

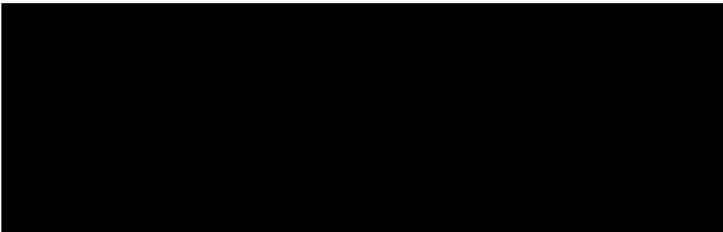
identity information  
prevent identity theft  
invasion of personal privacy

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  
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Services

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FILE: [REDACTED]  
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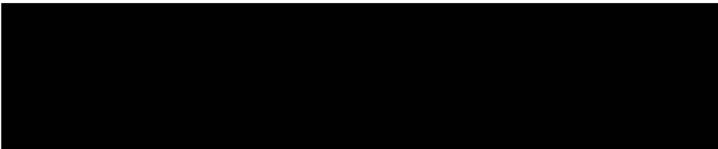
Office: VERMONT SERVICE CENTER

Date: **MAR 30 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 AAO will withdraw the director's decision. Because the petition is not approvable, however, it will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the abused spouse of a U.S. citizen. The director denied the petition because the petitioner failed to establish that she resided with her spouse or entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

We concur with the director's determination that the petitioner has not established that she resided with her spouse or entered into her marriage in good faith. Counsel's claims and additional evidence on appeal do not overcome these grounds for denial. Nonetheless, the case must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

*Eligibility for Immigrant Classification Under Section 204(a)(1)(A)(iii) of the Act*

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner 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.

(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.

\* \* \*

(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.

*Procedural History and Pertinent Facts*

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 was last admitted to the United States at New York on November 12, 2003 with a B-2 non-immigrant visitor visa. Her passport shows multiple prior entries, including to San Juan, Puerto Rico; New York and Miami. The petitioner married H-G-<sup>1</sup> a U.S. citizen, in Rio Piedras, Puerto Rico, on September 26, 1997. The petitioner had been married before and divorced in Santo Domingo, the Dominican Republic, on July 17, 1997.

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

The petitioner filed the instant I-360 Petition on March 23, 2007. Evidence submitted with the I-360 Petition included (1) a detailed statement by the petitioner; (2) copies of sonograms as proof of pregnancy on March 4, 1997 along with a medical record of the same date (not translated) from a clinic in Santo Domingo; (3) a letter dated March 20, 2006 signed by [REDACTED] on letterhead of the same clinic indicating that the petitioner had a miscarriage on March 20, 1997; and five affidavits from acquaintances or relatives. Upon review, the director found that the documentation submitted was insufficient and, on October 23, 2007, issued a Request for Evidence (RFE) that the petitioner resided with her U.S. citizen spouse and that she entered into her marriage in good faith. In response, on January 18, 2007 the petitioner submitted two additional affidavits. The director found that the petitioner had failed to provide sufficient evidence of eligibility and denied the petition on February 21, 2008.

On appeal, counsel submits a brief, a statement from the petitioner and another letter from Dr. [REDACTED] regarding the petitioner's miscarriage on a different date, April 2, 1998. Counsel also submits copies of evidence previously submitted regarding the petitioner's pregnancy and miscarriage on March 20, 1997. Counsel's remaining claims and the evidence submitted on appeal fail to establish the petitioner's residence with her husband and her good-faith entry into their marriage.

#### *Joint Residence*

The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- The petitioner's I-360 Petition, submitted on March 23, 2007, in which she claims to have resided with her husband from July 1996 to 2003 and that their last joint address was [REDACTED]
- The petitioner's two statements, the first undated but submitted with the I-360 Petition, and the second dated April 23, 2008 and submitted on appeal.
- The petitioner's Form G-325A, Biographic Information, which indicates that she resided in [REDACTED] in the Dominican Republic from 1964 to November 2003, at which time she moved to the Bronx, New York.
- Five affidavits from acquaintances or relatives, all undated but submitted with the I-360 Petition, attesting to the petitioner's marriage, her visits to Puerto Rico, and her husband's abusive treatment.
- Two affidavits, dated December 27, 2007, from individuals residing in Rio Piedras, Puerto Rico, who claim to have known the petitioner and her husband since 1998 and 1999, respectively.

