

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

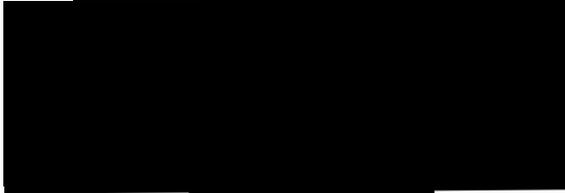


U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9

MAR 04 2010



FILE:



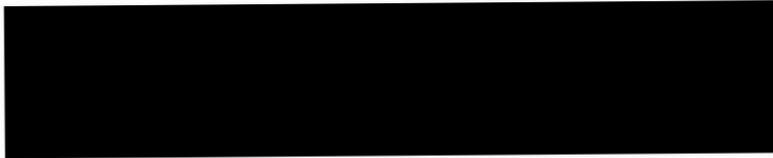
Office: VERMONT SERVICE CENTER

Date:

EAC 08 070 50206

IN RE:

Petitioner:



PETITION: Petition for Immigrant Battered 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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
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 petition will be denied.

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 determining that the petitioner failed to establish that she resided with her husband and that she married her spouse in good faith.

On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal, a brief, the petitioner's additional statement, and an additional affidavit.

As set out below, the AAO concurs with the director's determination that the petitioner has not established that she resided with her spouse and that she married her spouse in good faith.

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].

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. The petitioner provided a copy of a marriage certificate showing that she married L-G¹, a United States citizen on July 17, 2007 in Orlando, Florida. On the Form I-360, Petition for Amerasian, Widow(er), Special Immigrant, the petitioner indicated that she lived

¹ Name withheld to protect individual's identity.

with L-G- from August 2000 to September 2007, except when she was married to J-R-.² The record shows that the petitioner had a son with L-G- on February 23, 2002. The record also includes evidence: that the petitioner married J-R- on March 21, 2005; that J-R- filed a Form I-130, Petition for Alien Relative, on July 13, 2005 on behalf of the petitioner, and that the petitioner and J-R- divorced on December 20, 2006. The petitioner filed the Form I-360 on January 2, 2008. Upon review of the record, including evidence submitted in response to the director's request for further evidence (RFE), the director denied the petition on May 27, 2009. This timely appeal followed.

Residence

In addition to her statement on the Form I-360, the petitioner provided a personal statement notarized December 19, 2007. The petitioner stated that she had known L-G- since August 2000 and that she is currently separated from her husband. The petitioner provided a copy of her Florida State Driver's License issued November 2005 showing her address as [REDACTED]. The petitioner also provided a copy of her son's birth certificate showing his date of birth as February 23, 2002 and listing his father as L-G-. The initial record also included photocopies of undated photographs, receipts for a time period prior to July 17, 2007, the date of the marriage, and police reports for incidents in 2002 and 2003 and injunctions issued against L-G- prior to the date of the marriage. The initial record also included a petition for injunction filed against L-G- on November 20, 2007, showing the petitioner's current address as [REDACTED] and L-G-'s address as [REDACTED] and noting that the couple did not live together.

In response to the director's RFE, counsel for the petitioner provided the petitioner's second affidavit notarized April 13, 2009. The petitioner indicated that she had lived "on and off" at various addresses at various time periods with her husband, including at [REDACTED] from January 2007 to December 2008. Counsel also submitted three affidavits. In the undated affidavit signed by [REDACTED] noted that the petitioner had been in an unhealthy relationship with L-G- since 1999. In the September 30, 2007 affidavit of [REDACTED] the petitioner's uncle, [REDACTED] stated that the petitioner had lived with L-G- for the past six years. In the September 28, 2007 affidavit of [REDACTED] stated that she had known the petitioner for five years and ten months and that the petitioner and L-G- had "lived together at certain times, but because of he's [sic] inappropriate behavior it has been impossible for them to share a house hold." The record also includes a report of an injunction violation on January 10, 2009 for an incident occurring at a barber shop. In the narrative of the report, the police officer noted that the petitioner indicated that she was leaving the barber shop area to go and stay with a relative and that she admitted that she had violated the injunction "several months ago" when she allowed L-G- to stay at her residence for a few days because he had nowhere else to stay. The record also included additional undated photographs of the couple on different occasions.

