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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:



Office: VERMONT SERVICE CENTER

Date:

**AUG 07 2009**

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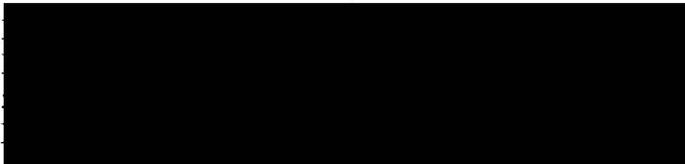
IN RE:

Petitioner:



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.

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 The decision of the director will be withdrawn and the petition will be remanded for further action.

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 because the petitioner did not establish that she resided with her husband and that she married him in good faith.

On appeal, counsel submits a brief, additional evidence, and copies of documents previously submitted.

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 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 filed 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.

\* \* \*

(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 Jamaica who was admitted into the United States as a B-2 nonimmigrant for pleasure on August 28, 2003. On May 8, 2006, the petitioner married G-C<sup>1</sup>, a U.S. citizen, in Fort Lauderdale, Florida.

The petitioner filed the instant Form I-360 on April 30, 2007, and concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On December 21, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residency, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner, through counsel, responded with additional evidence. On June 25, 2008, the director denied the I-360 petition because the petitioner did not establish that she resided with her husband and married him in good faith. On July 15, 2008, the director denied the Form I-485, based upon the denial of the I-360 petition. Counsel timely appealed the denial of the instant I-360 petition.

On appeal, counsel claims that the director's decision is erroneous and without merit. Counsel explains or discounts certain factual inconsistencies and discrepancies cited by the director. As supporting documentation, counsel submits copies of previously submitted documentation, and affidavits from the petitioner and on behalf of the petitioner. Counsel also submits an excerpt from the website of *Women in Distress of Broward County, Inc.* and information pertaining to the "Power

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

and Control Wheel,” produced and distributed by the *National Center on Domestic and Sexual Violence*.

### *Joint Residence*

The record contains the following evidence relevant to the petitioner’s claim that she resided with her husband:

- The petitioner’s affidavits dated April 23, 2007; March 13, 2008; and August 5, 2008 (the latter submitted on appeal);
- The petitioner’s undated Form G-325A, Biographic Information, submitted as supporting documentation for the Form I-485 that she signed on October 24, 2006, on which she stated that she resided at [REDACTED] in Brooklyn, New York, from August 2003 to May 2004, and at [REDACTED] in Ft. Lauderdale, Florida, from May 2004 to the present;
- The petitioner’s Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, signed by the petitioner on November 8, 2006, on which she stated that she resided at [REDACTED], in Ft. Lauderdale, Florida;
- An affidavit from [REDACTED] dated August 10, 2008;
- An affidavit from [REDACTED], dated August 10, 2008;
- An affidavit from [REDACTED], dated August 5, 2008;
- An affidavit from [REDACTED], dated August 10, 2008; and
- Copies of rent receipts, dated from June 1, 2004 through July 1, 2006.

On the Form I-360, the petitioner did not provide the requested information in Part B pertaining to the specific dates she resided with G-C-. For the “last address at which you lived together . . .” and “the last date you lived together with that person at that address,” the petitioner stated: [REDACTED] in Ft. Lauderdale, Florida; September 2006.

At the outset, the record reflects that the petitioner and G-C- were married on May 8, 2006. Although the petitioner claims to have resided with G-C- since 2004, only the time period on and after May 8, 2006 counts as joint residence for 8 C.F.R. § 204.2(c)(1) purposes.

In her April 23, 2007 affidavit, the petitioner states that in August 2004, she and G-C- moved in together and rented a room from her friend, [REDACTED] at the [REDACTED] address. The petitioner states that in September 2006, during an argument about G-C-’s possession of crack cocaine, [REDACTED] told G-C- that he could no longer stay in her home. The petitioner explains that she left with G-C- because, if she did not, he threatened to have her deported. The petitioner states that the same evening she left [REDACTED] home, she called [REDACTED] to rescue her because G-C- had taken her to an abandoned building filled with drug addicts.

In her March 13, 2008 affidavit, the petitioner states that in June 2004, she and G-C- rented a spare room from her friend, [REDACTED], in Ft. Lauderdale, Florida. The petitioner explains that she and

G-C- married on May 8, 2006, and that her friend, [REDACTED] charged them \$200.00 monthly for rent.

In her August 5, 2008 affidavit submitted on appeal, the petitioner states that several months after they were married, she and G-C- went to Bank of America to open a joint account, but the bank would not allow the account because she did not have a social security number. The petitioner states that, in accordance with the bank's advice, G-C- opened an account and named the petitioner as the beneficiary. The petitioner explains that the bank has advised her that, without permission from G-C-, she is unable to obtain documentation pertaining to the account. The petitioner states that she and G-C- lived on meager earnings and paid their expenses in cash. The petitioner explains that she "could not create documents on [her] own because [she] did not have a social security number."