On the Form I-360, the petitioner claimed to have resided with her husband from July 1996, over a year before they were married, to 2003; and she provided an address where they last resided in San Juan. As noted by the director, however, the petitioner stated on her Form G-325A that she resided in the Dominican Republic from birth until November 2003. This inconsistency was not explained

on appeal. Moreover, the petitioner claimed in her statement submitted on appeal that her “marital address in Puerto Rico was [REDACTED]” and not the address listed on her petition, adding to the inconsistent information she has provided regarding where she resided. These unexplained inconsistencies raise questions as to the credibility of the petitioner’s claim to have resided with her husband.

In her initial statement, the petitioner claimed that she met H-G- in 1996 during a visit to Puerto Rico and returned to the Dominican Republic shortly thereafter; that she visited him from the Dominican Republic on different occasions; and that early in their relationship he was abusive, describing in detail how he abused her during those visits. She claimed that after they went out for a few months she discovered that she was pregnant and had to return to Santo Domingo, in February 1997, because her father was very ill. She explained in detail the problems she had with the pregnancy a few days after she returned. She stated that a doctor in Santo Domingo recommended complete bed rest to avoid aborting the baby; she had a miscarriage shortly afterwards; and H-G- accused her of having an abortion. She added that her friends, including some who wrote affidavits about the event, were with her in the hospital and spoke to H-G- over the telephone and witnessed his anger, and that H-G- refused to help her with the hospital bill. She also stated that she continued to visit H-G- in Puerto Rico and later agreed to marry him, but that she had always informed him that she had to travel to Santo Domingo to be with her sick father and also that she was in college and needed to finish her studies in the Dominican Republic. She said their relationship deteriorated after they were married because she had to stay in Santo Domingo, and she described his abusive actions whenever she would visit.

Affidavits from her neighbors in the Dominican Republic and two aunts generally confirm the petitioner’s account of her visits to Puerto Rico, abusive treatment by H-G-, and her miscarriage in March 1997. The five affidavits were submitted with the I-360 Petition and included information that the petitioner used to travel back and forth to Puerto Rico: Three of her acquaintances stated that the petitioner told them she was married and confirmed the events surrounding the miscarriage in March 1997 as described by the petitioner in her statement; one aunt stated that she met H-G- during a visit to Puerto Rico and described the petitioner as very much in love but also described H-G-’s abusive behavior and noted that the couple stayed in a hotel one night; another aunt stated that the petitioner and H-G- would stay at the aunt’s house in Puerto Rico when the petitioner visited. None of the affidavits refers to the dates of the events they are describing and none indicates that the petitioner and H-G- resided together, but rather that H-G- resided in Puerto Rico and the petitioner visited him occasionally, even noting that they would spend nights at an aunt’s house or in a hotel. The petitioner’s initial statement also describes how she had to remain in the Dominican Republic, either because of her father’s illness or because she was in college, and that her failure to reside with H-G- in Puerto Rico was a source of tension. She claimed, “The relationship completely deteriorated because I had to stay about 9 months in Santo Domingo to be able to finish the thesis.” After that time, the petitioner’s statement focuses solely on how she was abused by H-G- during visits to Puerto Rico; she provides no dates or other details, noting only that she could not continue with H-G- and instead went to Florida; and once, in 2004, saw him in New York. The absence of relevant information, inconsistent addresses in Puerto Rico provided by the petitioner and inconsistent information provided by the petitioner regarding the years she resided in

the Dominican Republic further detract from the credibility of her claim that she resided with her husband at any time.

The record also includes two affidavits, submitted in response to the RFE issued on October 23, 2007, from individuals who claimed to reside in Puerto Rico and to have known the couple since 1997 or 1998. However, these affidavits lack details of any relationship with the couple. Moreover, they contain verbatim language regarding the issue of joint residency. They both state their names, addresses and professions and declare, "when I met them they were married and lived together, we became friends and on many occasions we went out together to eat and dance." As the affiants would not have provided duplicate language, and it is not clear who provided the statement, these affidavits lack credibility. In addition, even if they were credible, the statements fail to report any address for the couple or any time frame or other information relevant to a determination of where the couple resided. These affidavits, therefore, have no weight as evidence of the couple's joint residence.

