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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 02 020 50528

Office: VERMONT SERVICE CENTER

Date: FEB 11 2009

IN RE: Petitioner: [REDACTED]

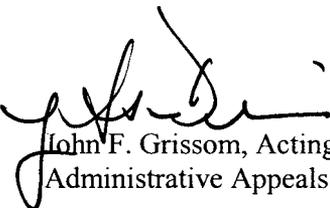
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 or reopen, 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, initially approved the immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On January 11, 2002, the director approved the petition for 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)(A)(iii), as an alien subjected to battery or extreme cruelty by her United States citizen spouse.

On July 10, 2007, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition because the petitioner had not entered into marriage with her former husband in good faith. The NOIR cited police reports in the record, which disclose statements of the petitioner that she only married her former husband in order to remain in the United States. The director notified the petitioner that she had 33 days to respond to the NOIR. The petitioner did not respond. Accordingly, the director revoked the approval of the petition on December 13, 2007.

The petitioner, through counsel, timely appealed. On appeal, the petitioner submits additional evidence and asserts that she married her former husband in good faith.

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title.” A director may revoke the approval of a petition on notice “when the necessity for the revocation comes to the attention of this Service.” 8 C.F.R. § 205.2(a). For the reasons discussed below, we find that the visa petition was initially approved in error and we uphold the director’s revocation of that approval.

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:

(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 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.

* * *

(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 Mexico who states on the Form I-360 that she entered the United States (U.S.) in 1995 without inspection. On April 2, 1996, the petitioner married M-N¹, a U.S. citizen, in New Mexico. M-N- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on August 18, 2000, as was the petitioner's concurrently filed Form I-485, Application to Adjust Status, due to the former couple's divorce on July 27, 1999.²

¹ Name withheld to protect individual's identity.

² Dona Ana County, New Mexico Third District Court, Number [REDACTED]

The petitioner filed a prior Form I-360 on September 18, 2000, which was denied on January 16, 2001 for failure to establish a qualifying relationship and good moral character.³ The petitioner remarried M-N- on February 2, 2001. On October 5, 2001, the petitioner filed the instant Form I-360, which was initially approved on January 11, 2002. The petitioner and M-N- were divorced for the second time on May 14, 2002.⁴ On July 10, 2007, the director issued a NOIR because police reports submitted by the petitioner cited three oral and written statements by the petitioner saying that she remarried M-N- only to stay in the United States. The petitioner did not respond to the NOIR and the director consequently revoked approval of the petition on December 13, 2007.

On appeal, the petitioner reasserts her eligibility and submits additional evidence, but does not address her prior statements that she remarried her former husband solely to remain in the United States. The evidence submitted on appeal fails to overcome the petitioner's prior statements in the record and we affirm the director's decision.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with M-N- in good faith:

- The petitioner's December 27, 2007 affidavit submitted on appeal; Las Cruces, New Mexico Police Department report (Case Number [REDACTED] regarding an incident on July 27, 2001, which cites the petitioner as stating that "she got back with her husband for the reason of her oldest daughter staying in the United States to finish her education;"
- Dona Ana County, New Mexico Sheriff report (Case Number [REDACTED] regarding an incident on August 7, 2001, which states that a deputy read in the petitioner's diary that "she married the male suspect [M-N-] only to gain U.S. nationality status" and that the reporting officer read a letter written by the petitioner to M-N- "stating that the only reason she had remarried him was because she was going to lose her privilege of staying in the States and gaining residency in the United States;"
- Copy of the birth certificate of the daughter of the petitioner and M-N-, Magdalena, born on January 26, 1997;
- Copies of 13 notes written by M-N- to the petitioner and her other daughter, [REDACTED], submitted on appeal;
- Copy of one note written by the petitioner to M-N-, submitted on appeal;
- July 25, 2003 letter from Teacher Retirement System (TRS) of Texas, which states that payments from M-N-'s retirement annuity would be made to the petitioner and a related court

³ Receipt Number EAC 00 281 53642. At the time the first Form I-360 petition was adjudicated, the statute required the self-petitioner to be married to the abuser at the time of filing. See section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii) (2000).

⁴ Dona Ana County, New Mexico Third District Court, Number [REDACTED]

order dividing M-N-'s retirement plan benefits between him and the petitioner, both of which were submitted on appeal;

- Automobile insurance statement for December 2, 2000 to June 2, 2001 for M-N- listing the petitioner as a non-driver, submitted on appeal;
- New Mexico Retiree Health Care Authority letter, submitted on appeal, which states that M-N-, his children and the petitioner were covered under his policy from August 1996 through August 1999, but that M-N- later cancelled his coverage; and
- Photocopies of photographs of the petitioner, M-N- and other individuals taken on unspecified occasions and dates and submitted on appeal.

The petitioner submitted no affidavit or statements below regarding her allegedly good-faith entry into either of her marriages with M-N-. In her affidavit submitted on appeal, the petitioner states that she met her former husband at his birthday party in 1995 and they began dating. After a year of dating, the former couple was married and the petitioner explains that at the time she was unaware that she was pregnant with their daughter. The petitioner states that she separated from M-N- due to his abuse and M-N- then filed for divorce. After their divorce, the petitioner states that M-N- would stay with her and her daughters on the weekends, treated them well and constantly apologized. Two years later, the petitioner states that she remarried M-N-, but he became abusive less than a month afterwards. The petitioner asserts:

I never married [M-N-] to fix my papers, and I never asked him to petition for us, even after I lost the first petition, I remarried him knowing that it was lost and I was not going to ask him to do it again. The torture we suffered while with [M-N-] was because I loved him not for any other reason.

The petitioner does not, however, explain her statement to a police officer on July 27, 2001 that "she got back with her husband for the reason of her oldest daughter staying in the United States to finish her education." The petitioner also does not acknowledge or explain the sheriff's report from August 7, 2001, which states that the petitioner's diary said "she married the male suspect [M-N-] only to gain U.S. nationality status" and that a letter written by the petitioner to M-N- stated "that the only reason she had remarried him was because she was going to lose her privilege of staying in the States and gaining residency in the United States." The director informed the petitioner of these adverse statements in the NOIR, to which the petitioner did not respond. The petitioner was also fully aware of these statements as they are contained in the police reports she submitted below with her Form I-360. The petitioner's brief description of her initial and second marriage to M-N- fails to overcome her adverse statements in the police reports.

The remaining, relevant evidence also fails to establish the petitioner's claim. The TRS document, related court order and the automobile insurance statement show that the petitioner was granted part of her former husband's retirement benefits and was listed as a non-driver for six months on his automobile policy. The New Mexico Retiree Health Care Authority letter establishes that the petitioner was covered under M-N-'s health insurance policy during their first marriage, but also states that M-N-

subsequently cancelled his insurance policy. The photocopied photographs indicate that the petitioner, M-N- and other individuals were photographed together at unspecified times and locations. While the record shows that the petitioner and M-N- had a daughter together, the petitioner submitted no further evidence of the former couple's joint residence, shared assets or liabilities, or other documentation or testimony regarding their relationship during the three years of their first marriage and the year and a half of their second marriage.

The petitioner has failed to rebut or explain her adverse statements in the police records which indicate that she remarried M-N- solely to remain in the United States. The petitioner's affidavit submitted on appeal does not discuss or even acknowledge her prior statements. The remaining relevant evidence is also insufficient to overcome the petitioner's repeated statements that she remarried M-N- only to gain lawful immigration status in the United States. The petitioner has thus failed to demonstrate that she married and remarried M-N- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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.