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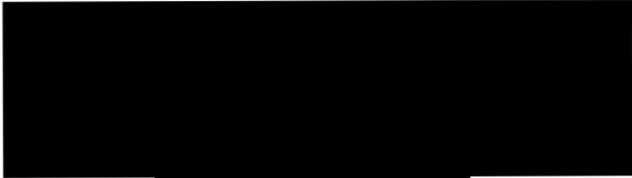


U.S. Citizenship
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FILE: [REDACTED]
EAC 07 033 50844

Office: VERMONT SERVICE CENTER

Date: **MAR 23 2009**

IN RE:



PETITION: Petition for Immigrant Abused 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.

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 service center director 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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that she entered into marriage with her ex-husband in good faith.

Counsel submitted a timely appeal on September 14, 2007

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful permanent resident 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)(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) 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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 of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Cambodia who entered the United States in B-1/B-2 nonimmigrant status on November 6, 1994. She married A-M-,¹ a lawful permanent resident of the United States, on August 9, 1996 in New Britain, Connecticut. A-M- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on September 9, 1996. The Form I-130 was approved on September 18, 1997.² The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on October 31, 2001. The Boston District Offices issued notices of intent to revoke approval of the Form I-130 on August 21, 2002 and January 5, 2005. Approval of the Form I-130 was revoked, and the Form I-485 denied, on March 4, 2006. A-M- and the petitioner were divorced on November 3, 2006.

The petitioner filed the instant Form I-360 on November 8, 2006. The director issued a request for additional evidence on November 28, 2006, and requested additional evidence to establish that the petitioner is a person of good moral character and that she had married A-M- in good faith. The petitioner responded on January 26, 2007, and submitted additional evidence. On May 11, 2007, the director issued a notice of intent to deny (NOID) the petition, which notified the petitioner of the deficiencies of record and afforded her the opportunity to submit further evidence to establish that she

¹ Name withheld to protect individual's identity.

² See Form I-130, EAC 96 246 52540, approved September 18, 1996.

and A-M- had shared a joint residence, and that she had married A-M- in good faith. The director also requested proof of the legal termination of the petitioner's first marriage, as well as a copy of the final divorce decree with regard to her marriage to A-M-. The petitioner responded to the NOID on July 5, 2007, and submitted additional evidence. After considering the evidence of record, including the evidence submitted by the petitioner in response to the NOID, the director denied the petition on August 16, 2007. Counsel submitted a timely filed appeal.

Good Faith Entry into Marriage

The sole issue on appeal is whether the petitioner has established that she married A-M- in good faith. In finding the evidence of record insufficient to establish this criterion, the director stated that since A-M- and the petitioner were married for approximately ten years, it would appear likely that the petitioner would be able to submit common assets, insurance policies, leases, and other types of accounts. Instead, the petitioner submitted affidavits only. The director noted that none of the petitioner's affidavits state that she married A-M- in good faith, and that none of the affidavits of record provided insight into the petitioner's relationship with A-M- prior to their marriage or the dynamics of the relationship after the marriage.

The record contains four affidavits from the petitioner. In her June 12, 2001 affidavit, the petitioner stated, with regard to her intentions upon marrying A-M-, that she met him in Philadelphia in June 1996 through mutual friends and, after spending time together, decided to marry. The petitioner also stated that "much of the reason behind" the marriage was that A-M- had a new job in Connecticut and wanted the petitioner to move with him to Connecticut. The petitioner, however, did not want to move with him unless they were married. As noted previously, they married in August 1996. The petitioner also explained that, although she and A-M- lived together happily for "a long time," things began to change in the summer of 1997. She began to notice that money was missing from the house, and she soon discovered that A-M- was taking their money and using it to gamble. She reports that she and A-M- argued frequently until he left her in late November, or early December, of 1997. She did not see him again until February 2000, when they saw each other at a restaurant and, although A-M- never moved back into the petitioner's home, A-M- began visiting the petitioner's home a few times each week. A-M- left again in July 2000 after the petitioner discovered he was stealing money again. In September 2000, A-M-'s father told the petitioner that A-M- had been arrested at a casino and was serving time in jail. A-M- was released from jail in October 2000, and he and the petitioner began speaking again. At the time the petitioner submitted the affidavit, she had not spoken to A-M- since January 2001.

