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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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MAY 05 2009

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

EAC 07 194 50299

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 Immigration and Nationality Act (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 for the petitioner's failure to establish that she entered into the marriage in good faith.

On appeal, counsel submits a brief, the petitioner's affidavit, and a photograph.

The AAO concurs with the director's determination that the petitioner has not established that the petitioner entered into the marriage in good faith. The AAO finds beyond the decision of the director that the petitioner failed to establish that she resided with the claimed abuser.

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].

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

The eligibility requirements are further explained 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 under section 204(a)(1)(A)(iii) of the Act are further explained 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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Colombia. She entered the United States on January 16, 2004 on a K-1 visa as

a fiancé of M-A-,<sup>1</sup> an individual unrelated to this matter. The record includes information provided by the petitioner indicating that she lived in Indiana for a month after her entry into the United States, then moved to Connecticut with another man – not her fiancé, and then met A-S-,<sup>2</sup> her former husband in March 2004 who drove her to Florida. On the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that is the subject of this appeal, the petitioner indicated that she lived with A-S- from March 2004 to July 2005. The record includes a marriage certificate showing she married A-S-, a United States citizen, on May 14, 2005 in the State of Florida. The record includes a final judgment of dissolution of marriage dated October 10, 2005 showing A-S- brought the divorce action against the petitioner, that the matter was uncontested, and that the cause of the dissolution of the marriage was that the marriage was irretrievably broken. The petitioner initially filed a Form I-360 on January 31, 2006. The director issued a Notice of Intent to Deny (NOID) the petition on July 27, 2006. Upon review of the evidence in the record the director denied the petition on March 1, 2007, finding that the petitioner had not established: that she had resided with A-S-, that she is a person of good moral character, and that she entered into the marriage in good faith. On June 25, 2007, the petitioner filed a second Form I-360, the Form I-360 that is the subject of this appeal. The director issued a request for further evidence (RFE) on February 19, 2008 and upon review of the record, including the response to the RFE, denied the petition on June 11, 2008 finding that the petitioner failed to establish that she entered into the marriage in good faith.

### *Good Faith Entry into Marriage*

The petitioner initially provided a June 21, 2007 personal statement indicating that she and A-S- were very much in love and that she “entered into the marriage in good faith and with expectations of having a long and loving marriage.” She stated that she met A-S- in person in March 2004 when he came to pick her up in Connecticut to drive her to Florida, but also indicated that she had met him previously online. The petitioner reported that she spent a lot of time with A-S-, “so eventually our friendship became stronger and when [she] least expected it, [they] fell in love with each other.” The petitioner also reported that A-S- had Parkinson’s disease and took strong medication to control the disease. The petitioner related the difficulties she had with A-S- and noted that she would stay at A-S-’s ex-girlfriend’s house or other friends’ houses during these difficulties, but that A-S- would always apologize. The petitioner indicated that she completed a form to sell her reproductive eggs in January 2005 and began work as an exotic dancer in February 2005 at the request of A-S-. The petitioner claimed that A-S- told her that she could not have her name on anything, any bill, any letter, or bank account because immigration would find her. The petitioner noted several incidents of A-S-’s alleged behavior prior to their marriage and then stated:

After a while, A-S- calmed down and his attitude changed to the point that [they] could have a conversation without him calling [her] nasty names or putting [her] down. So [they] started to see each other more and more. He promised [her] that he

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

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

was a changed person and that he would never be violent and angry to [her] again. And then one day, A-S- asked [her] to marry him.

The petitioner noted that they married on May 14, 2005.

In the petitioner's second personal statement, dated April 1, 2008, the petitioner stated: "[a]fter living with A-S- for a while, we both decided to get married." She explained that she "personally wanted to spend the rest of [her] life with [A-S-] because [she] was sure at the time that he was the right person for [her]" and further that it was like "when you have that warm fuzzy feeling inside that takes control of your emotions just from looking at him." The petitioner noted that she could go on and on about the many pleasurable memories of the things she and A-S- did together, but those experiences have been "run over and outweighed by the slow changes that occurred in [their] relationship."

In the petitioner's third personal statement submitted on appeal, the petitioner describes how A-S- proposed to her; notes the statements provided by her friends and two of A-S-'s relatives; and indicates that she had lost contact with A-S- and recently found him to ask for help on her case and that he gave her some more pictures of their wedding and a picture of them while on vacation in Orlando. The petitioner explains that once she was married she could not change her name without a social security number and was told by an immigration attorney that she would have to go back to Colombia to process her immigration papers and since everything was already in A-S-'s name and she did not drive; it did not occur to her that she would need papers with their names together in order to make her case with immigration.

