

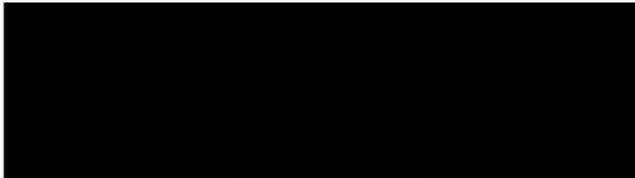
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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Bq

FILE: [Redacted]
EAC 04 241 52706

Office: VERMONT SERVICE CENTER

Date: FEB 12 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)

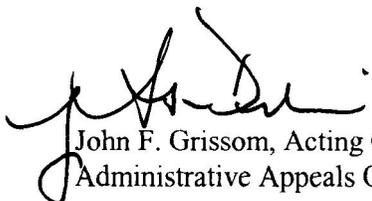
ON BEHALF OF PETITIONER:



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, 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 because the petitioner did not establish that she married her former husband in good faith and that he subjected her or any of her children to battery or extreme cruelty during their marriage.

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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be

considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(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.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(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 the Dominican Republic who entered the United States (U.S.) on April 23, 1998 as a nonimmigrant visitor (B-1). On April 2, 1998, the petitioner married A-P-¹, a U.S. citizen, in New Hampshire. A-P- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on December 29, 2000. On April 16, 2001, A-P- filed a second Form I-130 on the petitioner's behalf which remains pending. On April 21, 2004, the petitioner and A-P- were divorced.²

The petitioner filed this Form I-360, through her prior representative on August 20, 2004. On May 30, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite joint residence, good-faith entry into the marriage and battery or extreme cruelty. The petitioner, through prior counsel, timely responded to the NOID with additional evidence. On October 30, 2006, the director denied the petition for lack of the requisite good-faith entry into the marriage and battery or extreme cruelty.

On appeal, present counsel claims that evidence submitted below and on appeal establishes the petitioner's eligibility and resolves discrepancies in the record cited by the director. While we find that the petitioner has established her good-faith entry into the marriage, the petitioner has not demonstrated that her former husband subjected her or any of her children to battery or extreme cruelty.

Entry into the Marriage in Good Faith

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

- Memorandum dated October 13, 1998 regarding the legacy Immigration and Naturalization Service (INS) interview of the petitioner and A-P- in connection with the first Form I-130 petition filed by A-P- on the petitioner's behalf and the petitioner's concurrently filed Form I-485, Application to Adjust Status;
- Report of an investigation by the INS dated February 16, 2000, regarding the bonafides of the petitioner's marriage to A-P-;
- Internal Revenue Service (IRS) records submitted on appeal, which show that the petitioner and A-P- jointly filed income tax returns in 1998, 1999, 2000 and 2001;
- Nine joint bank account statements for the petitioner and A-P- dated between May 12, 1998 and April 3, 2000 and a February 7, 2001 letter from the bank confirming that the petitioner was added to A-P-'s account on April 2, 1998;
- 11 electricity bills jointly addressed to the petitioner and A-P- and dated between September 21, 1998 and October 27, 2003;

¹ Name withheld to protect individual's identity.

² New Hampshire Superior Court Docket Number [REDACTED]

- June 22, 2006 letter from [REDACTED] New Hampshire Housing Authority confirming that the petitioner and A-P- resided together from August 17, 2001 to November 1, 2003;
- School records of the petitioner's son, [REDACTED] which show that A-P- was listed as his stepfather and main contact along with the petitioner between 2001 to 2003;
- Nashua, New Hampshire Police Department log, which indicates that the police were summoned to the petitioner's marital residence three times in 2003;
- The petitioner's August 17, 2004 and July 24, 2006 affidavits submitted below;
- Letters from the former couple's friends, [REDACTED] and the petitioner's son, [REDACTED] (the latter two submitted on appeal); and
- Photographs of the petitioner, A-P- and her family.

