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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: JUN 29 2009
EAC 06 188 51682

IN RE: Petitioner: [Redacted]

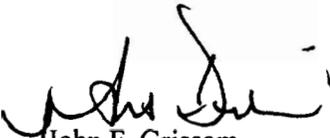
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 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 husband in good faith.

On appeal, the petitioner's representative submits a brief.

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 filed 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 Colombia who was admitted into the United States on April 11, 2005, as a K-3 nonimmigrant spouse of a U.S. citizen. The petitioner had married J-G¹, a U.S. citizen, in Medellin, Antioquia, Colombia on February 2, 2004.

On May 30, 2006, the petitioner concurrently filed the instant Form I-360 and Form I-485, Application to Register Permanent Residence or Adjust Status. On December 8, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite good-faith entry into the marriage. The petitioner, through her representative, timely responded to the NOID with additional evidence. On June 4, 2007, the director denied the petition on the aforementioned ground. The petitioner's representative timely appealed.

On appeal, the petitioner's representative states that the petition was incorrectly denied, as the petitioner is not required to include evidence of time spent cohabitating once married, to demonstrate a good faith marriage. He states further that the petitioner provided ample and credible evidence, including her declaration and declarations from family members, wedding photos, and shared health insurance, all of which demonstrate that she and J-G- intended to spend their lives together after their marriage.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's claim that she married her husband in good faith:

- The petitioner's personal declaration, dated September 27, 2006;
- A certification, dated May 17, 2005, from a Colombian exchange office, reflecting 16

¹ Name withheld to protect individual's identity.

drafts that the petitioner received from April 2004 to April 2005;

- A health insurance card from Connecticut General Life Insurance Company, reflecting coverage for the petitioner, effective January 1, 2005;
- A translation of the personal statement, dated September 30, 2005, from [REDACTED];
- A translation of the personal statement, dated October 6, 2005, from [REDACTED];
- An affidavit, dated January 5, 2007, from the petitioner's sister, [REDACTED];
- An affidavit, dated January 23, 2007, from the petitioner's uncle, [REDACTED];
- An affidavit, dated January 23, 2007, from the petitioner's uncle, [REDACTED];
- An affidavit, dated January 6, 2007, from the petitioner's uncle, [REDACTED];
- Copies of the hotel reservations, and a translation, for February 2 – 3, 2004, in Medellin, Colombia; and
- Photographs of the petitioner with her husband, and of the petitioner's wedding rings, ceremony, party, dress, and shoes.

In her September 27, 2006 personal declaration, the petitioner states that in May 2003, while talking on the telephone with [REDACTED] - her married, Colombian friend who lives in the United States - the petitioner told her friend that she was lonely and wanted a serious relationship with a special person. The petitioner states that after a short time, her friend called her back and told her about her husband's boss, J-G-, who was their friend inside and outside of work, and an honorable and decent person, who was divorced and also wanted a relationship. The petitioner reports that in June 2003, [REDACTED] who was the husband of her friend, [REDACTED], called her and told her that he was with J-G-, and went on to introduce them and serve as their translator, as neither the petitioner nor J-G- spoke the other's language. The petitioner explains that this went on for 15 days and, meanwhile, she was obtaining books to learn basic English and J-G- was doing likewise to learn Spanish. The petitioner states that J-G- later started calling her on his own and that, with difficulty, they began to understand one other. The petitioner reports that in September 2003, J-G- proposed to her, that she then began the preparations for a civil wedding in Medellin, Colombia, and that her uncle, [REDACTED], helped her when J-G- did not understand the required paperwork for a marriage involving a foreign citizen. The petitioner states that she was not concerned about the age difference between her and J-G-, as their love and wanting to spend the rest of their lives together were most important. The petitioner explains that J-G- sent her money from September 2003 to January 2004 to pay for the wedding preparations, and that he also sent her a Christmas gift and called her two or three times daily. The petitioner states that in January 2004, after the wedding preparations were finished, her friends invited her to lunch to celebrate her last month of being single, after which they shopped for her wedding dress. The petitioner also states that her aunt, [REDACTED] promised to host a wedding reception, and her uncle, [REDACTED] offered to look for J-G- when he arrived at the airport. The petitioner explains that, one week before the wedding, she made hotel reservations for their wedding night and honeymoon. The petitioner describes J-G-'s arrival at the airport, their wedding and special lunch the following day, and their wedding night and honeymoon. The petitioner states that on February 6, 2004, J-G- returned to the United States and she to Medellin, after which they spent the next ten months communicating by telephone two times a day, without an interpreter, and J-G- sent her money for extra expenses. The

petitioner states that in January 2005, she went to Bogota for her visa interview and, though she thought her husband would send her an airplane ticket in February, he did not send it until April. The petitioner explains that her uncle, [REDACTED] was waiting for her at the airport when she arrived in the United States on April 11, 2005, and that J-G- arrived an hour later, after which she and J-G- drove for eight hours from Miami to Clearwater, stopping only for gasoline and donuts. The petitioner states that she lived with J-G- until she left him six days later after he became abusive.

