

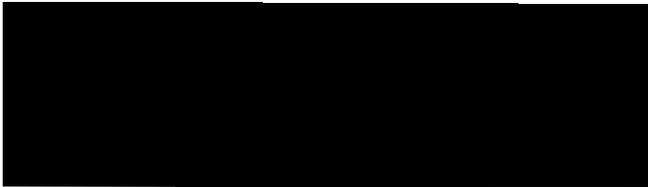
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

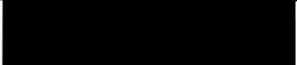
U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



B9

FILE:



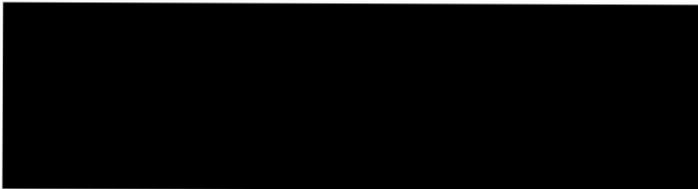
Office: VERMONT SERVICE CENTER

Date: JUL 17 2009

EAC 07 103 50248

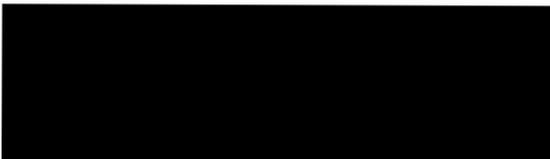
IN RE:

Petitioner:



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

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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 classification as an immigrant pursuant to section 204(a)(1)(B)(ii) 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 lawful permanent resident spouse.

The director denied the petition because the petitioner did not establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States, was eligible for immigrant classification based upon that relationship, resided with her husband, and married him in good faith.

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

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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 corresponding regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section . . . 204(a)(1)(B)(ii) of the Act for his or her classification as . . . a preference immigrant if he or she:

\* \* \*

(B) Is eligible for immigrant classification under section . . . 203(a)(2)(A) of the Act based on that relationship [to the U.S. lawful permanent resident].

(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)(B)(ii) 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.

(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 . . . .

(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 Mexico who reports that she entered into the United States without inspection in

November 1992. On August 6, 1993, the petitioner married J-V-<sup>1</sup>, a U.S. lawful permanent resident, in Denver, Colorado. On December 30, 1993, J-V- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on February 23, 1994. On October 1, 2001, the petitioner filed a Form I-485, Application to Register Permanent Resident or Adjust Status, which was automatically terminated on October 29, 2002. On October 8, 2003, the I-130 petition and the I-485 application were reopened, pursuant to 8 C.F.R. § 103.5(a)(5)(i). On July 19, 2004, the district director issued a Notice of Intent to Revoke the approval of the I-130 petition, due to insufficient evidence of a valid marital relationship. On December 28, 2004, the I-130 petition filed on behalf of the petitioner was revoked, the petitioner's I-485 application was concurrently denied, and the petitioner was served with a Notice to Appear for removal proceedings charging her as inadmissible under sections 212(a)(6)(A)(i) and 212(a)(7)(A)(i)(I) of the Act. The petitioner remains in proceedings before the Denver, Colorado Immigration Court and her last hearing was scheduled for March 19, 2008.

The petitioner filed the instant Form I-360 on February 28, 2007. On December 3, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite qualifying relationship, joint residency, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner, through counsel, timely responded to the RFE with additional evidence, including the October 16, 2006 record of divorce pertaining to the petitioner's first marriage to A-G-<sup>2</sup>. On May 22, 2008, the director denied the petition because the petitioner did not establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States, was eligible for immigrant classification based upon that relationship, resided with her husband, and married him in good faith. Counsel timely appealed.

On appeal, counsel claims that because the petitioner's "first marriage was later dissolved, and [the petitioner and J-V-] continued to have the intent to be married and hold themselves out as such, under Colorado's common law marriage statute, the second marriage was validated as of the date of the first marriage's dissolution." Counsel also claims that the evidence in the record and submitted on appeal establishes the petitioner's residence with her husband and her good-faith entry into their marriage.