As noted above, documents may also be submitted as evidence of joint residency, including 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. In this case, although the petitioner and H-G- were married in September 1997 and the petitioner claimed on her I-360 Petition to have resided with him from July 1996 to 2003, not one document has been submitted, other than forms with contradictory information submitted by the petitioner, that notes the petitioner's or H-G-'s address.

While the petitioner is not required to have lived with her husband for any specific amount of time, her inconsistent statements regarding her residence, the lack of relevant information provided in supporting affidavits, and the failure to provide any documentary evidence detract from the credibility of her claim. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Good Faith Entry into Marriage*

In support of her claim that she entered into her marriage in good faith, in addition to the evidence listed in the preceding section the petitioner submitted evidence that she had a miscarriage in March 1997. She submitted copies of sonograms as proof of her pregnancy on March 4, 1997 along with a contemporaneous medical record in Spanish from a clinic in Santo Domingo and a letter dated March 20, 2006 signed by [REDACTED] on letterhead of the same clinic indicating that she had a miscarriage on March 20, 1997. The director pointed out that at the time of her miscarriage the petitioner was still married to her former husband, and although she submitted a detailed description of this event, she did not mention her prior husband or her subsequent divorce.

On appeal, the petitioner submits another statement, claiming that (1) she did not know that her first divorce from her former husband was defective until she went to marry her second husband, H-G-; and (2) she suffered a second miscarriage on April 2, 1998, and both pregnancies were the result of

her relationship with H-G-. She submits a second letter from [REDACTED] also dated March 20, 2006, regarding the petitioner's miscarriage on April 2, 1998. She also claims that she entered into her marriage with H-G- in good faith, believing that she would establish a relationship that would last a lifetime.

In her initial statement, submitted with her I-360 Petition, the petitioner provided details regarding the abusive treatment she received from H-G-, both before and after they were married. She claims that his sister introduced them at his sister's home during a visit to Puerto Rico in 1996; she liked him and was attracted to him; she returned to Santo Domingo shortly after they met; he would call her often and she would visit him; and they felt more attracted to each other. She also claims that from the beginning, H-G- was overprotective and controlling and was abusive in many ways, including by forcing her to go out or stay home against her will and to have sex against her will. She describes in detail how she became pregnant and returned to the Dominican Republic in February 1997. As noted in the previous section, this pregnancy and a miscarriage a few weeks later in the Dominican Republic is described in detail by the petitioner and in affidavits from acquaintances who were present with her in the hospital.

The petitioner does not mention her former husband although they were still married when she met H-G- and when she became pregnant. To explain this discrepancy, in her statement submitted on appeal the petitioner refers to a defective divorce and a second miscarriage. As there was no mention of a second miscarriage in the detailed statement of the petitioner and affidavits initially submitted in support of the I-360 Petition, this claim creates an additional discrepancy in the record and raises questions regarding the petitioner's account of her time spent with her husband. The second letter from the doctor regarding a second miscarriage also raises questions regarding the credibility of its contents. It is not notarized and is not accompanied by any medical records despite the fact that it is dated September 18, 2006 and purports to confirm an event in 1998. The claims and evidence on appeal neither explain why the petitioner failed to include such information before nor provide credible information relevant to a determination of a good faith marriage.

As noted above, evidence of good faith at the time of marriage may also 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 potential evidence includes police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. The record in this case lacks all such evidence.

The petitioner claims to have resided with H-G- for over six years; yet neither she nor any acquaintance with personal knowledge of the relationship has provided details about the feelings or plans or activities of the couple during their courtship or marriage, why they married, her plans for a future with her husband or any relevant information about the couple's relationship.

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). However, the petitioner has submitted contradictory

information regarding her residence during the six to seven years of her claimed relationship with H-G-. Moreover, the lack of probative detail and substantive information in the petitioner's testimony regarding the couple's relationship and shared experiences, other than those related to abuse, and the lack of documentary evidence significantly detracts from the credibility of her claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

For the reasons noted above, the petitioner has failed to establish by a preponderance of the evidence that she resided with her husband or that she entered into her marriage in good faith. Consequently, she is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The petition is not approvable for the above stated reasons, with each considered as an independent and alternative bar to approval.

Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID as required under former 8 C.F.R. § 204.2(c)(3)(ii)(2007). While it is no longer a regulatory requirement for petitions filed on or after June 18, 2007, a NOID is required in this case, as it was filed on March 23, 2007.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act.

**ORDER:** The director's decision is withdrawn; however, the petition is currently not approvable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.