Counsel asserts on appeal that the affidavits from [REDACTED] and the second affidavit from [REDACTED], in addition to the other documents submitted, demonstrate the petitioner's residence with her husband, G-C-. The AAO acknowledges [REDACTED] August 10, 2008 letter submitted on appeal, stating that his wife, [REDACTED] rents a room to the petitioner. [REDACTED] claims that when he arrived from Jamaica in 2005, the petitioner and G-C- were renting a room and living together in his wife's home. [REDACTED] claims that the petitioner and G-C- started to have problems after their marriage in May 2006, and that G-C- "eventually had to move out of the house because of his abusive behavior towards [the petitioner]." As stated above, in these proceedings, only the time period on and after the petitioner and G-C-'s marriage on May 8, 2006, counts as joint residence for 8 C.F.R. § 204.2(c)(1) purposes. [REDACTED] August 10, 2008 letter contains only general statements such as his having spent "many occasions together," going to the beach together and out to dinner at different restaurants, and having holiday "house parties," and do not establish that the petitioner and G-C- resided together after they were married on May 8, 2006. Moreover, although [REDACTED] claims that the petitioner and G-C- celebrated [REDACTED] wedding anniversary with them, he provides no probative details of that occasion.

In his August 10, 2008 affidavit, [REDACTED] claims that when G-C- moved in with the petitioner at the "[REDACTED]" address in August 2004, [REDACTED] was also renting a room at that address. [REDACTED] claims that he moved out in January 2007, and states further: "After I moved from that address, I continued to visit [G-C-] and [the petitioner], and we would continue to play dominos on the weekends." [REDACTED] claim conflicts with the petitioner's claim that she and G-C- ceased residing together in September 2006, and that after that date G-C- continued to stalk and harass her. The record contains no explanation for this discrepancy.

In her August 5, 2008 affidavit, [REDACTED] claims that she met G-C- at the petitioner's home at the "[REDACTED]" address on Thanksgiving 2005, and that she visited them at their home "on a regular basis every weekend for approximately eight months until I moved to Miami." As stated above, only the time period on and after the petitioner and G-C-'s marriage on May 8, 2006 counts as joint residence for 8 C.F.R. § 204.2(c)(1) purposes. [REDACTED] affidavit provides no probative details establishing that the petitioner and G-C- resided together after they were married on

May 8, 2006.

In his August 10, 2008 affidavit, [REDACTED] claims that he visited the petitioner and G-C- every other weekend after the couple moved in together in 2004. [REDACTED] also claims to have driven the petitioner and G-C- to the Bank of America to open a joint bank account soon after they were married in May 2006, and to have heard the bank officer inform them that they could not open an account because the petitioner did not have a social security number, and to have witnessed that the petitioner was "very frustrated." It is noted that [REDACTED] claims that the bank incident occurred "soon after" the petitioner and G-C- were married, while the petitioner claims in her August 5, 2008 affidavit that this incident occurred "several months" after they were married. Again, the record contains no explanation for this discrepancy. In addition, although [REDACTED] claims to have witnessed the disintegration of the petitioner and G-C-'s relationship after their marriage, due to the abusive behavior of G-C-, [REDACTED] affidavit provides no probative details establishing that the petitioner and G-C- resided together after they were married on May 8, 2006. Consequently, the affidavits from [REDACTED] and [REDACTED] do not establish that the petitioner and D-W- resided together.

It is also noted that, although the director points out that the rent receipts, dated June 1, 2004 through July 1, 2006, are made out to [REDACTED] even though the petitioner and G-C- did not get married until May 8, 2006, neither the petitioner nor counsel addresses this issue on appeal.

In sum, the relevant evidence provides scant documentation and contains unresolved discrepancies regarding the petitioner's alleged residence with her husband. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Good Faith Entry into Marriage*

In her April 23, 2007 affidavit, the petitioner states that she met G-C- in May 2004, while she was shopping at a mall with her friend, [REDACTED]. The petitioner states that G-C- followed them to the parking lot where they talked and she, in turn, gave him [REDACTED]'s phone number where she was staying. The petitioner states that when G-C- called her on the following night and asked her out on a date, she was hesitant because she did not know him. The petitioner states that G-C- ended up taking her and [REDACTED] to the Red Lobster for dinner, after which the petitioner and G-C- talked every night on the phone, saw each other on a regular basis, and started falling in love. The petitioner states that in August 2004, they rented a room together at [REDACTED]'s house and their lives seemed perfect together up until they married on May 8, 2006.

In her March 13, 2008 affidavit, the petitioner reiterates the information from her April 23, 2007 affidavit about how she and G-C- first met, only she now states that while shopping with Ms. [REDACTED] at the mall, they ran into her cousin, [REDACTED], who was with his friend, G-C-, whom her cousin introduced to them. The petitioner also states that after they had dated and fallen in love, she was planning to return to New York and then to Jamaica, but G-C- begged her not to go and asked her

if they could move in together. The petitioner states that they first lived at his home in Belle Glade, Florida, and then in June 2004, they rented a room at [REDACTED]'s house. The petitioner states that G-C- moved from [REDACTED] to Fort Lauderdale towards the end of July 2004 to be with her full time. The petitioner explains that she and G-C- married on May 8, 2006, and her friend, [REDACTED] charged them \$200.00 monthly for rent.

