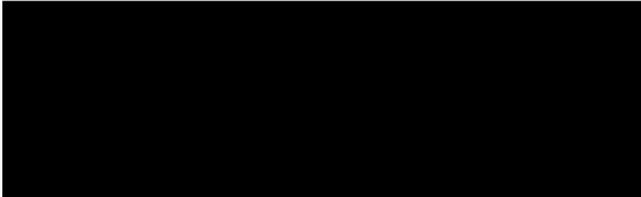


identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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



U.S. Citizenship  
and Immigration  
Services



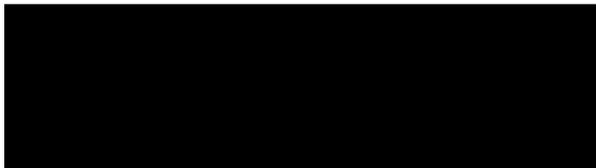
B9

FILE:  Office: VERMONT SERVICE CENTER Date: **DEC 27 2010**

IN RE: Petitioner: 

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:**

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,

Penny 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 remain 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 April 8, 2010, the director denied the petition, determining that the petitioner had not established that she had entered into the marriage in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a statement on the Form I-290B, previously submitted documents, and documents in support of the appeal.

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:

(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.

\* \* \*

(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 the Philippines. She entered the United States on April 22, 2007 on a K-1 visa. She married N-S-<sup>1</sup>, the claimed abusive United States citizen spouse on May 21, 2007. On July 2, 2007, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which was denied on November 9, 2007. On June 25, 2009, the marriage was terminated. On January 5, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner stated on the Form I-360 that she resided with the claimed abusive United States citizen spouse from April 22, 2007 to October 24, 2007.

#### *Good Faith Entry into Marriage*

The petitioner provided the following documentation to establish that she had entered into her marriage in good faith:

- The petitioner's undated personal statement submitted in support of the Form I-360, a personal statement attached to a response to an Order to Show Cause, and a personal statement dated May 4, 2010;
- A March 16, 2010 affidavit signed by [REDACTED]
- An undated statement signed by [REDACTED]
- Notices from the Internal Revenue Service (IRS) addressed to the petitioner regarding the account of the petitioner and N-S- regarding unpaid taxes;
- A copy of the petitioner's credit report showing the petitioner as an authorized user on some of N-S-'s credit cards; and

---

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

- Photographs of the petitioner's wedding and on one other occasion.

In the petitioner's initial statement, she stated generally that: she met N-S- in September 2002 through the Internet; they developed a mutual understanding; and he sent her emails, love notes, and talked to her on the phone and their love story began. The petitioner indicated that N-S- visited her in the Philippines in June 2005 and he was very friendly and kindhearted and they had dinner and walked around the city and N-S- asked her to marry him. The petitioner noted that she said no because she did not feel ready for marriage and N-S- said he would wait and he then returned to the United States but that they continued to correspond and talk on the phone. The petitioner stated that N-S- returned to the Philippines in December 2005 and they became engaged although she still needed time to think about marrying him. The petitioner declared that N-S- returned to the Philippines in February 2006 and they made love, although she did not want to, and she did not tell anyone of the experience because she did not want to hurt his image. The petitioner indicated that N-S- wanted to get married but that he had to return to the United States. The petitioner reported that this incident made her depressed and she talked to a male friend, they made love and she got pregnant. The petitioner stated that she then tried to break off the relationship with N-S- but he learned that she was pregnant and thought the baby was his but when she told him she could not come to the United States while she was pregnant, he told her to abort the baby which she refused to do. The petitioner declared further that in February 2007, N-S- returned to the Philippines and she told him that the baby was not his and he forgave her and promised to be a father to the baby. The petitioner noted that she and the baby came to the United States in April 2007, she married N-S-, and that everything was just right in the beginning and they were happy, but that when her husband was unable to do well at work, he yelled at her. The remainder of the petitioner's statement relates to the claimed abuse.

