marriage ceremony was actually performed and who otherwise meets any applicable requirements under this Act to establish the existence of and bona fides of a marriage, but whose marriage is not legitimate solely because of the bigamy of such citizen of the United States; or

(CC) who was a bona fide spouse of a United States citizen within the past 2 years and –

(aaa) whose spouse died within the past 2 years;

(bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or

(ccc) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse;

(bb) who is a person of good moral character;

(cc) who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) or who would have been so classified but for the bigamy of the citizen of the United States that the alien intended to marry; and

(dd) who has resided with the alien's spouse or intended spouse.

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) prescribes that when acting on self-petitions for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the Secretary of Homeland Security:

[s]hall 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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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.

The evidentiary standard and 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.

* * *

(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.

In this case, the record provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Jamaica, who entered the United States on May 27, 2005 as the K-1 nonimmigrant fiancée of C-S-,¹ a U.S. citizen. The petitioner did not marry C-S-. On April 17, 2006, the petitioner filed this Form I-360. On Part 3 of the Form I-360, the petitioner indicated that her marital status was "single." On Part 7, section B of the Form I-360, where self-petitioners are asked to provide the date and place of their marriage to the U.S. citizen or lawful permanent resident abuser, the petitioner stated "N/A." On September 12, 2006, the director issued a Notice of Intent to Deny (NOID) the petition because the petitioner failed to provide evidence that she had a qualifying relationship with a U.S. citizen in that the petitioner did not have a marriage ceremony with C-S-. In response to the NOID, the petitioner did not submit any additional evidence; instead, counsel requested an extension of time to provide the requested evidence. On December 8, 2006, the director denied the extension request and denied the petition based on the ground cited in the NOID. Counsel timely appealed.

On appeal, counsel argues that the approved Form I-129F petition, is prima facie evidence that the petitioner was the intended spouse of C-S-, and that "there is no indication whatsoever in [section 204(a)(1)(A)(iii)(I)(bb)]² that a marriage ceremony must have been performed; only that the petitioner

¹ Name withheld to protect individual's identity.

² Counsel miscites this provision as "Section 204(a)(1)(A)(iii)(bb) of the Act."

and the beneficiary must have intended that their relationship culminate in marriage.” Counsel is mistaken in his interpretation of the statute. Although section 204(a)(1)(A)(iii)(I)(aa) and (bb) of the Act references “the intent to marry the United States citizen” and the “relationship intended by the alien to be legally a marriage,” these clauses do not describe the qualifying relationship requisite to immigrant classification under this self-petitioning provision of the statute. Section 204(a)(1)(A)(iii)(I) of the Act specifically states that only an alien “described in subclause (II)” is eligible to file a self-petition. In this case, the pertinent provisions of subclause (II) describes an alien who is either “the spouse of a citizen of the United States” or believed that he or she had married a U.S. citizen with whom a marriage ceremony was actually performed, but whose marriage was invalid “solely because of the bigamy of such citizen of the United States.” Section 204(a)(1)(A)(iii)(II)(aa)(AA), (BB) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(AA), (BB). In this case, the petitioner’s mere intent to marry her fiancé is insufficient to establish a qualifying relationship under section 204(a)(1)(A)(iii)(II)(aa) of the Act: she is neither the spouse of a U.S. citizen nor a party to a U.S. citizen’s bigamy.

We concur with the director’s determination that the petitioner did not establish a qualifying spousal relationship with C-S-, her former fiancé, because they were never married and no marriage ceremony was actually performed. Aliens who have been abused by their U.S. citizen fiancés are not eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Beyond the director’s decision, the record also fails to establish the requisite battery or extreme cruelty and joint residence.

Qualifying Relationship and Eligibility for Immediate Relative Classification

The statute is clear: An alien who has not married a U.S. citizen is only eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien believed that he or she had married a U.S. citizen with whom a marriage ceremony was actually performed, but whose marriage was not legitimate solely because of the U.S. citizen’s bigamy. Section 204(a)(1)(A)(iii)(II)(aa)(BB) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(BB). In this case, the petitioner submitted no evidence that a marriage ceremony was actually performed between her and her former fiancé. In her statement dated December 11, 2005, the petitioner states, “I was [sic] to marry C-S- in which it didn’t work out because he was abusing me verbally and then he change [sic] his mind from marrying me.” The petitioner, by her own testimony, states that no marriage ceremony was actually performed between her and C-S-. The record is also devoid of any evidence that the petitioner’s former fiancé committed bigamy. Accordingly, the petitioner has not established that she had a qualifying spousal relationship with her former fiancé pursuant to section 204(a)(1)(A)(iii)(II) of the Act, or that she was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Battery or Extreme Cruelty

Beyond the director’s decision, the record fails to establish battery or extreme cruelty pursuant to section 204(a)(1)(A)(iii)(I)(bb) of the Act because that provision only applies to individuals who

have been battered or subjected to extreme cruelty by a U.S. citizen with whom they had a qualifying spousal relationship. As discussed in the preceding section, the petitioner did not have a qualifying relationship with her former fiancé because they were never married, her former fiancé did not commit bigamy and no marriage ceremony was actually performed.

Joint Residence

Beyond the director's decision, the record fails to establish the joint residence required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. On Part 24 of her Form DS-156, Nonimmigrant Visa Application, the petitioner stated that she would reside with C-S- at his [REDACTED] address in Philadelphia,³ however, on Part 1 and 3 of her Form I-360 petition, the petitioner stated that she resides at a different address in Philadelphia, and makes no indication on the form that she ever lived with her former fiancé. In Part 7, section B of the Form I-360, the petitioner left blank the section asking for the last address where she lived with C-S-. Accordingly, the petitioner has not established that she resided with C-S-.

The petition will be denied for the reasons stated above, with each considered an independent and alternative basis for denial. The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has failed to sustain that burden.

ORDER: The appeal is dismissed.

³ See Form DS-156, Nonimmigrant Visa Application.