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

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[REDACTED]

BS

FILE: [REDACTED]
EAC 06 103 50212

Office: VERMONT SERVICE CENTER

Date: MAR 05 2008

IN RE: Petitioner: [REDACTED]

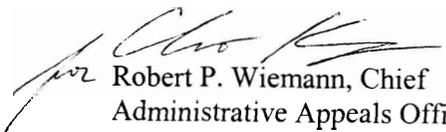
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

[REDACTED]

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.


for 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 Immigration and Nationality Act (“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 finding that the petitioner did not establish that she resided with her former spouse and that she entered into her marriage in good faith.

The petitioner submits a timely appeal with additional evidence.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien’s child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 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 pertinent facts and procedural history. The petitioner is a native and citizen of India who entered the United States on December 23, 2003 as a nonimmigrant visitor (B-2). On June 11, 2004, the petitioner married A-R-¹, a lawful permanent resident of the United States in Nevada. The petitioner filed the instant Form I-360 on February 21, 2006. The director issued a Request for Evidence (RFE) on May 17, 2006 of, *inter alia*, the requisite residence and good faith marriage. The petitioner, through counsel, timely responded to the RFE with additional evidence. On August 29, 2006, the director issued a Notice of Intent to Deny (NOID) that notified the petitioner of the deficiencies in the record and afforded the petitioner the opportunity to submit further evidence to establish her residence with her spouse and her good faith marriage. The petitioner, through counsel timely responded to the NOID with a brief and additional evidence. The petitioner and her spouse were divorced on September 14, 2006. The director denied the petition on November 22, 2006, finding that the petitioner failed to establish that she resided with her former spouse and that she entered into her marriage in good faith. The petitioner submitted a timely appeal with additional

¹ Name withheld to protect individual's identity.

evidence. As will be discussed, we concur with the determination of director and find the petitioner has failed to establish her eligibility on appeal.

Residence

On the Form I-360, the petitioner indicated that she resided with her former spouse at [REDACTED] and [REDACTED] in Santa Clara, California from June 2004 until October 2005. In the statement provided by the petitioner at the time of filing, the petitioner stated:

. . . coming from a traditional background, I wanted his family's blessings before we began living together. So, after we got married, we agreed that we should keep our separate apartments in the same complex until we got [A-R-'s] family's approval. I[n] our minds, we could not live together without the approval from the both families, and a subsequent religious ceremony. Yet, he often came over home when my mother was traveling and spent nights with me in my mother's house.

Every day, for more than a year, my husband was making promises, telling me that he would get his parents' approval, but nothing happened. Meanwhile, I continued to live wit[h] my mom, and he lived with his roommate. As both apartments were in the same complex, we were together all the time.

Although the petitioner submitted statements from her mother and two acquaintances, the statements contained no information regarding the petitioner's residence with her former spouse. In response to the director's RFE, counsel submitted a brief in which she reiterated the petitioner's acknowledgment that she and her former spouse did not reside together. Counsel stated:

They decided to keep both units subsequent to getting married because their culture requires both parent's consent and blessing of the marriage before moving in together, which they did not have . . . During this time [the petitioner and her spouse] were together all the time even though they kept their own apartments.

As documentary evidence of their "co-habitation," the petitioner submitted her spouse's auto insurance card, dated September 21, 2004, which indicated his address as [REDACTED] and a receipt notice for the petitioner's Form I-539, Application to Extend/Change Nonimmigrant Status, which indicated the petitioner's address in care of her spouse as [REDACTED]

In response to the director's NOID, counsel submitted a brief but no further evidence to establish the petitioner's residence with her former spouse.

On appeal, the petitioner submits a brief from counsel with additional evidence. In her brief, counsel argues that the current law gives no specified amount of time that a petitioner must have lived with the abusive spouse and that a petitioner can qualify even if he or she lived with the abuser for only a

short time. Counsel then states:

In the present case too, the fact that the [petitioner] and her abusive former husband . . . kept two separate apartments, even after being married to each other, does not and should not be interpreted to mean that they did not reside as husband and wife at any point of time.

* * *

There is no legal requirement, nor is it part of the definition of marriage in any state law for a legally married husband and wife to live together under the same roof, for any amount of time, when there is evidence to prove the fact of the marriage, in the form of licenses, witness affidavits, and finally a divorce decree.

Counsel's argument is not persuasive. A legal marriage is not evidence that the marriage is bona fide, nor is it evidence of the joint residence required by section 204(a)(1)(B)(ii)(II)(dd) of the Act. In this instance, although the petitioner acknowledges that she and her former spouse lived in separate apartments, she bases her claim of their joint residence on an unspecified number of nights spent with her former spouse at her mother's house while her mother was traveling. Apart from the claimed abuse, the petitioner does not describe, for example, any events shared together in their residence or any of their shared possessions.

The petitioner submits additional evidence on appeal with no explanation of why the evidence submitted on appeal was not available for submission below. Regardless, the evidence (which consists of copied rent receipts, a California Department of Motor Vehicles (DMV) printout, automobile insurance cards, and an unsigned statement) does not establish the petitioner's residence with her former spouse.