The petitioner also provided several statements, affidavits, and documents on her behalf including:

- An undated letter signed by A-S-'s stepmother who states that the petitioner and her stepson lived together from March 2004 to July 2005 and that they were all together as a family on many occasions and that she attended their wedding.
- A planned parenthood client information form dated January 27, 2005, whereon the petitioner indicates that A-S- is her boyfriend and lists the family number as three (which includes A-S-'s son).
- A December 31, 2005 affidavit signed by [REDACTED] who indicates that he witnessed A-S- being abusive, but does not provide any information regarding the petitioner's intent in entering her marriage.
- A January 7, 2006 statement signed by A-S- who states: that he met the petitioner a year before she came to the United States on a fiancé visa; that when the petitioner arrived in the United States and her fiancé was abusive he asked the petitioner to come and live with him; that they fell in love; and married a year later. A-S- also notes that when he started using a drug to control his Parkinson's disease, the side effects of the drug caused him to take things out on the petitioner and that despite

the turmoil between he and the petitioner, the petitioner still came to be with him when he was in the hospital in late December 2005.

- A May 12, 2006 letter signed by [REDACTED] who states that she has known the petitioner since March 2004 when she lived with A-S-, and that she has spent many occasions with the petitioner and A-S- and knew them to be a close couple, and that the petitioner and A-S- were in love from early on in their relationship up until the time of their wedding.
- A May 12, 2006 affidavit signed by [REDACTED] A-S-'s cousin who states that he lived with A-S- and his girlfriend (the petitioner) from March 2004 to July 2004 and that the petitioner cared for his cousin very much and that he attended their wedding.
- An August 6, 2006 email from A-S- to the petitioner indicating that he cannot find the "cd" but can make another one and that he needs some things from the petitioner. A-S- notes that he needs copies of the marriage license, the restraining order, and all the paperwork which states that he was violent to the petitioner for his lawsuit against the drug company. He notes that it actually helps his case "to admit to everything [she] claim[s] [that] [he] did to [her]."
- An August 19, 2006 letter signed by [REDACTED] who indicates that the petitioner and A-S- lived together for more than a year but does not offer any information regarding the petitioner's intent in entering her marriage.
- A September 7, 2006 affidavit signed by [REDACTED] who declares that she met the petitioner when the petitioner lived with her fiancé and that they shared the apartment for more than a year before they got married.
- A September 1, 2006 affidavit signed by [REDACTED] who repeats the petitioner's words about A-S-'s abusive behavior but does not provide any information regarding the petitioner's intent in entering her marriage.
- An April 4, 2008 statement from the petitioner's father, who indicates that the petitioner was happy in the relationship before her husband started to act violent and controlling and that she was very much in love with A-S-.
- An April 2, 2008 affidavit signed by [REDACTED] wherein [REDACTED] indicates that she met the petitioner in early 2005 and in July 2005 offered the petitioner a place to stay in her home. [REDACTED] offers her opinion regarding A-S-'s claimed abuse against the petitioner occurring in July and September 2005 but does not provide information regarding the petitioner's intent in entering the marriage in May 2005.
- An April 2, 2008 affidavit signed by [REDACTED], wherein [REDACTED] indicates that he met the petitioner and A-S- in 2005 when A-S-, who was the petitioner's fiancé at the time, brought the petitioner to the club where he worked. [REDACTED] indicates the petitioner and her former husband shared an apartment for about a year, but does not provide any information regarding the petitioner's intent upon entering her marriage.

- A July 2, 2008 notarized letter signed by A-S- in support of the petition who states that he and the petitioner married in good faith. A-S- notes that they had a beautiful wedding, lived together, went on trips, and have other papers to show the truth of their relationship.

The record also includes photographs of the petitioner and A-S- at their wedding and on other occasions.

On appeal, counsel for the petitioner asserts: that although the couple's marriage was short-lived, the couple dated and lived together for more than a year before marrying; that the petitioner explained that despite their love for each other they took their time making the decision to marry because it was a big and important step for both of them; that the petitioner explained that A-S- told her not to put her name on any documentation because immigration would find her; that everything was already in A-S-'s name; that the petitioner's lack of a social security number and immigration status and her limited ability to drive made it unnecessary or difficult to have the petitioner's name on documentation; that the couple's low standard of living did not allow them to obtain possessions or accounts; and that the circumstances surrounding the couple's separation, including the petitioner's leaving the residence on very short notice did not allow her to accumulate documents and evidence to support her future petitions for immigration benefits.

