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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

B9

[REDACTED]

FILE: [REDACTED]
EAC 07 051 50315

Office: VERMONT SERVICE CENTER

Date: **APR 02 2009**

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administration Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(i) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(B)(i), as an alien battered or subjected to extreme cruelty by a United States lawful permanent resident.

We concur with the director's determination that the petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by her spouse, E-G-¹. We also concur with the director's determination that the petitioner has not established that she was married to a lawful permanent resident when she filed the petition, although we base our decision on different grounds. We also find, beyond the decision of the director, that the record does not include sufficient evidence to establish that the petitioner entered the marriage in good faith. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

On November 20, 2007, the director denied the petition, finding that the petitioner failed to establish a qualifying relationship with a lawful permanent resident of the United States and her eligibility for preference immigrant classification based on such a relationship as she had not submitted evidence that E-G- is a lawful permanent resident. The director also found that the petitioner had not established that she had been subjected to battery or extreme cruelty as set out in the statute and regulations.

On appeal, counsel asserts: that the marriage is a *bona fide* marriage and was entered into in good faith; that E-G- is a national and native of Cuba and that the petitioner as a spouse who has been subjected to extreme cruelty was not required to reside with E-G- when she filed the petition; and that when the petitioner learned of E-G-'s infidelity, she was verbally degraded and abused by E-G- requiring medical treatment.

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, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security]:

- (aa) the marriage or the intent to marry the lawful permanent resident 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.

¹ Name withheld to protect individual's identity

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

The eligibility requirements are also explained 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 explained 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 matter provides the following pertinent facts and procedural history. The petitioner in this matter is a native and citizen of Brazil. The petitioner married E-G- on April 28, 2003 in the State of Florida. At the time of their marriage E-G- claimed to be a lawful permanent resident of the United States pursuant to the Cuban Adjustment Act. The record includes a photocopy of E-G-'s permanent resident card. The petitioner filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on May 13, 2003 and subsequently withdrew the Form I-485 on February 17,

2006, stating that she was separated from E-G-. The record includes a divorce decree terminating the petitioner and E-G-'s marriage on November 13, 2006. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on December 11, 2006. The director issued a Request for Further Evidence (RFE) on July 2, 2007. Upon review of the record, including the response to the RFE, the director denied the petition on November 20, 2007 for the reasons detailed above.

Qualifying Relationship

The AAO finds that section 204(a)(1)(B)(ii) of the Act requires that the petitioner establish that she is married to a permanent resident at the time of the filing of the Form I-360 petition unless he or she establishes that a divorce within the two years following the filing of the petition is due to an incident of domestic violence. *See* section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act. In this matter, the record shows that the petitioner's marriage to E-G- was legally terminated on November 13, 2006 and she filed the Form I-360 petition one month later on December 11, 2006. As will be discussed below, the petitioner has not established that she suffered battery or extreme cruelty perpetrated by her former spouse during the marriage. Thus, the petitioner has not provided evidence that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States when the petition was filed or that the marriage was legally terminated as a result of an incident or incidents of abuse. The petitioner has not satisfied the requirements of 204(a)(1)(B)(ii) of the Act and is not eligible for this benefit.

Eligibility for Immigrant Classification

The AAO also finds that the petitioner has failed to demonstrate the requisite eligibility for immigrant classification as an immediate relative based on her marriage to E-G-. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(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 lawful permanent resident. As discussed in the preceding section, the petitioner has failed to establish a qualifying relationship with E-G- when the petition was filed. Accordingly, the petitioner has failed to demonstrate her eligibility for preference immigrant classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Battery or Extreme Cruelty

The AAO has reviewed the petitioner's initial personal statement in which she related that toward the end of 2005, E-G- stopped his commitments to the household, changed radically, his mood became unbearable, and in October 2005 he left the house without any explanations. The petitioner further indicated that in February 2006, prior to her interview with United States Citizenship and Immigration Services (USCIS) regarding her Form I-485 interview, E-G- told her that he had another woman who was pregnant. In the petitioner's second personal statement provided in response to the director's RFE, the petitioner indicated that there was minimal discord between she and E-G- until June 2005, when she realized E-G- was hiding things from her. The petitioner stated that there were

verbal maltreatments of her during this time and that her emotional state hindered her professional life. The petitioner reiterated that E-G- left their home at the end of October and she learned that he was living with another woman. The petitioner indicated that she had to be treated by a doctor and take antidepressants to calm her sadness and depressive stress. The petitioner reported that although they had discussed the issue of their age difference prior to marriage and E-G- indicated it was not a problem, E-G- now told her that she was too old for him, they could not have children, and he did not see a future with her. The petitioner stated that her self-esteem was damaged.

The AAO has also reviewed the letters and statements from the petitioner's friends, colleagues, and acquaintances who indicate their awareness of the petitioner's marriage and the break up because of another woman and the other woman's pregnancy. In response to the director's RFE, the petitioner provided an August 30, 2007 letter signed by [REDACTED] who indicates that the petitioner's emotional stability, critical sense, and ability to perform her job were demolished by the actions of E-G-. [REDACTED] stated that the petitioner lost fame, money, investments, her job, clients, and her credibility due to extreme depression and emotional pain caused by the adultery of E-G-. The petitioner provided several additional letters also indicating that the petitioner had suffered emotional pain because of her former husband's abandonment of her for another woman. The AAO has further reviewed the October 4, 2006 letter of [REDACTED] who prescribed Ambien, Xanax, and Prozac for the petitioner indicating that the petitioner had been diagnosed with a depressive disorder and a general anxiety disorder. The record on appeal also includes a March 7, 2007 letter from [REDACTED] who notes that the petitioner continues under her care for major depressive disorder, single episode and continues on medications and psychotherapy. The record on appeal includes verification that the petitioner is under the treatment of [REDACTED] for high blood pressure and anxiety that may be due to the stress that the petitioner is under