While counsel states that the copies of the rental receipts demonstrate that the petitioner's former spouse paid the rent for both apartments, the rental receipts do not contain any signature to indicate who paid the rent. In addition, the "receipts" are photocopied carbon copies from a personal checkbook. The copies are not of receipts issued by the lessor to the petitioner or her former spouse. Moreover, even if the petitioner established that her former spouse did pay the rent for her apartment on two separate occasions, this evidence does not establish that the petitioner and her former spouse resided together. The DMV printout, issued on April 15, 2004, lists the petitioner's former spouse's address as [REDACTED] San Jose, California. As this is not an address claimed by the petitioner on the Form I-360 or in her statement, we find no relevance between this document and the petitioner's claim of a joint residence with her former spouse. Similarly, the copy of the petitioner's automobile insurance card demonstrates that it was effective on February 28, 2006, four months after the petitioner indicated that she no longer resided with her former spouse, and contains an address not claimed as a residence with her former spouse. The unsigned statement, submitted on the petitioner's behalf by [REDACTED], the manager of her apartment complex, confirms the fact that the petitioner and her former spouse resided in separate apartments and that the petitioner's former spouse "informed [her] that although they have been married, they wanted to get married the

traditional Indian way before they began living in the same apartment.” While [REDACTED] also stated that the petitioner’s former spouse would go to the petitioner’s home for lunch when her mother was not present, she does not indicate that she was aware of any other times the former couple spent together at the petitioner’s mother’s apartment.

The documentary evidence contained in the record lists separate addresses for the petitioner and her former spouse. The testimonial evidence submitted by the petitioner and on her behalf establishes that the petitioner and her former spouse lived in separate apartments. While we do not dispute that the petitioner and her former spouse shared lunch and unspecified nights together when the petitioner’s mother was not present, we do not find the petitioner has established that she resided with her former spouse either at her mother’s apartment or at the apartment the petitioner’s former spouse shared with his roommate. The petitioner has failed to provide specific details regarding the times she and her former husband shared together in the claimed residences, their routines, shared possessions, or other testimony that establishes their residence together. Accordingly, we concur with the determination of the director that the petitioner has failed to establish that she resided with her former spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. This finding has not been overcome on appeal.

Good Faith Entry into Marriage

In the statement submitted by the petitioner at the time of filing, the petitioner describes meeting her former spouse soon after arriving in the United States. She claims that she was introduced to her former spouse by friends and they started dating. She states that after “about twenty days” of dating, her former spouse proposed to her. The petitioner then claims that she found out her parents had arranged a marriage for her with another man but despite that fact, she “did not want to rush anything” with A-R-. She claims that she loved A-R- but that she “was happy just the way it was.” However, she states that because A-R- insisted that they get married immediately, they were married the next day. Although the petitioner claims that they “saw each other on a daily basis, and spent a lot of time together,” she does not provide any further details regarding their courtship, time spent together prior to their marriage, or her reasons for marrying A-R-. The petitioner also provides no details regarding their life together after the marriage, except as it relates to her claim of abuse.

The statements submitted on the petitioner’s behalf offer no further probative details to establish that the petitioner intended to establish a life with her former spouse at the time she married him. The petitioner’s mother does not describe the petitioner’s relationship with her former spouse prior to their marriage and states only that, “their’s was the love marriage.” The remaining statements contain similarly general statements. [REDACTED] states that she “casually” knew the petitioner’s former spouse and “believed them to be married” because he was introduced as the petitioner’s husband and did not deny it. [REDACTED] states that he witnessed the petitioner with her former spouse several times and that “they appeared to be very much in love with each other” [REDACTED] states that the petitioner and her former spouse “were sharing a very loving relationship” and that she “could feel [the petitioner’s] happiness after getting married” None of the statements describe any

shared events with the petitioner and her former spouse in detail and although they conclude that the petitioner was happy and “in love,” they fail to describe the interactions between the petitioner and her former spouse, which led them to their conclusions.

The documentary evidence contained in the record consists of photographs of the petitioner and her former spouse after their marriage ceremony. While the petitioner also submitted other undated and uncaptioned photographs, the petitioner fails to describe the photographs, the date, time and importance of the events, and to provide any other information about the photographs to establish their relevance to her claim of a good faith marriage.

On appeal, the petitioner submits copies of electronic mail messages and receipts as evidence that her spouse assisted the petitioner and her mother in filing for an extension of their visas. The petitioner also submits copies of rent receipts, vehicle registration information, automobile insurance cards, and a copy of a Wells Fargo Visa card to support her claim of a good faith marriage. We do find this evidence to be persuasive. As previously noted, the check receipts do not contain a signature or other evidence to establish that the petitioner’s spouse actually wrote the checks as claimed. Even if it were established that the petitioner’s spouse assisted in filing the visa extension and paid the rent for the petitioner for two months during their 14-month marriage, these facts do not establish the petitioner’s good faith intent in marrying her spouse. While the petitioner also submitted evidence that her spouse was the owner of a car that was listed under the petitioner’s current automobile insurance, the evidence does not demonstrate that she and her spouse had a joint policy or jointly owned any vehicle. We also note that the petitioner’s statement contains no explanation of this arrangement. Although the petitioner submitted a copy of a Wells Fargo Visa card in her spouse’s name, the petitioner has not demonstrated her use of this card, such as by providing statements or receipts that demonstrate her purchase of items. Finally, the general statement from ██████████ that the petitioner and her spouse behaved like a couple from the “little interaction” she witnessed is not sufficient to establish the petitioner’s claim. ██████████ does not describe how they behaved like a couple other than to state that they ate lunch together on occasion.

Accordingly, we concur with the determination of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. This finding has not been overcome on appeal.

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.