The director determined the petitioner did not enter into her marriage with A-P- in good faith because: 1) the petitioner did not sufficiently explain three discrepancies between the answers of her and A-P- at their 1998 interview; 2) the petitioner did not submit IRS transcripts for the years she claimed to have jointly filed tax returns with A-P- and did not submit copies of cancelled checks from their joint bank account; and 3) because the record did not indicate that A-P- was involved in the lives of the petitioner's children and the director found it incongruous that her sons would maintain a relationship with their stepfather if he had abused the petitioner. The evidence submitted on appeal, combined with the relevant evidence submitted below, overcomes the director's determinations and establishes that the petitioner entered into marriage with A-P- in good faith.

The three discrepancies from the 1998 interview noted by the director are either resolved by the record or of insufficient weight to discount the petitioner's claim. First, the director found the petitioner did not sufficiently explain why her husband stated that he did not know of her prior marriage at their 1998 interview. As counsel notes on appeal, the record clearly shows that A-P- knew of the petitioner's prior marriage at the time of their 1998 interview. The petitioner's prior marriage was listed on the first (as well as the second) Form I-130 filed by A-P- which was submitted with the petitioner's prior divorce certificate. The petitioner's prior marriage is also listed on the marriage certificate of the petitioner and A-P-. Second, the director did not find the petitioner's response that she did not know much about cars and the names of different makes of cars sufficient to explain why she did not know what kind of car A-P- had at the time of their 1998 interview. While notable, this one discrepant response does not outweigh the other, more substantive evidence that the petitioner and her former spouse had a bonafide marriage. Third, the director noted that the petitioner told the INS officer that her sister had only one child while her former husband said her sister had two children. The petitioner credibly explained that her sister was pregnant at the time, which may have caused her former spouse to say that her sister had two children.

On appeal, the petitioner submits evidence which overcomes the director's second concern. The petitioner explained that she had not saved any cancelled checks from the former couple's bank account. However, the petitioner submitted IRS records of her and her former husband's joint income tax filings in 1998, 1999, 2000 and 2001. The adjusted gross income and taxable income listed on the

IRS records matches the amounts stated in the copies of the IRS Forms 1040 that the petitioner submitted below.

The petitioner has also overcome the director's third point. On appeal, the petitioner's son, [REDACTED], attests to his relationship with his stepfather and the family's joint residence. The school records submitted below further show that the petitioner's former husband was involved in [REDACTED]'s life. Moreover, the approval of the Form I-130 petitions filed by the petitioner's former husband on behalf of her sons further demonstrates their familial connections. Finally, the director inappropriately concluded that it was incongruous for the petitioner's sons to maintain a relationship with their stepfather if he abused their mother. Yet the director determined, and we agree, that the petitioner's former husband did not subject her or any of her children to battery or extreme cruelty. The record regarding the petitioner's marriage is thus not inconsistent with the petitioner's sons having an ongoing relationship with their stepfather.

In her August 17, 2004 affidavit, the petitioner gave a detailed account of how she met A-P-, their courtship, wedding, shared residence and experiences. In her July 24, 2006 affidavit, the petitioner explained that she was not present when the INS investigators went to the former couple's home in 2000 because she was staying with her mother, which she would do periodically during times of marital conflict. In addition, the police records show that on three occasions in 2003, the petitioner and her former spouse were at their marital residence when the police responded to calls for assistance from their home.

The bank account statements and electricity bills show that the former couple shared some financial assets and liabilities. The IRS records submitted on appeal also show that the former couple jointly filed income tax returns for four years from 1998 through 2001. The school records for the petitioner's son, [REDACTED], show that the petitioner and A-P- were listed together as his parents and main contacts. In addition, the record shows that A-P- filed Form I-130 petitions for A [REDACTED] and the petitioner's fourth son, [REDACTED], who immigrated to the U.S. in 2001. On appeal, [REDACTED] attests that he and [REDACTED] lived with the petitioner and A-P- from March 2001 until the former couple separated and that he had a father-son relationship with A-P-. The former couple's friends also attest to their bonafide marriage and joint residence.

