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U.S. Department of Homeland Security  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

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FILE:

[REDACTED]  
EAC 05 139 52556

Office: VERMONT SERVICE CENTER

Date:

FEB 09 2009

IN RE:

Petitioner: [REDACTED]

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)

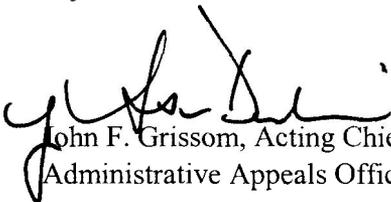
ON BEHALF OF PETITIONER:

[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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

  
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 appeal will be dismissed.

The petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(A)(iii) 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 her United States citizen husband.

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).

On December 12, 2006, the director denied the petition, finding that the petitioner failed to establish that she had entered into a legally binding marriage with a United States citizen and that she had entered into the marriage in good faith. On appeal, counsel for the petitioner provides a brief and resubmits documentation.

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 also explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

\* \* \*

(ii) *Relationship*. A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner . . . .

\* \* \*

(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 is a native and citizen of China. The record shows that she entered the United States for the last time<sup>1</sup> on February 16, 2003 as a K-1 fiancé of P-C-<sup>2</sup> a United States citizen. The petitioner's son entered with

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<sup>1</sup> The petitioner's administrative record also includes pages from her passport (Number [REDACTED]) including a B-1/B-2 visa, issued January 15, 2002 and evidence that the petitioner attempted to enter the United States on the B-1/B-2 visa on March 5, 2002. The petitioner was questioned at secondary inspection. The inspecting immigration officer reported that the petitioner testified that she was coming to the United States for business but did not have an invitation letter from any U.S. company or evidence of the type of business in which she was engaged. The immigration officer reported that the petitioner attempted to hide two letters, one from a friend she indicated that she had spoken to before she left China but did not plan on meeting. The immigration officer also reported that the petitioner was carrying information on obtaining a social security card, information concerning a bank account established in the United States, her divorce papers translated into English, and her school records. The immigration officer determined that the petitioner was an intending immigrant and was deemed inadmissible. She was charged under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act and chose to voluntarily withdraw her application to enter the United States.

<sup>2</sup> Name withheld to protect individual's identity.

her on a K-2 visa. The record includes: a marriage certificate issued in Uruapan, Michoacan, Mexico on May 3, 2003 to the petitioner and P-C-; a Final Order of Annulment issued in Calpulalpan, Tlaxcala, Mexico on May 13, 2003, vacating the marriage between P-C- and the petitioner; a Notice of Rejection from legacy Immigration and Naturalization Services, rejecting a Form I-130 submitted by P-C- and noting that P-C- should file a Form I-129F and a marriage certificate as the petitioner entered on a K-1 visa; a November 12, 2003 response from P-C- indicating that he married the petitioner in Mexico and was told that he needed to file a Form I-130, Petition for Alien Relative; a Form I-130 filed by P-C- on behalf of the petitioner on December 4, 2003; a Form I-485, Application to Register Permanent Resident filed by the petitioner on December 3, 2003; a denial decision on the Form I-485 dated August 24, 2004 noting that the visa petition supporting the application had been withdrawn; and a Notice of Entry of Judgment dissolving the marriage between the petitioner and P-C- dated March 24, 2005.

The petitioner, in a personal statement dated March 30, 2005, declared: upon entry into the United States on a K-1 visa, she and P-C- discussed a wedding in Hawaii but P-C- decided to be married in Mexico; that she signed a power of attorney so that P-C- could obtain a license to marry in Mexico; that P-C- traveled to Mexico on or about May 1, 2003 until May 3, 2003 and when he returned told her that they were legally married; and that P-C- began the immigration application process for her and her son in September 2003.

In a second personal statement, dated June 30, 2006, the petitioner indicated that she first became aware of the claimed annulment of her marriage to P-C- when she began divorce proceedings against P-C-. The petitioner noted that she had never consented to the annulment and that throughout 2003 P-C- introduced her as his wife and had filed immigration papers on her behalf in December 2003; thus she believed they were legally married during this time. The petitioner provided a copy of a letter from [REDACTED] who states: that his wife met the petitioner at an "ESL" class in June 2003; that he and his wife visited the petitioner and P-C- at their home in Oxnard, California; and that P-C- introduced the petitioner to him as his wife. The AAO finds the probative value of this letter de minimus as the petitioner initially declared that P-C- would not let her take English as a Second Language class at the local college; thus the [REDACTED] letter conflicts with the petitioner's personal statement. 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).

In a third personal statement, dated November 10, 2006, the petitioner indicated that she was hesitant to travel to Mexico because she thought she would have problems re-entering the United States with her K-1 visa; that she trusted P-C- when she signed the power of attorney to allow him to apply for a wedding license in Mexico; that when P-C- returned from Mexico on May 3, 2003 he told her they were legally married; and that the marriage was consummated between May 2, 2003 and May 13, 2003. The petitioner also indicated in her November 10, 2006 statement that she does not have original copies of the marriage or annulment certificates and that her ex-husband is uncooperative and will not give them to her and that she does not speak Spanish and does not know where or how to request the

certificates.

