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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**



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FILE: EAC 07 074 50031 Office: VERMONT SERVICE CENTER Date: **APR 06 2009**

IN RE: [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:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further action.

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 on the basis of his determination that the petitioner had failed to establish that she entered into marriage with her husband in good faith.

The petitioner submitted a timely appeal on January 15, 2008.

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 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 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 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, 8 U.S.C. § 1154(a)(1)(J) 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 filed under section 204(a)(1)(B)(ii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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.

\* \* \*

- (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 petitioner is a citizen of Mexico. She married D-T-,<sup>1</sup> a lawful permanent of the United States, on January 15, 2001. D-T- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner, and it was approved on March 11, 2005.

The petitioner filed the instant Form I-360 on January 17, 2007.<sup>2</sup> On August 6, 2007, the director issued a request for additional evidence to establish that the petitioner is a person of good moral character and that she married D-T- in good faith. After considering the evidence of record, the director denied the petition on December 18, 2007. The petitioner submitted a timely filed appeal.

### **Good Faith Entry into Marriage**

The sole issue on appeal is whether the petitioner has established that she married D-T- in good faith. In finding the evidence of record insufficient to establish this criterion, the director stated that

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<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> The petitioner filed a second Form I-360 on July 19, 2007. See EAC 07 220 50404. It was denied on March 6, 2008.

the affidavits of record provided no details regarding the petitioner's relationship with D-T-. The director noted that the petitioner had provided no evidence of any joint assets or accounts, or commingling of any funds. Nor, according to the director, had the petitioner provided any evidence or information about the couple's courtship. The director also emphasized to the petitioner that although the marriage certificate established that a marriage ceremony had been performed, the marriage certificate not prove that she entered into the marriage in good faith.

On appeal, the petitioner contends that the director erred in denying the petition, and that she married D-T- in good faith. The only information contained in the petitioner's April 22, 2006 affidavit, with regard to her intent upon entering into the marriage, was that she and D-T- began living together as husband and wife in 2000. In her undated statement, which was received at the service center on June 10, 2008, the petitioner states that the director ignored the complexity of her case. The petitioner points to her marriage certificate, approval of the Form I-130, and the evidence that she and D-T- shared a joint residence as evidence of her intent upon entering into the marriage. She also states that the photographs of record, as well as the affidavits, establish her good faith entry into the marriage.

Upon review, the AAO finds that the petitioner's testimony fails to establish that she married D-T- in good faith. The petitioner's affidavit provides very little information that would allow the AAO to ascertain her intentions upon entering into marriage. She does not describe how she met D-T-; her first impressions of D-T-; why she decided to date D-T-; their first date; details about their courtship; the length of their courtship; activities they enjoyed together; when they became engaged; the length of their engagement; details about their wedding; etc. Nor are the photographs of record or tax returns evidence of her intentions upon entering into the marriage: the photographs merely establish that D-T- and the petitioner were together on certain occasions, and the tax returns do not even contain the petitioner's name; D-T- stated on the tax returns that he was single. Further, the AAO notes that the tax returns are not signed, and there is no evidence that they were ever filed with the Internal Revenue Service. While the marriage certificate establishes that she legally married D-T-, it does not establish that she married him in good faith. Nor does the fact that the petitioner shared a joint residence with D-T- establish that she married him in good faith. Also, the AAO finds the petitioner's statements with regard to D-T- upon entering into the marriage irrelevant; the issue here is the intent of the petitioner, not the intent of D-T-, upon entering into the marriage.

Nor is approval of the Form I-130 evidence of the petitioner's intentions upon entering into the marriage, as asserted by the petitioner. Approval of a Form I-130 is not prima facie evidence of the beneficiary's good-faith entry into marriage with her husband under section 204(a)(1)(A)(iii) of the Act. In self-petitions under section 204(a)(1)(B)(ii) of the Act, the alien bears the burden of proof to establish that she or he entered into the marriage in good faith, and the regulation specifically defines the term "good faith marriage" and what types of evidence will suffice to meet that eligibility criterion. 8 C.F.R. §§ 204.2(c)(1)(ix), (c)(2)(vii). Hence, the fact that a self-petitioner was the beneficiary of an approved Form I-130 filed by his or her spouse will not establish that the petitioner actually entered into the marriage in good faith. Further, the AAO notes that the burden

of proof in the Form I-130 filing was on D-T-, and not on the petitioner. While evidence submitted with a Form I-130 petition filed on the petitioner's behalf may be relevant to a determination of her good faith entry into the marriage, reliance on such evidence alone is unwarranted. Had Congress not intended for USCIS to inquire into the bona fides of the marriage, and rely solely upon approval of the Form I-130, it would not have enacted section 204(a)(1)(A)(iii) of the Act to require that petitioner make such a demonstration. For all of these reasons, the AAO rejects the petitioner's assertion that approval of the Form I-130 establishes that she entered into the marriage in good faith.