In her August 5, 2008 affidavit submitted on appeal, the petitioner states that in August 2004, when she and G-C- moved in together full time at the [REDACTED] address, she had no documentation, social security number, work permit, or Florida identification, and that several months after they were married, she and G-C- tried to open a joint bank account but were unsuccessful because she had no social security number.

In this matter, the petitioner claims that she and her husband lived together from the date of their marriage on May 8, 2006 to September 2006. Counsel asserts on appeal that the affidavits from [REDACTED] and the second affidavit from [REDACTED] are also submitted as evidence that the marriage was entered into in good faith, in addition to the petitioner's August 5, 2008 affidavit. The affidavits from [REDACTED] and [REDACTED] contain primarily general statements regarding the petitioner's relationship with her spouse, such as "we all lived together as one happy family" and "[w]e had a great time." Moreover, as discussed above, in her August 5, 2008 affidavit, the petitioner states that "several months" after she and G-C- were married, they tried to open a joint bank account but were unsuccessful because she had no social security number, while in his August 10, 2008 affidavit, [REDACTED] states that he drove the petitioner and G-C- to the Bank of America to open a joint bank account "soon after" they were married in May 2006. Again, the record contains no explanation for this discrepancy. Moreover, the affidavit from [REDACTED] also contains the unexplained discrepancy discussed above. It is also noted that although the wedding cards and photographs confirm that the petitioner and G-C- were married and pictured together, these documents alone do not establish the petitioner's good-faith entry into the marriage.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, as discussed above, the record contains unresolved inconsistencies and deficiencies. Moreover, the testimonial evidence submitted by the petitioner and on her behalf lacks probative detail about the petitioner's relationship and interactions with her spouse. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, due to the unexplained discrepancies in the record, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage. For example, in her April 23, 2007 affidavit, the petitioner states that in November 2006, G-C- attacked her outside her home and stole her purse, and that she was so frightened that she changed her phone number and she told her landlady, [REDACTED] to change the locks on the doors. The petitioner explains that [REDACTED] wanted her to call the police but the petitioner was too frightened. The petitioner also states that two weeks later G-C- attacked her again, grabbed her purse, and stole her

money, and [REDACTED] ran outside screaming that she would call the police if he did not leave immediately, whereupon G-C- "immediately fled from the scene." On the Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, signed by the petitioner on November 8, 2006, however, the petitioner listed her address as: [REDACTED] Ft. Lauderdale, Florida, not Ms. [REDACTED] [REDACTED]' address. The record contains no explanation for this discrepancy.

In addition, the record contains testimony submitted on the petitioner's behalf that describes behavior involving the petitioner's husband that the petitioner herself does not discuss in any of her affidavits. For example, in her March 11, 2008 affidavit, [REDACTED] claims that the petitioner once called her in tears and was frantic because G-C- wanted cash. [REDACTED] claims that she drove to the petitioner's home to loan her \$300.00, at which time she witnessed G-C- threatening the petitioner that if she did not get the cash, she would not be able to stay at the house and that he would leave her. Ms. [REDACTED] also claims that once when she and the petitioner were leaving the movie theater, they noticed G-C- following them, whereupon G-C- threatened to put a gun in the petitioner's mouth and shoot her. [REDACTED] claims that she took the petitioner to her house that evening, and that when she took the petitioner home the following morning, G-C- threatened to kill them both and "had his hands around [the petitioner's] neck," whereupon [REDACTED] ran over with her phone to her ear, scaring away G-C- because he thought she was calling the police. The petitioner, however, does not mention these incidents in any of her affidavits.

In a letter dated March 1, 2007, [REDACTED] and [REDACTED] from *Women in Distress of Broward County* state that the petitioner reported that G-C- consumes alcohol frequently, and that he threw objects at her, broke objects, and destroyed her property. Again, the petitioner does not mention this behavior in any of her affidavits.

In a letter dated March 4, 2008, [REDACTED] and [REDACTED] from *Women in Distress of Broward County* state that the petitioner reported that G-C- threw objects at her and broke and destroyed objects including doors and windows, that he verbalized suicidal thoughts and threatened to kill her family members, and that he consumes alcohol frequently. Again, the petitioner does not mention this behavior in any of her affidavits.

In her February 20, 2007 psychological examination, [REDACTED] does not provide any details of her evaluation of the petitioner, such as the date(s) and length of the interview(s). Furthermore, in her March 3, 2008 addendum, [REDACTED] lists the petitioner's address as the "[REDACTED]" address, where she allegedly resided with G-C- before and after their marriage, not the address that the petitioner listed on her I-693 medical form. There is no information in the record to explain when the petitioner may have moved away from the "[REDACTED]" address and, if she did return to that address, why she chose to return as she had claimed to [REDACTED] that she was afraid that G-C- would find her.

Again, the record contains no explanation for the above deficiencies and inconsistencies. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. For this additional reason, the petition may not be approved.

The present record fails to demonstrate the petitioner's eligibility for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID). The regulation at 8 C.F.R. § 204.2(c)(3)(ii), that was in effect at the time the petition was filed, directed that USCIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the AAO for review.