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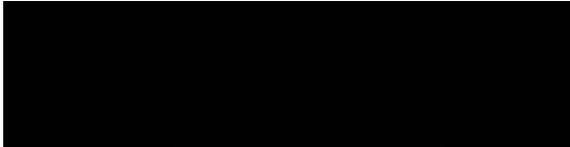
U.S. Department of Homeland Security
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Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services

B5



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **FEB 27 2009**
EAC 06 232 51053

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)

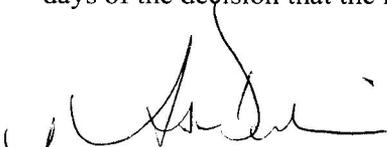
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 entered into marriage with her United States citizen husband in good faith, resided with him and that he battered or subjected her to extreme cruelty during their marriage.

On appeal, the petitioner submits additional evidence.

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.

(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.

* * *

(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.

(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 Columbia who entered the United States (U.S.) on November 13, 1999 as a nonimmigrant visitor (B-2). The petitioner subsequently filed a Form I-589, Request for Asylum, which U.S. Citizenship and Immigration Services (USCIS) referred to the Miami Immigration Court. On January 28, 2003, the petitioner was served with a Notice to Appear (NTA) for removal proceedings. On February 11, 2004, an immigration judge denied the petitioner's applications for asylum, withholding of removal and relief under the Convention against Torture and ordered the petitioner removed to Colombia. The petitioner's appeal was dismissed by the Board of Immigration Appeals (BIA) on August 17, 2005 and her subsequent motion to reopen and reconsider was denied by the BIA on November 21, 2005.

On July 30, 2004, while her removal proceedings were pending, the petitioner married J-B-¹, a U.S. citizen, in Florida. The petitioner filed the instant Form I-360 on August 7, 2006. On March 14, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish the requisite good-faith entry into the marriage, joint residence and battery or extreme cruelty. The petitioner did not respond to the NOID. Accordingly, the director denied the petition on the grounds cited in the NOID on July 2, 2007 and the petitioner timely appealed.

On appeal, the petitioner submits additional evidence and states that her former attorney never told her that further evidence was needed. We concur with the director's determinations. The evidence submitted on appeal fails to overcome the grounds for denial.

Beyond the decision of the director, section 204(g) of the Act, 8 U.S.C. § 1154(g), further bars approval of this petition because the petitioner was married when she was in removal proceedings and she had not established that she qualifies for the bona fide marriage exemption. The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Entry into the Marriage in Good Faith

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

¹ Name withheld to protect individual's identity.

- The petitioner's July 22, 2006 statement;
- Statements of the petitioner's mother and her friend, [REDACTED];
- Earnings statements of the petitioner's husband from October and November 2004 which list his filing status as single and his address as on [REDACTED] in Miami, Florida;
- One bank statement, letter and a paycheck of the petitioner dated between November 2004 and March 2005, all of which are addressed to the petitioner individually at the [REDACTED] Court residence;
- Copy of the petitioner's unsigned federal income tax return filed as single; and
- Four photographs of the petitioner and her husband on their wedding day.

The petitioner states that she met her husband through a neighbor in January 2004. The petitioner briefly explains: "[J-B-] was kind and sweet and that is why I fell in love with him and we went to live together. After six months of seeing each other we decided to get married. Everything was going well until six months later." The petitioner does not further describe how she met her husband, their courtship, wedding, shared residence and experiences (apart from the purported abuse). Her testimony lacks detailed, probative information sufficient to demonstrate that she married her husband in good faith.

The statements of the petitioner's mother and friend also fail to establish her claim. The petitioner's mother states that she met J-B- through a neighbor, thought he was a good person and introduced him to her daughter. The petitioner's mother briefly relates that the former couple dated, moved in with each other and that in "the beginning everything was fine, they would go to dinner and movies, etc." The petitioner's mother provides no further, relevant information. Ms. [REDACTED] simply states that she attended the petitioner's wedding and visited the former couple's apartment, but she provides no probative details.

The remaining, relevant evidence also fails to demonstrate that the petitioner married her husband in good faith. J-B-'s earnings statements list his taxable marital status as single. The petitioner's bank statement and letter are addressed to the petitioner individually. Although her paycheck does not indicate the petitioner's marital status, her 2004 income tax return states her filing status as single. The photographs show that the petitioner and her husband were pictured together on their wedding day, but they do not demonstrate that the petitioner entered the marriage in good faith.

The preponderance of the relevant evidence fails to demonstrate that the petitioner entered into marriage with J-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Beyond the director's decision, section 204(g) of the Act also bars the approval of this petition. The record shows that the petitioner married J-B- while removal proceedings were pending against her. Consequently, this petition is subject to section 204(g) of the Act, which states:

Restriction on Petitions Based on Marriages Entered While in Exclusion or Deportation Proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after her marriage to J-B-. The record also does not indicate that the petitioner has satisfied the bona fide marriage exception to section 204(g) of the Act, pursuant to section 245(e) of the Act, 8 U.S.C. § 1255(e), which states:

Restriction on Adjustment of Status based on Marriages Entered while in Admissibility or Deportation Proceedings; Bona Fide Marriage Exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved

only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”) To demonstrate good faith entry into the qualifying relationship for a self-petition under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. 8 C.F.R. § 204.2(c)(2)(i); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good faith entry into the marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As the petitioner has failed to establish that she married her husband in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also failed to demonstrate that she qualifies for the bona fide marriage exemption from section 204(g) of the Act under the heightened standard of proof required by section 245(e) of the Act. Accordingly, section 204(g) of the Act also requires the denial of this petition.