The record contains statements from [REDACTED] and [REDACTED], dated September 30, 2005 and October 6, 2005, respectively, who both state, in part, that they were present at the civil marriage of the petitioner, who is their niece, and J-G-.

The record contains a second statement from [REDACTED], dated January 6, 2007, stating that he acted as a translator for the petitioner and J-G- during many international calls that took place between them in 2003 and 2004. [REDACTED] also states that he took the petitioner to the airport to meet J-G- on the day before their wedding, and that he witnessed the wedding between the petitioner and J-G-, which took place on February 2, 2004. [REDACTED] states that J-G- assured the petitioner that he would take good care of her, including providing for her healthcare needs and buying a house. [REDACTED] concludes that it is his belief that the petitioner entered into the marriage in good faith.

The record also contains a statement from [REDACTED] the petitioner's sister, who states, in part, that she attended the wedding of the petitioner and J-G- on February 2, 2004, and spoke to J-G- by phone prior to and subsequent to the wedding. [REDACTED] states that the last time she had a conversation with J-G- was in November 2004.

The record also contains a statement from [REDACTED] dated January 22, 2007, who states, in part, that in February 2004, the petitioner told him about her marriage to J-G-. [REDACTED] states that in never met J-G- in person, but had spoken to him by phone. [REDACTED] states further that his niece intended to be dedicated wife, but J-G- did not know how to treat her.

The record contains a statement from [REDACTED] dated January 7, 2007, who states, in part, that J-G- called him several times during his long-distance courtship with the petitioner, who is Mr. [REDACTED] niece, to ask questions about the petitioner and her Colombian family. [REDACTED] states that he and J-G- discussed the differences in customs between the United States and Colombia, and foreign document handling and procedures. [REDACTED] states that he went to the Miami airport on April 11, 2005 to meet the petitioner, and he later learned from the petitioner's mother that she had called the petitioner and J-G- one week after the petitioner's arrival to the United States and learned from J-G- that the petitioner was no longer living with him. [REDACTED] states further that after several phone calls to his sister, who is the petitioner's mother, he learned that his niece had been physically abused by J-G- and that she was living in a home for abused women.

The AAO finds the director to have erred in citing the short duration of joint residence as evidence that the petitioner did not enter into the marriage in good faith, as the statute and regulations prescribe no

minimum period of time to establish joint residence or good-faith marriage. Upon review of the record, however, we still do not find that the evidence submitted by the petitioner and on her behalf is sufficient to establish the petitioner's good-faith entry into the marriage. The petitioner met J-G- the night before they were married, lived together in Colombia for five days, and lived together in the United States for six days. The petitioner has submitted evidence of her wedding and described her long-distance relationship with J-G-. Although the petitioner states that she and J-G- talked on the telephone without the aid of an interpreter, she does not describe the content of their conversations or state why she decided to marry a man she had never met. Moreover, although the petitioner states that she and J-G- studied one another's language and thus overcame their language barrier, the April 16, 2005 police report states that they are unable to verbally communicate with each other, that J-G- speaks no Spanish, and that the petitioner speaks only broken English. The relevant affidavits submitted by the petitioner are all from relatives, who provide primarily only general statements regarding having witnessed the wedding and/or talked on the phone to J-G-. Their statements provide no probative details regarding the petitioner's relationship with J-G- and interactions with each other, and contain only vague statements such as "[J-G-] was very likeable," "[J-G-] appeared to be a very nice and sincere person," and "[J-G-] sounded like a very correct and honest person for my lovely niece . . ." The petitioner has demonstrated that a wedding and wedding luncheon took place on February 2, 2004, in Medellin, Colombia, followed by a 3-day honeymoon, after which J-G- returned to the United States, included the petitioner on his medical insurance plan, effective January 1, 2005, and reportedly sent her money from April 2004 to April 2005. The photographs of the petitioner and J-G- confirm that they were married and pictured together, but these documents, along with the medical insurance card and money drafts, alone do not establish the petitioner's good-faith entry into the marriage. Moreover, the testimonial evidence submitted by the petitioner and on her behalf lacks probative details regarding the circumstances under which she met J-G-. The petitioner stated that her "good friend" from childhood, [REDACTED], and [REDACTED] husband, [REDACTED] who live in the United States, introduced the petitioner to J-G- after the petitioner told [REDACTED] that she was lonely and wanted to meet someone, and that [REDACTED], in turn, told the petitioner about her husband's boss, J-G-, explaining that she and her husband were good friends with J-G- "in and outside of work" and that J-G- was "an honorable and decent person." We note, however, that the petitioner provided no statement from her friend, [REDACTED], whom the petitioner claims introduced her to J-G-, visited her and J-G- on April 13, 2005, and provided the petitioner a place to stay after fleeing from J-G-'s house. The petitioner also did not indicate why such evidence was unobtainable.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has not demonstrated that she married she married her husband in good faith. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.