In her November 3, 2006 affidavit, the petitioner stated that she met A-M- at [REDACTED]'s sister's wedding party in June 1996. The petitioner stated that they had a nice conversation and, at the end of the party, A-M- asked for her phone number. The petitioner stated that A-M- called her the next day, and they agreed to get together that evening. A-M- drove to the petitioner's apartment, and they "drove around" and stopped at a park before eating at a nearby restaurant. The petitioner stated that she was very excited, as she had never had a man take her to dinner alone in that manner. At the end of the evening, A-M- asked the petitioner if he could come to pick her up more often,

and she told him he could. On July 1, 1996, A-M- moved to Connecticut to start a new job. The petitioner stated that she and A-M- spoke on the telephone often, and sometimes talked through the night. Two weeks later, A-M- returned to Philadelphia for a weekend visit, and proposed marriage to the petitioner. She stated that they were married in Connecticut on August 9, 1996, and had a party at their home the following day.

The petitioner's July 2, 2007 affidavit addresses the issue of whether she married A-M- in good faith, and was executed in response to the director's NOID, which had requested such items as insurance policies in which she or A-M- are named as beneficiaries; bank statements, tax records, or other documentation that show shared accounts and other similar responsibilities; evidence of the couple's courtship, wedding ceremony, residences, and special events; evidence of joint ownership of property; birth certificates of children; and affidavits from friends and family members who can provide specific information. In her affidavit, the petitioner stated that she was unable to provide any of this information because, due to her lack of status in the United States, and A-M-'s gambling activities and controlling nature, she did not have additional documents.

In her September 7, 2007 affidavit, the petitioner attempts to explain why she is unable to provide any of the evidence suggested by the director that would demonstrate that she had married A-M- in good faith. The petitioner stated that for the first year she and A-M- were married, she could not obtain a social security number and, therefore, could not be named on any insurance policies, bank accounts, or other assets. According to the petitioner, by the time the Form I-130 was approved in September 1997, A-M- had developed a horrendous gambling problem and that, in order to pay for her basic needs, she could not deposit any money into a joint account because he would have withdrawn the money to support his gambling addiction.

Upon review, the AAO agrees with the director's determination that the petitioner has failed to demonstrate that she married A-M- in good faith. In support of the petitioner's assertion that she was unable to obtain additional documentation in support of a good faith marriage, counsel asserts, in his September 13, 2007 appellate brief, that such documents would be readily available with regard to a marriage that was based upon mutual respect, responsibility, and consideration, the marriage between the petitioner and A-M- was extremely dysfunctional beginning shortly after the marriage due to A-M-'s gambling and abusive behavior.

However, counsel's statement that the relationship became extremely dysfunctional shortly after the marriage is inconsistent with the evidence of record that he requests the AAO re-examine. The petitioner and A-M- were married in August 1996. In her June 12, 2001 affidavit, the petitioner stated that she and A-M- "lived happily in New Britain for a long time," until the summer of 1997. In his July 2, 2001 affidavit, ██████████ stated that the petitioner and A-M- "lived happily until sometime late in 1997." In her November 1, 2006 affidavit, ██████████ stated that the couple had a good relationship for about one year. Counsel's statement introduces an inconsistency into the record, and it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not

suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The AAO acknowledges the petitioner's statements on appeal that, due to the unique circumstances of her case, she was unable to hold any type of financial account jointly with A-M-, as he would have withdrawn the money to support his gambling addiction. The AAO acknowledges further that she and A-M- only shared a joint residence for the first 16 months of their ten-year marriage, and that she did not have a social security number during that time. Further, the affidavits of record indicate that A-M- and the petitioner had little, if any, contact with each other after 2002. However, the AAO also shares the director's concerns regarding the complete lack of any documentary evidence in the record of the petitioner's intentions upon entering into the marriage. For example, both the petitioner and ██████████, the petitioner's uncle, state that there were around fifteen guests at the couple's wedding party. The AAO finds it unusual that not one individual took a single photograph to remember the day. Further, the AAO notes that the record is devoid of documentation that it would appear should be available to the petitioner, such as joint tax returns (at least for the 1996 filing year), a joint residential lease for the time during which the couple did live together, or, as mentioned previously, a single picture taken during the time in which they dated or lived together. Such information may in fact be unavailable, but the petitioner has not explained why such is the case.

Beyond the affidavits of record, the only evidence contained in the record of proceeding that speaks to the petitioner's intentions is a computer printout indicating that, as of January 19, 2007, A-M- was the named beneficiary of the petitioner's insurance policies and "Partner's Plan." However, this document is insufficient for two reasons. First, it is dated after the couple's divorce; there is no indication on the document that the petitioner named A-M- the beneficiary of these policies before they were divorced (or before she was requested by the director to submit such evidence). Further, as the document is from 2007, it is not evidence of her intentions upon entering into the marriage.

Accordingly, the only evidence of record with regard to the petitioner's intentions upon entering into the marriage are the affidavits of record. This is not necessarily problematic; the AAO acknowledges that, in certain situations, documentary evidence is unavailable. However, in the instant case, the affidavits contain inconsistencies. For example, the petitioner submits an affidavit from A-M- himself regarding their marriage, in which he states that he knows the petitioner married him because she loved him. A-M- states in this December 15, 2006 affidavit that he met the petitioner at the wedding party of ██████████ sister, and that he knew ██████████ from work. However, this conflicts with ██████████ June 28, 2007 affidavit, in which ██████████ stated that he met both A-M- and the petitioner for the first time at the wedding party.

The two affidavits of ██████████ are also inconsistent with each other. In his November 3, 2006 affidavit, ██████████ states that he left Cambodia in 1980 and did not speak to the petitioner for several years. In June 1996, he received a call from the petitioner, and she told him about her life in Philadelphia. Mr ██████████ stated that the petitioner told him about A-M-, and that he wished her good luck. He stated that in August 1996, he received a call from the petitioner inviting him to her

wedding. The AAO notes that none of the petitioner's affidavits mention the role of ██████████ in taking her to meet A-M-.

However, in his August 31, 2007 affidavit, ██████████ describes himself as having been much more involved in the courtship of the petitioner and A-M-. In this affidavit, he states that the petitioner visited him in Lowell, Massachusetts several times in June or July of 1996, and that each time she visited he drove her to Lynn, Massachusetts in order to visit A-M- and his father. He states that, in July 1996, he learned that the petitioner and A-M- had become engaged. According to ██████████, he had a discussion with A-M-'s father about A-M-'s gambling addiction shortly after meeting A-M-. ██████████ states that A-M-'s father told him that A-M- had a good job, and that the gambling was an occasional activity. Mr. ██████████ says that he discussed A-M-'s gambling with the petitioner, but that she decided nonetheless to proceed with the marriage.

These inconsistencies have not been explained. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Finally, the AAO notes that, in both notices of intent to revoke approval of the Form I-130, A-M- was unable, at the petitioner's permanent residency interview, to provide the names of either of the petitioner's two children. When considered together with the lack of any documentation indicating a shared life together, such a lack of basic knowledge about the petitioner's life is not indicative of a marital relationship that was entered into in good faith by the parties.

For all of these reasons, the AAO agrees with the director's determination that the petitioner has failed to establish that she entered into marriage with A-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The AAO concurs with the director's determination that the petitioner has failed to demonstrate that she entered into marriage with A-M- in good faith. She is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.