Considered in the aggregate, the relevant evidence demonstrates that the petitioner entered into marriage with her former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director's determination to the contrary is hereby withdrawn. The petitioner remains ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, however, because she has not established the requisite battery or extreme cruelty, as discussed below.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that A-P- battered and subjected her to extreme cruelty:

- The petitioner's August 17, 2004 and July 24, 2006 affidavits submitted below;
- Nashua, New Hampshire Police Department log, which indicates that the police were summoned to the petitioner's marital residence for three incidents in 2003 that were all resolved peacefully;
- Copy of a temporary order of protection issued to the petitioner against her former husband on August 6, 2003, which expired upon a subsequent hearing on August 26, 2003 (Nashua, New Hampshire District Court Case Number [REDACTED]);
- Copy of the subsequent order dated August 14, 2003, which found that the petitioner had not been abused and dismissed her case;
- July 19, 2006 and July 8, 2004 letters from Bridges, Domestic and Sexual Violence Support, stating that the petitioner had worked with the organization beginning in August 2003 and July 2004, respectively;
- July 1, 2004 letter from Bienestar Mental Program of Nashua regarding the petitioner's intake interview for mental health services;
- Copy of handwritten note by [REDACTED] dated July 23, 2004 and certifying that he prescribed Zoloft to the petitioner for an unspecified medical condition; and
- Records of the petitioner's treatment at the Community Council of [REDACTED] for depression.

In her first affidavit, the petitioner stated that her marital problems began in 2003. On one occasion, the petitioner reported that her former husband threw a pot of food she had cooked in the garbage. When she asked him about it, the petitioner states that her former husband yelled at her and turned up the volume on the stereo. After this incident, the petitioner explains that her husband slammed doors, hit the walls, stopped eating her food, played the stereo very loudly and was no longer intimate with her. The petitioner also describes one incident where her husband told her son that she was "looking for" him to turn her "over to immigration." On another occasion, the petitioner states that she returned home to find that her husband had thrown onto their driveway a pot of rice that she had cooked because he thought it was burnt. In August 2003, the petitioner states that she called the police because her former husband would not turn down the volume on the stereo. When the police came, they told her former husband to turn down the volume and he left. After this incident, the petitioner states that her former husband threatened to change the lock to their door.

Approximately a week later, the petitioner reports that her husband indicated that some kitchen knives would be "good to mess [her] up one side with." The petitioner explains that she was scared and went to the Bridges crisis center for help where they helped her obtain the temporary protection order. The petitioner explains that her case was later dismissed because the judge did not find her former husband's behavior to be abusive. The petitioner notes that she did not mention her former husband's last threat at the hearing because she was afraid of him and intimidated because he was represented by an attorney. The petitioner reports that she then suspected that her former husband was having an affair, but that when she asked him questions about it, he would threaten to divorce her and "call the immigration." The petitioner reports that she suffered from depression and finally left her former husband in October 2003.

The petitioner's testimony fails to describe specific incidents of battery or extreme cruelty and the remaining, relevant evidence does not support her claim. The police log shows that on August 3, 2003, the police responded to a call regarding loud music and the music was turned down; on August 10, 2003, the police were called to "keep the peace" and the "peace [was] kept;" and that on October 10, 2003, the police were called regarding "undesirable" and the situation was resolved when someone "left upon request." The police records do not indicate that domestic violence was involved in any of the incidents or that the petitioner suffered other physical or mental harm. The court documents show that the petitioner's temporary protection order was not extended because the behavior of the petitioner's husband did not constitute abuse. The letters from [REDACTED] do not state what specific services the petitioner received from the organization or provide any details regarding her situation. Finally, the petitioner's medical records show that she received treatment for depression in 2004 related to her marital problems, but they do not establish that her former husband subjected her to battery or extreme cruelty.

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner's former husband subjected her or any of her children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) 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.