



U.S. Citizenship  
and Immigration  
Services

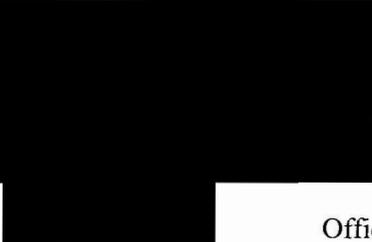
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**APR 27 2009**

FILE:



Office: VERMONT SERVICE CENTER

Date:

EAC 08 095 50775

IN RE:



PETITION: Petition for Immigrant 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

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.

Counsel filed a timely appeal on September 17, 2008.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen 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 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(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:

- (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)(A)(iii) 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 El Salvador who married E-D-<sup>1</sup> a citizen of the United States, on April 12, 2001. According to the petitioner's testimony on the Form I-360, she and E-D- lived together between July 2000 and January 2002.

The petitioner filed the instant Form I-360 on February 11, 2008. The director issued a request for additional evidence on February 22, 2008, and requested additional evidence to establish that the petitioner is a person of good moral character. The petitioner responded on March 4, 2008. The director issued a second request for additional evidence on April 25, 2008, and requested additional evidence to establish that E-D- subjected the petitioner to battery and/or extreme cruelty; that the petitioner shared a joint residence with E-D-; and that the petitioner entered into marriage with E-D- in good faith. The petitioner responded on July 14, 2008. After considering the evidence of record, the director denied the petition on August 25, 2008.

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

The sole issue on appeal is whether the petitioner has established that she married E-D- in good faith. In finding the evidence of record insufficient to establish this criterion, the director stated that there is no evidence of record to establish that the petitioner entered into marriage with E-D- with the intention of creating a life together as husband and wife; that there is no evidence to establish that the petitioner and E-D- actually created a life together; and that there is no evidence of record to establish that the petitioner and E-D- shared in the responsibilities associated with a marriage.

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

The AAO agrees with the director's analysis. As evidence that she married E-D- in good faith, the petitioner submitted affidavits and pictures. However, none of the affiants provide any information relevant to the determination of whether the petitioner married E-D- in good faith. Although the record contains three statements from the petitioner, she fails to describe the couple's courtship and decision to marry in any meaningful way. She states that she met E-D- while they were working through a temporary employment agency in 2000, and that they married one year later. No further information regarding her intentions upon entering into the marriage was ever submitted.

In his June 24, 2008 affidavit the petitioner's son states that E-D- "would take us out," but no further information was provided regarding his mother's intentions upon entering into the marriage. The affidavit from the petitioner's other son, and the affidavit from her daughter, provide no information speaking to the petitioner's intentions upon entering into the marriage. As [REDACTED] and [REDACTED] both indicate that they met the petitioner after her marriage to E-D-; they are unable to opine on the petitioner's intentions upon entering into that marriage, so their affidavits are not useful in determining whether she married E-D- in good faith.

Nor do the pictures provide any information useful in determining whether the petitioner married E-D- in good faith, as no information was provided that would allow the AAO to place them into any sort of context.

In this case, the only information regarding the petitioner's intentions upon entering into the marriage are the affidavits of record. This is not necessarily problematic; the AAO acknowledges that, in certain situations, documentary evidence is simply unavailable. However, the affidavits submitted by the petitioner are insufficient for the AAO to make a determination that the petitioner entered into marriage with E-D- in good faith. The specific problems with the individual affidavits were set forth previously. The record, as it currently stands, contains little information regarding the couple's relationship, such as the circumstances surrounding their first introductions; the petitioner's first impressions of E-D-; their decision to date; their courtship; activities they enjoyed together; their decision to marry; and their wedding. Such information, in the absence of documentary evidence, would have allowed the AAO to make a determination on the petitioner's intentions upon entering into the marriage. In this case, the record contains neither documentary evidence nor testimony.

In his statement accompanying the Form I-290B, counsel contends that the affidavits of record "corroborate that she entered the marriage in good faith." However, for the reasons set forth above, the AAO disagrees. Counsel also asserts that the director's decision was malicious; that he played "gotcha"; that he lied about the evidence of record; and that he denied the petition in bad faith. However, the AAO has reviewed the entire record of proceeding and finds no evidence of any misbehavior on the part of the director.

In his November 19, 2008 letter, counsel contends that "[t]he only reason that [the director] gave for saying the marriage was not in good faith was the absence of documents showing the couple amassed material wealth during the marriage," and that an unpublished decision by the BIA on

November 13, 2008 “mandates” that the petition be approved. The AAO disagrees. First, counsel’s statement that the director’s denial was based upon the fact that the petitioner had failed to demonstrate that the couple “amassed material wealth” is untrue: as noted previously, the director found that the evidence of record failed to demonstrate that the petitioner entered into the marriage with the intention of creating a life together; that they had actually created a life together; or that they had shared in the responsibilities associated with a marriage. Nor does the unpublished BIA decision aid the petitioner’s case. Again, the AAO acknowledges, as did the BIA in the decision submitted by counsel on appeal, that, in certain situations, documentary evidence is simply unavailable. In such cases, where there is no documentary evidence, the testimony of record is critical. However, in this case the affidavits submitted by the petitioner are insufficient for the AAO to make a determination that the petitioner entered into marriage with E-D- in good faith. The testimony of record in this case contains insufficient information regarding the couple’s relationship, such as the circumstances surrounding their first introductions; the petitioner’s first impressions of E-D-; their decision to date; their courtship; activities they enjoyed together; their decision to marry; and their wedding. Such information, in the absence of documentary evidence, would have allowed the AAO to make a determination on the petitioner’s intentions upon entering into the marriage. The record contains neither documentary evidence of the petitioner’s intentions upon entering into the marriage, nor does it contain adequate testimony regarding the petitioner’s intentions upon entering into the marriage. In the absence of both documentary evidence and adequate testimony, the petitioner fails to establish her claim. Counsel and the petitioner have failed to overcome the director’s concerns with regard to the petitioner’s intentions upon entering into marriage with E-D-. The petitioner has failed to establish that she entered into marriage with E-D- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### **Conclusion**

The AAO concurs with the director’s determination that the petitioner has failed to demonstrate that she entered into marriage with E-D- in good faith. She is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.