*Qualifying Relationship and Eligibility for Immediate Relative Classification*

At the outset, we note that Colorado recognizes marriages contracted without formal ceremony, or common law marriages. Section 14-2-104(3) of the Colorado Revised Statutes states: "Nothing in this section shall be deemed to repeal or render invalid any otherwise valid common law marriage between one man and one woman." Colorado case law also states: "Upon dissolution of a subsisting marriage, an intended marriage contracted in good faith by a party thereto prior to the removal of the disability is rendered valid and binding by the continued cohabitation of the parties to such union, as the original intention to become husband and wife is presumed to continue so as to effectuate a common-law marriage." *Davis v. People*, 83 Colo. 295, 264 P. 658 (1928). A common law marriage occurs where the parties consent to be husband and wife and there is a mutual and open

---

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

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

assumption of a marital relationship. For purposes of proving common law marriage, the parties' consent may be proven by, or presumed from, evidence of cohabitation as husband and wife and general repute as husband and wife. Conduct in the form of mutual public acknowledgment of the marital relationship is essential to establish a common law marriage. *People v. Lucero*, 747 P.2d 660,663 (Colo. 1987).

In this matter, the record contains a marriage certificate indicating that the petitioner and J-V- were married on August 6, 1993, in Denver, Colorado. That marriage, however, was not valid, as the petitioner was still married to her first husband, A-G-, until October 16, 2006. In his denial, the director found that the petitioner's marriage to J-V- on August 6, 1993 was not valid, and that the petitioner had not established that a common law marriage existed under Colorado law after the dissolution of the petitioner's first marriage on October 16, 2006. We concur with the director's determination that the petitioner failed to establish that she had a qualifying relationship as the spouse of a U.S. lawful permanent resident and that she was eligible for classification based upon that relationship. We are not persuaded that the petitioner established the elements necessary to demonstrate that, at the time of filing the instant petition, she had a valid, common law marriage with J-V- under the laws of Colorado.

In this instance, the facts do not demonstrate that on October 16, 2006, when the petitioner's divorce from her first husband became final, the petitioner and J-V- continued to cohabit, had a continuing intent to be married, and had the reputation in the community as being married. Although the petitioner claims in her July 21, 2008 affidavit, submitted on appeal, that in approximately 2002, she moved to [REDACTED] in Commerce City, Colorado, and J-V- lived with her "on and off at that address for a period of about three or four years," she does not state or provide any evidence that J-V- resided with her as of October 16, 2006, the date of her divorce from her first husband. Moreover, although the petitioner additionally claims in the same affidavit that she and J-V- still consider themselves married, have frequent contact, and maintain separate residences so that she is "able to leave when he becomes violent or aggressive," she has not demonstrated that as of October 16, 2006, when her divorce from her first husband became final, she and J-V- continued to cohabit, had a continuing intent to be married, and had the reputation in the community as being married, in accordance with the laws governing common law marriage in Colorado. The remaining affidavits submitted on the petitioner's behalf, while acknowledging the petitioner's relationship with J-V-, do not discuss their knowledge of the petitioner's purported common-law marital status as of October 16, 2006. Neither the petitioner's statements nor any of the statements submitted on her behalf by family and friends provide any probative details which demonstrate that the petitioner and J-V-, as of October 16, 2006, continued to cohabit, had a continuing intent to be married, and had the reputation in the community as being married. In addition, counsel's assertion on appeal that the petitioner and J-V- continue to reside together intermittently conflicts with the information she provided in her February 27, 2008 letter submitted in response to the director's RFE, that the petitioner and J-V- lived together from April 1993 until November 1996, "when [the petitioner] was forced to leave their home due to her husband's abusive behavior." As presented above, the facts do not establish petitioner and J-V-, as of October 16, 2006, continued to cohabit, had a continuing intent to be married, and had the reputation in the community as being married, in accordance with the laws governing common law marriage in

Colorado.

As discussed above, we concur with the director's determination that the petitioner failed to establish that she had a qualifying relationship as the spouse of a lawful permanent resident pursuant to section 204(a)(1)(B)(ii)(II) of the Act and that she is eligible for classification based upon that relationship, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

As the petitioner failed to establish that she had a lawful marriage to a lawful permanent resident at the time of filing, there is no need to discuss the evidence of joint residence and good-faith entry into the marriage. Similarly, beyond the director's decision, the petitioner has not established that she was subjected to battery or extreme cruelty during a marriage to a lawful permanent resident.

Finally, beyond the director's decision, the petitioner has not established her good moral character because she submitted police clearance based upon name only, none of which shows that the searches were done on her three other aliases. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition.

The present record fails to demonstrate the petitioner's eligibility for immigrant classification pursuant to section 204(a)(1)(B)(ii) 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 U.S. Citizenship and Immigration Services (USCIS) to 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.