Counsel specifically points to photographs of the couple before their marriage and photographs of the wedding; a planned parenthood client information form whereon the petitioner indicates that A-S- is her boyfriend and lists the family number as three (which includes A-S-'s son); statements from friends and family members, particularly those of A-S-'s cousin and stepmother and Jeri James; and a new statement from A-S- in support of the petition. Counsel asserts that the previously submitted documents were not properly considered by the director and that the new statement from A-S- obtained only after the petitioner renewed contact with A-S- constitutes new, previously unavailable evidence and should be considered on appeal.

Upon review of the information in the record, the AAO does not find the petitioner's statements credible. First, the petitioner does not provide the detail necessary to ascertain the truthfulness of her statements regarding her courtship with A-S- other than as related to incidents of claimed abuse. Second, the petitioner does not provide detailed information that would assist in establishing her reasoning for marrying an individual that she claimed abused her. Third, the petitioner's statements when reviewed in total provide a confusing picture regarding her initial meeting with A-S-, her claimed "residence" with A-S-, her interactions with A-S-, and her loss of contact with him and subsequent finding him. Further, the AAO observes that the petitioner's first statement appears to contradict her claim that she lived with A-S- for the year prior to their marriage. For example, the petitioner states that "[a]fter a while A-S- calmed down and his attitude changed to the point that [they] could have a conversation without him calling [her] nasty names or putting [her] down. So [they] started to see each other more and more." Upon review of the petitioner's general statements, lacking significant detail regarding her interaction with A-S- other than as it relates to the claimed

abuse, the AAO finds that the petitioner's statements do not establish that she entered into the marriage in good faith.

The AAO has reviewed the statements and affidavits submitted on the petitioner's behalf. The AAO finds that the affiants and declarants indicate that they knew the petitioner and her former husband, attended the wedding or visited the couple, but that the affiants provide no probative details regarding their observations of the petitioner's allegedly good faith entry into the marriage. The affiants and declarants do not describe any particular incidents wherein they witnessed the alleged *bona fides* of the couple's marital relationship. These general statements do not substantiate that the petitioner's intent upon marrying A-S- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the legitimacy of the marriage. Similarly, the planned parenthood form does not provide probative details regarding the petitioner's intent in marrying A-S-, but rather informs only that she was offering to sell her reproductive eggs.

The AAO has also reviewed the statements of the petitioner's former husband. The AAO notes that although A-S- indicates in his statement on appeal that he has other papers to show the truth of the couple's relationship, he does not provide those papers. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO also finds that the lawsuit A-S- has brought against the drug company that manufactured the drug for his Parkinson's disease suggests that his motive to support the petitioner in her claims is disingenuous and moreover, unreliable. Further, A-S- does not provide evidence of the petitioner's intent upon entering the marriage.

The record lacks any independent documentary evidence suggested by the regulation including: proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; detailed testimony or other evidence regarding courtship, the wedding ceremony, the shared residence, and experiences; or other types of readily available evidence such as police, medical, or court documents providing information about the relationship. The AAO finds that while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf also fails to support a finding that she entered into this marriage in good faith. There are no probative, consistent details about the petitioner's initial relationship with A-S- and the subsequent interactions with A-S- that allow a conclusion that the petitioner entered into the marriage in good faith. The record lacks credible detailed information sufficient to establish the good faith intent of the petitioner in entering the marriage. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the AAO finds that the petitioner failed to establish that she resided with the claimed abuser.

*Residence*

The petitioner has not established that she resided with A-S-. The record includes no documentation, save for the petitioner's testimony and the planned parenthood donor form showing that the petitioner resided with A-S-. Moreover, the petitioner is inconsistent regarding her residence with A-S-. For example, the petitioner indicated in her initial statement that at some point after A-S- had felt bad about his behavior, they "started to see each other more and more," a statement that suggests that they did not reside together and is inconsistent with the petitioner's statements on the Form I-360. Although the petitioner has provided affidavits from friends and others indicating that she resided with A-S-, the affiants and declarants, as well as the petitioner, do not provide any probative testimonial evidence regarding her residence with A-S- during the two-month marriage, such as a description of the apartment and its location, their shared belongings, or any other information which demonstrates a joint residence. Upon review of all the information in the record, the petitioner has not provided probative consistent evidence demonstrating that she resided with her former spouse from May 14, 2005 to July 5, 2005. For this additional reason, the petition may not be approved.

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.