Joint Residence

The evidence listed in the preceding section regarding entry into the marriage in good faith is also relevant to the petitioner’s alleged residence with her husband. On the Form I-360, Part 7, Section B, the petitioner stated that she lived with J-B- from April to December 2004 and that they last resided together at an apartment on [REDACTED] in Miami, Florida. The petitioner states that she lived with her husband in his apartment before and after their marriage, but she does not specify their address or describe the residence in any probative detail. The petitioner’s mother and [REDACTED] state that they visited the petitioner at the former couple’s apartment, but neither of them state the address or describe their visits in any probative detail, apart from the alleged abuse. The testimony of the petitioner, her mother and [REDACTED] lacks detailed, probative information sufficient to demonstrate the requisite shared residence.

The remaining, relevant evidence also fails to demonstrate that the petitioner resided with her husband. Although the documents submitted on appeal list the [REDACTED] apartment as the address of both the petitioner and her husband, the documents are addressed to each of them individually and do not establish that the petitioner and her husband actually resided at the apartment together. Finally, none of the photographs picture the petitioner and her husband in a residential setting.

In sum, the relevant evidence fails to demonstrate that the petitioner resided with her husband during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that her husband battered or subjected her to extreme cruelty during their marriage:

- The petitioner's July 22, 2006 statement;
- Statements of the petitioner's mother and her friend, [REDACTED];
- Copy of a mental health assessment of the petitioner conducted on February 22, 2006; and
- Copy of a Sunny Isles, Florida Police Department incident report dated July 7, 2005.

The petitioner states that her husband asked her for money to buy a house for them and that she obtained money from her parents, but later realized that her husband had lied and did not purchase a house. She reports that when she asked him about the money, her husband would swear at her. The petitioner states that she once wrote him a check that was cashed by another woman and when she asked him who the woman was, her husband screamed at her and threw her on the sofa. The petitioner explains that as she was leaving, her husband grabbed her bag of clothes and said she would have to pay for them. After their separation, the petitioner states that her husband would call, threaten and insult her, although she does not specify the content of his threats or describe his insults. The petitioner reports that her husband stopped calling her after she contacted the police a second time.

The petitioner's testimony is inconsistent with the statements of her mother and [REDACTED] on significant points. The petitioner's mother states that on December 20, 2004, she and [REDACTED] went to the former couple's apartment and the petitioner and her husband began arguing. In her own statement, the petitioner does not indicate that her mother and [REDACTED] were present during this incident. The petitioner's mother reports that J-B- grabbed the petitioner and threw her on the sofa. She further states that after the former couple separated, J-B- would call the petitioner and threaten to "call immigration and tell them the marriage was a lie" if she did not give him money. The petitioner herself, however, does not state that her husband threatened her in this manner.

[REDACTED] states that she once visited the petitioner and saw her husband ask the petitioner for money and scream and insult her when she said she did not have any money to give him. The petitioner herself does not discuss this incident. Ms. [REDACTED] also reports that on December 20 of an unspecified year, she went to the former couple's apartment with the petitioner's mother and the petitioner's husband screamed at the petitioner, grabbed her and threw her on the couch. Ms. [REDACTED] states that J-B- continued to call and threaten the petitioner and her mother after the former couple's separation, but she does not describe the calls or threats in detail.

The remaining, relevant evidence also differs from the petitioner's account of the alleged abuse and its effects on several key points. The police report states that the petitioner reported that she separated from her husband after he pushed her and that he contacted her for the first time on July 5, 2005. Yet the petitioner, her mother and [REDACTED] all indicate that J-B- called the petitioner soon after their separation. The report further states that the petitioner's husband had "not threatened [the petitioner] to date," although the petitioner, her mother and [REDACTED] all state that J-B- did threaten the petitioner.

The mental health assessment of the petitioner is dated February 22, 2006 and states that the petitioner was "suffering from acute depression and anxious symptoms related to conflicts in her marriage." Although in their statements, the petitioner, her mother and [REDACTED] all report that J-B- repeatedly contacted the petitioner against her wishes after their separation, the assessment indicates that the petitioner sought to contact J-B-. The assessment quotes the petitioner as stating, "I have to divorce him and he has disappeared. He doesn't work in his previous place of employment. He disconnected his cellular." The assessment diagnoses the petitioner with depression and recommends that the petitioner receive psychotherapy twice weekly for four months. While the petitioner stated that she "had to go to counseling" after she separated from her husband, the petitioner submitted no evidence that she attended therapy or received other treatment for her mental health condition.

The significant discrepancies and inconsistencies, as well as the lack of probative details in the relevant evidence detract from the credibility of the petitioner's claim of abuse. The preponderance of the relevant evidence does not demonstrate that the petitioner's husband battered or subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that she entered into marriage with her husband in good faith, resided with him and that he battered or subjected her to extreme cruelty during their marriage. 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. Section 204(g) of the Act further bars approval of this petition.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.