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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

Bq

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 17 2010

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:

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 the \$630 fee. 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 Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner seeks immigrant classification 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 an alien battered or subjected to extreme cruelty by a United States citizen.

On May 3, 2010, the director denied the petition, determining that the petitioner had not established: a qualifying relationship with a United States citizen spouse; she was eligible for immediate relative classification based on a qualifying relationship; she had resided with the claimed abusive United States citizen spouse; and she had entered into the marriage in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and additional evidence. Counsel checks the box on the Form I-290B, indicating that a brief and/or further evidence would be submitted within 30 days. To date, no further evidence or brief has been submitted. Thus, the record is considered complete.

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 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 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.

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(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 initially entered the United States on or about January 6, 2000. She married P-R,<sup>1</sup> the United States citizen spouse, on September 8, 2002 in New Jersey. The petitioner last entered the United States on April 15, 2009 without inspection. On August 31, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

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

*Qualifying Relationship and Corresponding Immigrant Relative Classification*

The petitioner indicated on the Form I-360 that she had entered into a prior marriage but did not provide evidence that she had divorced her first husband. Despite the director's request for evidence (RFE) on this issue, the petitioner failed to provide evidence on this issue and thus, the record before the director did not include a document establishing that the petitioner had terminated her previous marriage and thus was eligible to enter into a qualifying relationship. On appeal, the petitioner provides a translated divorce decree showing that a divorce terminating her first marriage was issued on March 14, 2002. Accordingly, the director's determination on this issue is withdrawn. Similarly, the director's determination that the petitioner was not eligible for immediate immigrant relative classification based on a qualifying relationship is also withdrawn.

*Residence*

On the Form I-360, the petitioner claimed that she resided with P-R- from May 2001 to October 10, 2002 at a [REDACTED]. The record includes: a December 2007 fingerprint response issued by Public Records in New York, identifying the petitioner's address as the same [REDACTED]; a March 27, 2002 bank statement issued to the petitioner at the same address in Elmhurst, New York; an insurance card issued to the petitioner with the same address in [REDACTED] and an approval notice of an I-130, Petition for Alien Relative, sent to P-R- at the same address in [REDACTED]. The record before the director also included affidavits and statements signed by the petitioner, [REDACTED].

Although two of the individuals, [REDACTED] indicated they were neighbors of the petitioner and P-R-, the affiants did not provide information regarding the time period they were neighbors and did not provide probative information regarding the petitioner's address with P-R-. The petitioner provides no information regarding her joint residence with the claimed abusive spouse.

On appeal, counsel for the petitioner provides an additional three affidavits signed by [REDACTED]. [REDACTED] notes that she met the petitioner and P-R- in 2001 at a hospital where the petitioner was applying for insurance for her daughter and that the affiant saw her on several occasions thereafter. [REDACTED] does not provide any information demonstrating that the petitioner resided jointly with P-R- during their marriage. [REDACTED] declares only that he saw the couple at a Laundromat. [REDACTED] indicates that she saw the couple at a Laundromat and a church.

The record does not include any probative evidence establishing that the petitioner jointly resided with P-R- during her marriage. The only information in the record showing that P-R- received mail at the petitioner's address is the receipt notice for the approved Form I-130. This document is insufficient to establish that P-R- resided at the address. The record does not include testimony or any documentary evidence establishing that the couple established a joint residence in [REDACTED] New York during their marriage. The petitioner has failed to establish that she resided with P-R- as required to establish

eligibility for this benefit.

*Good Faith Entry into Marriage*

The petitioner has also failed to establish that she entered into the marriage in good faith. The petitioner does not provide any information regarding her courtship or any of her interactions with P-R- except as it generally related to the claimed abuse. The record includes photographs of a wedding ceremony and of the couple on one or two other occasions. However, photographs, although showing the performance of the ceremony and that the couple were together a few times, does not establish the petitioner's intent in entering into the marriage. [REDACTED] although stating that they were the couple's neighbors and declaring that in the beginning they seemed to be a happy couple, do not provide any substantive information regarding the interactions of the couple prior to or during the marriage. [REDACTED] declares that she met the petitioner in 2001 and in 2002 asked that the petitioner work for her; however, [REDACTED] does not indicate that she witnessed the couple together or that she observed the couple's interactions prior to or during the marriage. Similarly, [REDACTED] do not indicate that they observed the couple together. [REDACTED] note that they saw the couple together but do not provide any probative information regarding the circumstances and events of the couple's relationship.

A finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage, to determine if this was a marriage of two people intending to share a life together. For immigration purposes, evidence of good faith should demonstrate the emotional ties, commingling of resources, and shared financial responsibilities often associated with a bona fide marriage. In this matter, the petitioner has not provided a description of her introduction and interactions with her spouse prior to the marriage and during the marriage, other than as her interactions related to the alleged abuse.

The affidavits submitted on the petitioner's behalf also fail to include information regarding the shared experiences of the couple. The affiants do not provide the necessary information establishing the petitioner's intent in entering into the marriage. The affiants do not describe any particular incidents wherein they witnessed the alleged bona fides of the couple's marital relationship. The general statements submitted do not substantiate that the petitioner's intent upon marrying P-R- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the intent of the petitioner upon entering into the marriage.

While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf are not probative in supporting a finding that she entered into the marriage in good faith. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with P-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Page 6

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

**ORDER:** The appeal is dismissed.