Nor do the other affidavits of record establish that the petitioner married D-T- in good faith. In their April 22, 2006 affidavits, [REDACTED] and [REDACTED], state that they have known the petitioner for four years. Therefore, they met the petitioner after her January 25, 2001 marriage to D-T-, and are unable to opine on her intentions upon entering into the marriage. In her August 23, 2007 affidavit, [REDACTED] states that she has known the petitioner for five years. As she met the petitioner after her January 2001 wedding to D-T-, she is also unable to opine on the petitioner's intentions upon entering into the marriage. In her August 23, 2007 affidavit, [REDACTED] also states that she has known the petitioner for five years. Again, as [REDACTED] met the petitioner after her January 2001 wedding to D-T-, she is unable to opine on the petitioner's intentions upon entering into the marriage. The relevancy of these affidavits toward a determination of the petitioner's intentions upon entering into the marriage is, therefore, limited.

In his August 23, 2007 affidavit, [REDACTED] discusses the petitioner's good moral character. He does not, however, discuss her intentions upon entering into marriage with D-T-. The same is true of [REDACTED] August 23, 2007 affidavit.

[REDACTED] and [REDACTED] state in their January 9, 2008 affidavits that they knew the petitioner during the couple's courtship, and that they know the petitioner entered into the marriage in good faith. However, the affidavits are insufficiently vague with regard to the petitioner's intentions, and they provide none of the information regarding the couple's relationship discussed previously. Moreover, the AAO notes that their affidavits are nearly identical to one another, which raises the question of who actually wrote them, and lessens their evidentiary weight.

Although [REDACTED] states in his January 8, 2008 affidavit that "there was a courtship" between the petitioner and D-T-, he provides no further information. His affidavit, therefore, is of little probative value.

Finally, the AAO turns to the testimony of [REDACTED] D-T-'s niece, who submits two affidavits. In her August 23, 2007 affidavit, [REDACTED] states that she met the petitioner while she and D-T- were dating, and that she lived with them between 2000 and 2003. She also attests to the petitioner's good moral character. In her December 28, 2007 affidavit, [REDACTED] states that she knows that the petitioner entered into the marriage in good faith, because she witnessed the relationship. She states that the petitioner and D-T- had a loving relationship during their courtship; that they always looked happy; that the petitioner's mother helped the petitioner make her wedding dress; that the wedding was a joyful and memorable occasion; that the petitioner was a very good

wife and homemaker; that the petitioner and D-T- tried to have a child but were unable to conceive; and that the petitioner and D-T- were happy together during most of the marriage. While [REDACTED] does acknowledge the courtship between the petitioner and D-T-, the AAO finds that her testimony still lacks sufficient details to establish that the petitioner married D-T- in good faith.

The evidence of record lacks sufficient detail to establish that the petitioner married D-T- in good faith. Again, the petitioner has failed to describe how she met D-T-; her first impressions of D-T-; why she decided to date D-T-; their first date; details about their courtship; the length of their courtship; activities they enjoyed together; when they became engaged; the length of their engagement; details about their wedding; etc. Nor is there information regarding shared accounts or bills, or evidence of any commingling of any funds. The AAO agrees with the director's determination that the record, as presently constituted, fails to establish that the petitioner married D-T- in good faith. The evidence of record fails to demonstrate that the petitioner entered into marriage with D-T- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

### Conclusion

The AAO agrees with the director's determination that the petitioner has failed to demonstrate that she entered into marriage with D-T- in good faith. She is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii).

However, the record indicates that the director did not issue a notice of intent to deny the petition (NOID) before he denied the petition. Although the record clearly establishes that the petitioner is ineligible for the benefit sought, the petition must be remanded, solely on procedural grounds, so that the petitioner has the opportunity to respond to a NOID. The petition must be remanded to the director for issuance of a NOID in compliance with the regulation in effect at 8 C.F.R. § 204.2(c)(3)(ii)<sup>3</sup> on the date this petition was filed, and the director must afford the petitioner the opportunity to submit a response within the 60-day period. On remand, the director need only address the issue before the AAO on appeal; i.e., whether the petitioner has established that she entered into the marriage in good faith.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's December 18, 2007 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.

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<sup>3</sup> USCIS promulgated a rule on April 17, 2007 related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing of this petition on January 17, 2007.