In the petitioner's statement attached to a response to an Order to Show Cause, the petitioner reiterated that she met N-S- through the Internet, that she felt confident that she knew who N-S- was when she moved to the United States, and that when she and N-S- married, he was aware of her pregnancy prior to their marriage. In the petitioner's affidavit on appeal she declares that: she is unable to submit documents requested because N-S- refused to give them to her; during the marriage, N-S- controlled her and did not want her to have anything in her possession; she left their house on October 11, 2007, when he threatened to kill her; that she entered into her marriage in good faith with the intention of spending the rest of her life with N-S-; and she provided copies of letters from the IRS, a copy of her credit report showing that she was an authorized user on some of her former husband's credit cards; and a copy of a medical report from Family Planning Associates Medical Group<sup>2</sup> to United States Citizenship and Immigration Services (USCIS).

In the March 16, 2010 affidavit signed by [REDACTED] she noted that she met the petitioner in

---

<sup>2</sup> The medical report relates to her agreement to take medication to end a pregnancy on September 29, 2007 and progress notes on the termination of the pregnancy, dated October 12, 2007. The report does not provide evidence of or otherwise demonstrate the petitioner's intent when entering into the marriage with N-S-.

June 2007 because the petitioner lived next door to the affiant's rental property and that it appeared in the beginning that the petitioner and N-S- got along well and were a happy family. In the undated statement of [REDACTED] stated that she was the petitioner's neighbor and that the petitioner seemed happy when she first moved into the neighboring house in the spring of 2007.

Upon review of the petitioner's statements in the record, the petitioner has not provided detailed information that demonstrates that she entered into the marriage in good faith. The petitioner's statements do not provide any specific information regarding her intent in entering into the marriage. 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. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter, the petitioner noted her ambivalent feelings toward the marriage, entered into an affair with another man prior to the marriage, stated that the petitioner coerced her to engage in premarital sex, and also indicated that she knew the kind of man N-S- was when she moved to the United States. The petitioner's statements when reviewed in their totality do not demonstrate that the petitioner's intent when entering into the marriage was to establish a life with N-S-.<sup>3</sup> "An intent to obtain something other than or in addition to love and companionship from that life does not make a marriage a sham. Rather, the sham arises from the intent not 'to establish a life together.'" *U.S. v. Orellana-Blanco*, 294 F.3d 1143, 1151 (9<sup>th</sup> Cir. 2002). The petitioner does not provide any of the detail regarding the couple's plans upon marrying or their interactions subsequent to the marriage except as it related to the claimed abuse. The petitioner's testimony does not reveal the necessary good faith intent when entering into the marriage.

Upon review of the statements submitted on her behalf, [REDACTED] and [REDACTED] state generally that the petitioner and N-S- appeared to be a happy family initially. Neither individual describes in

---

<sup>3</sup> Approval of a Form I-129F, Petition for Alien Fiance(e), under section 214(d) of the Act is not prima facie evidence of the beneficiary's good-faith entry into the subsequent marriage under section 204(a)(1)(A)(iii) of the Act. The statutory and regulatory framework for fiancé(e) petitions significantly differs from the requirement that self-petitioners under section 204(a)(1)(A)(iii) of the Act demonstrate that they "entered into" the marriage with the abusive U.S. citizen "in good faith." The U.S. citizen petitioner bears the burden of proof in fiancé(e) cases to establish prospectively that the petitioner and beneficiary intend to and are able and willing to enter a valid marriage. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). The corresponding regulation does not, however, define what constitutes a "bona fide intention to marry" under section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). In contrast, for self-petitions under section 204(a)(1)(A)(iii) of the Act, the alien bears the burden of proof to establish that she or he entered into the marriage in good faith and the regulation specifically defines the term "good faith marriage" and what types of evidence will suffice to meet that eligibility criterion. 8 C.F.R. §§ 204.2(c)(1)(ix), (c)(2)(vii). Hence, the fact that a self-petitioner was the beneficiary of an approved Form I-129F filed by his or her spouse will not establish that the alien actually entered into the marriage in good faith.

detail 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 N-S- 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.

Upon review of the photographs, the notification from the IRS, and the petitioner's credit report, these documents do not assist in determining the petitioner's intent in entering into the marriage. Photographs show only that the couple were involved in a wedding ceremony and were together on one or more occasions and the IRS letter indicates only that the couple reported to the IRS that they were married. The petitioner's credit report, although showing that she was authorized to use N-S-'s credit cards, does not establish her intent upon entering into the marriage. In this matter, considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with N-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied and the appeal dismissed for the above stated reason. 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. The petition remains denied.