Upon review of the petitioner's statements and the statements and letters submitted on her behalf, the AAO finds that these statements are general in nature and lack probative detail. The petitioner in her statements speaks generally of verbal abuse and the shame she feels because her husband left her for another woman who was having his baby. The petitioner does not claim that she was subjected to battery by E-G- but complains generally of verbal maltreatment and her abandonment. The petitioner's friends, colleagues, and acquaintances do not detail specific instances of abuse, but again note only generally that the petitioner has suffered because of the breakdown of her marriage because of her spouse's involvement with another woman. The AAO finds that the petitioner has not established that E-G-'s behavior, including infidelity and abandonment, rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The AAO has reviewed the statements provided by the petitioner's doctors and finds that the doctors do not provide examples of any causal relationship of any "abuse" perpetrated by E-G- to the petitioner's depression. Moreover, the AAO reiterates that infidelity and abandonment do not comprise the sort of "abuse" set out in the statute and regulations governing eligibility for this benefit.

As discussed above, the documentary evidence contained in the record is insufficient to establish the petitioner's claim of abuse. Accordingly, the petitioner failed to establish that she was battered or subjected to extreme cruelty by E-G- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Beyond the decision of the director, the petitioner has not supplied the necessary documentation to establish that she resided with E-G- and that she entered into the marriage in good faith.

Residence

The AAO has reviewed the documents submitted to establish that the petitioner resided with E-G- as required by 8 C.F.R. § 204.2(c)(1)(v). The petitioner indicated on the Form I-360 that she resided with E-G- at an address on [REDACTED] in Miami, Florida from April 2003 to November 2005. The petitioner submitted:

- An unsigned copy of an Internal Revenue Service (IRS) Form 1040, U.S. Individual Income Tax Return for 2003 showing that the petitioner and E-G- had filed jointly and showing their address as an address on [REDACTED]. The schedule K-1 attached to the Form 1040 shows that E-G-'s address is on [REDACTED] in Miami, Florida;
- A document from the IRS indicating that a 2004 tax return had been filed by the petitioner and E-G- claiming an address on [REDACTED] in Miami, Florida;
- USCIS Receipt Notices dated May 13, 2003 and March 29, 2004 sent to the petitioner at the address on [REDACTED] in Miami, Florida;
- A July 8, 2003 letter addressed to the petitioner from the Social Security Administration to an address on [REDACTED] in Miami, Florida;
- Bank Statements for the periods from July 23, 2005 to October 21, 2005 addressed to the petitioner and E-G- at [REDACTED] in Miami, Florida;
- A photocopy of an undated bank letter addressed to the petitioner and E-G- at 825 [REDACTED] in Miami, Florida for a transaction that occurred May 31, 2005; and
- A September 12, 2007 bank letter referencing the petitioner and E-G- without including an address, that certifies that the petitioner and E-G- have been customers of the bank since April 4, 2005 and indicating that they continue to have a checking account with us.

Upon review of the documents submitted, the AAO finds the petitioner has submitted inconsistent information to demonstrate that she resided with E-G- during their qualifying relationship. The documentation submitted does not confirm that the petitioner resided with E-G- at the address noted on the Form I-360. Moreover, it appears from the documentation submitted that the petitioner was living at an address on [REDACTED] in Miami, Florida and E-G- was living at an address on [REDACTED] in Miami, Florida when the 2003 IRS 1040 was filed. It is unclear from the

record why bank statements would be sent to different addresses on [REDACTED] in Miami, Florida ostensibly during the time the petitioner claims she resided with E-G- on [REDACTED]. Further, it is unclear why the petitioner would continue to have an open checking account in September 2007 with E-G- almost a year after her divorce from him. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not include sufficient information establishing that the petitioner resided with E-G-.

Good Faith Marriage

The AAO has also reviewed the petitioner's personal statements to determine whether the petitioner has provided evidence of her intent upon entering the marriage. The petitioner's initial statement provides little background information relating to the couple's courtship. The petitioner stated that in November 2002 she was introduced to E-G- in connection with a gallery auction event and "[d]uring our preparation for the event a nice friendship arose. In April 28, 2003 we decide to marry, without importing [sic] the difference of age, for which we were already discuss [sic] since it had begun our relation." In the petitioner's statement in response to the director's RFE, the petitioner noted that during the two months in which she and E-G- held a professional relationship, feelings of love arose. She added that the relationship was very beautiful and wonderful and they decided to unite in a formal way in April in Miami, Florida and that when they traveled to Brazil they married in the church and she introduced E-G- to friends and family. The record also includes photographs of the petitioner and E-G- in what appears to be a civil ceremony before a clerk in Florida and pictures of the couple on a couple of different occasions, as well as a picture of the petitioner, E-G- and two other individuals in what appears to be an excerpt from a local newspaper. The AAO notes that the caption on the newspaper photograph does not identify the relationship of the four individuals and is not from a copy of an identifiable newspaper that includes a date.

The AAO finds that the photographs although documenting a civil ceremony and showing the petitioner interacting with E-G- on several occasions do not demonstrate the petitioner's good faith in entering her relationship with E-G-. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence also fails to support a finding that she entered into the relationship with E-G- in good faith. The petitioner provides general information regarding her introduction to E-G- and their subsequent professional relationship and then a conclusory statement that the couple married. The record does not include sufficient probative details about the petitioner's initial relationship with E-G- and the subsequent interactions with E-G- that allow a conclusion that the petitioner entered into the marriage in good faith. Accordingly, the AAO finds that the petitioner has failed to establish that she entered into her relationship with E-G- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied

by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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. The petitioner has not sustained that burden.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.