

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

B9

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: DEC 07 2010

IN RE:

[REDACTED]

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 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 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 married her husband in good faith. On appeal, counsel submits a legal memorandum reasserting the beneficiary's eligibility and additional documentation.

Applicable Law

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 the alien demonstrates that he or she entered into the marriage with the 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, 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, the following:

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 eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 standard and 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Mexico. She married S-C-,¹ a lawful permanent resident of the United States, on September 28, 1996, and evidence in the record indicates they divorced on April 29, 2008.

The petitioner filed the instant Form I-360 on June 20, 2008. The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, submitted timely responses. After considering the evidence of record, including the petitioner's responses to his requests for additional evidence, the director denied the petition on April 19, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

Good Faith Entry into Marriage

The sole issue on appeal is whether the petitioner has established that she married S-C- in good faith. In her May 23, 2008 declaration, the petitioner stated that she was introduced to S-C- by his sister-in-law, with whom she was living at the time. The petitioner stated that S-C- began asking her out, and they began dating two months later. According to the petitioner, she knew "from the beginning" that S-C- was not going to get along with her children. In her May 17, 2010 declaration submitted on appeal, the petitioner reiterated her earlier assertions and added that when they initially started dating, S-C- told her that she was going to fall in love with him. She stated that S-

¹ Name withheld to protect individual's identity.

C- treated her well during that time, and that they ate out together; visited family members; and went to parties. Two years later, S-C- proposed marriage. As further evidence of a good faith marriage, the record contains copies of photographs of the couple and of gifts S-C- gave the petitioner; and copies of utility bills, and rent receipts; an envelope addressed to S-C-; a receipt for a birthday cake; and a comic strip from a newspaper that S-C- signed.

The AAO has reviewed the entire record and finds that, when considered in the aggregate, the relevant testimonial and documentary evidence fails to establish that the petitioner married S-C- in good faith. The petitioner's testimony, which focuses on the abuse to which she was subjected, provides little meaningful insight into the couple's relationship apart from the abuse. The petitioner has failed to provide a detailed account of the couple's courtship and marriage, apart from the abuse, which would demonstrate her intentions upon entering the marriage. For example, the petitioner fails to describe, in any meaningful detail, the couple's first introductions; her first impressions of S-C-; their decision to date; their first date; their courtship; their decision to marry; their engagement; or their shared experiences, apart from the abuse. With regard to the documentary evidence submitted by the petitioner, the AAO agrees with the director's finding that it does not establish her good-faith entry into the marriage. The photographs are evidence only that the petitioner and S-C- were together on a few occasions. The gifts, receipt for a birthday cake, and the comic strip are evidence of the intentions of S-C-, not of the petitioner. The utility bills, rent receipts, and envelope addressed to S-C- are not evidence that the petitioner entered into the marriage in good faith or that the couple had any shared financial obligations, as none of those documents name both the petitioner and S-C-. While documentary evidence is not required to demonstrate entry into a marriage in good faith, the statements of the petitioner lack probative detail providing insight into her intentions upon entering into the marriage.

In the absence of both documentary evidence and detailed, probative testimony, the petitioner fails to establish her claim. The petitioner has failed to establish that she entered into marriage with S-C- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that she married S-C- in good faith. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), and this petition must remain 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.