Counsel for the petitioner provided the following information regarding the validity of the Mexican marriage, learned from telephonic discussions with an individual at the civil registry in Uruapan, Michoacan, Mexico: (1) that the officiant certifying the marriage lacked legal authority to formalize marriages; and (2) that the claimed officiant was known to have signed numerous other marriage certificates in the past. Counsel notes that the individual at the civil registry did not provide written evidence confirming these allegations. Counsel observes, however, that although the Mexican marriage may not have been legally valid, it appeared that P-C- believed it was valid as he attempted to have the marriage annulled on May 13, 2003. Counsel asserts further that even if the Mexican marriage was legally void from the start, this fact is not relevant to this self-petition as the petitioner entered into the marriage in good faith and was not aware that the marriage was legally invalid.

The director determined that the failure to provide an original marriage certificate and an original annulment certificate, when the petitioner had been notified the documents did not appeal valid, along with the other evidence submitted, did not establish that the marriage was entered into in good faith.

On appeal, counsel for the petitioner asserts that the marriage was in good faith and that even if the petitioner's marriage was not legally valid, she should be recognized as a putative spouse. Counsel further asserts that proxy marriages are recognizable under immigration law and reiterates that even if they are not, the petitioner qualifies under VAWA as a putative or intended spouse. Counsel contends that the director in this matter failed to state precisely why the petitioner's marriage did not appear to be *bona fide* and thus acted capriciously when determining that the marriage was not entered into in good faith. Counsel notes that the Department of Homeland Security/Department of State determined that the relationship was valid, and approved the K-1 and K-2 visa petitions.

Counsel assertions are not persuasive. In this matter, the AAO acknowledges that the petitioner believed that she had entered into a marriage; thus the director's requirement that she provide original certificates of marriage and annulment is unnecessary. However, the director properly determined that the evidence of record is insufficient to establish the petitioner entered into the marriage in good faith.

The petitioner, in her declarations indicates that she first met P-C- in May 2001 in China through business and family contacts. She notes that although P-C- could not speak Mandarin, she was pretty fluent in English and they got to know each other during his visit. The petitioner notes that after P-C- returned to the United States he sent her a headset so they could talk on a regular basis and that she began to care for him. She indicates that P-C- returned to China in September 2001 and they stayed together at his hotel for four months and traveled to various cities together, and that he bought her an engagement ring and she accepted his proposal to marry him because she loved him. The petitioner indicates that she does not have documents or additional evidence to show that she and P-C- had a *bona fide* marriage as she was limited in obtaining such documents.

In addition to the information referenced above, the petitioner has provided pictures of herself and P-C- and of other family members. The pictures are insufficient, however, to establish the petitioner's intent upon entering the marriage. The petitioner has provided a copy of vehicle buyers order and odometer statement for the purchase of a Volvo by P-C- and the petitioner that is dated March 25, 2004. Apparently this document was submitted to show that the petitioner lived at the same address as P-C-. The AAO observes that this document includes the petitioner's name in different handwriting than the other handwritten information on the form and appears to conflict with the petitioner's declaration that P-C- would not allow her to have a driver's license or to drive. It is unclear why the petitioner's name would be on a purchase document with P-C- for a car if P-C- did not allow her to drive or to have a driver's license. The petitioner has also provided credit card statements and a Costco receipt issued to her son as a member of Costco, at P-C-'s address. While these documents show that the petitioner and her son received mail at P-C-'s address, the documents do not show the petitioner's intent upon entering the marriage.

The AAO also observes that approval of a Form I-129F, Petition for Alien Fiance(e), under section 214(d) of the Act is not prima facie evidence of the beneficiary's good-faith entry into the subsequent marriage under section 204(a)(1)(A)(iii) of the Act. The statutory and regulatory framework for fiancé(e) petitions significantly differs from the requirement that self-petitioners under section 204(a)(1)(A)(iii) of the Act demonstrate that they "entered into" the marriage with the abusive U.S. citizen "in good faith." The U.S. citizen petitioner bears the burden of proof in fiancé(e) cases to establish prospectively that the petitioner and beneficiary intend to and are able and willing to enter into a valid marriage. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). The corresponding regulation does not, however, define what constitutes a "bona fide intention to marry" under section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). In contrast, for self-petitions under section 204(a)(1)(A)(iii) 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-129F filed by his or her spouse will not establish that the alien actually entered into the marriage in good faith.

Moreover, while evidence submitted with a Form I-129F petition filed on the alien's behalf may be relevant to a determination of the alien's good faith entry into the subsequent marriage, reliance on such evidence alone is unwarranted. In such instances, the U.S. citizen petitioner would have borne the burden of proof in the fiancé(e) case and reliance on the abusive spouse's representations of the alien's intentions at the time of their engagement is of little probative value.

The record in this matter does not include any probative documentary evidence that the petitioner intended to create a life together with P-C-. The petitioner's general testimony regarding her courtship and shared experiences with P-C-, other than descriptions of alleged abuse, are insufficient to establish that the petitioner entered into the marriage in good faith. The petitioner has provided one letter from an individual who states that the petitioner and P-C- were a married couple, but the

author of the letter provides information regarding how he met the couple that conflicts with the petitioner's own statements. Moreover, the petitioner fails to address her attempt to enter into the United States in March 2002 and to credibly explain the circumstances of this attempt when a Form I-129 had been filed on her behalf in August 2001.

While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the information submitted on her behalf fails to establish that she entered into the marriage with P-C- in good faith. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage on good faith and that it was a *bona fide* relationship, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied for the above stated reason. 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.