²Name withheld to protect individual's identity.

The director observed that to establish eligibility for this benefit the petitioner's residence with her spouse must have occurred during the qualifying relationship. The director noted that visits are not considered as residing with L-G-. The director determined that the record did not include any satisfactory information that demonstrated that the petitioner and L-G- resided together during the qualifying relationship.

On appeal, counsel for the petitioner provides the petitioner's third affidavit notarized on June 19, 2009. The petitioner stated: that she had not put her husband on her lease because of his abusive behavior and she believed he would kick her out of the home as he had done when she was pregnant; **that they had never filed joint tax returns; L-G- had received mail at her new address and at the [REDACTED] address, mail which he takes and disposes of; that after her marriage with J-R- she married L-G- because she thought he had changed and that they lived together at the [REDACTED] address with their son; and that two months after marrying L-G- he started his abusive behavior again and a representative of the Florida Department of Child and Family Services came and took her husband outside the home and told him if he did not leave, they would take the child. The petitioner provides a photocopy of a letter addressed to L-G- at the petitioner's new address. The record on appeal also includes an affidavit of J-R- notarized June 19, 2009. J-R-: he was briefly married to the petitioner; when the petitioner's child was born, the petitioner tried to work out her relationship with L-G- and they moved near the airport on [REDACTED]; and he knows that the petitioner and L-G- are married and lived together at [REDACTED] for a few years because he kept in contact with the petitioner.**

The AAO has reviewed the information submitted to establish that the petitioner resided with her spouse during the qualifying relationship. The record shows that the petitioner married L-G- on July 17, 2007. On the Form I-360, the petitioner states that she resided with L-G- from August 2000 until September 2007, except for the time she was married to J-R-. **A copy of an injunction filed against L-G- shows the petitioner's current address as [REDACTED] and L-G-'s address as [REDACTED] and notes that the couple did not live together. As the director noted, the qualifying relationship began July 17, 2007. The record does not include any documentary evidence that the couple resided together during the two or three months the petitioner claims she was not separated from L-G-.**

The affidavits in the record present inconsistent and vague versions of the claimed joint residence. For example, the petitioner in her second affidavit indicates that she lived "on and off" with L-G- at the [REDACTED] address from January 2007 to December 2008. This information conflicts with the information the petitioner gave to the court in November 2007 when obtaining the restraining order against L-G-, as the court indicated that the couple no longer resided together and listed a different address for L-G- in the restraining order. **In addition, [REDACTED], in his September 30, 2007 affidavit stated that the petitioner had lived with L-G- for the past six years. This information conflicts with the petitioner's statement on the Form I-360 that she lived with J- R-, her first husband, when they were married. The AAO observes that the record shows that the petitioner and J-R- were married from March 21, 2005 to December 20, 2006. [REDACTED] affidavit is also vague as to the specific time period the couple resided together. In the September**

28, 2007 affidavit of [REDACTED] stated that the petitioner and L-G- lived together at certain times but also stated that it was impossible for the couple to share a household. The AAO observes that the petitioner has had protective orders against L-G- at various times but told a police officer investigating L-G-'s violation of a protective order that she allowed L-G- "to stay" at her residence when he had no place to go. J-R- indicates in his affidavit on appeal that he knows that the petitioner and L-G- lived together at [REDACTED] for a few years because he kept in contact with the petitioner. This information does not provide the necessary detail regarding the actual time period the petitioner and L-G- lived at [REDACTED] and whether it was during the qualifying relationship.

Upon review of the affidavits submitted, the AAO does not find that the affiants, including the petitioner, provide consistent testimony regarding the petitioner's residence with L-G- during the qualifying relationship. The information in the record regarding the petitioner's residence with L-G- contains inconsistencies and does not include supporting indicia establishing that the petitioner actually resided at the [REDACTED] address with L-G-. Accordingly, the petitioner has not established that she resided with her spouse as required by the regulation at 8 C.F.R. § 204.2(c)(1).

Good Faith Entry into Marriage

The petitioner initially provided a copy of the birth certificate of her son with L-G-, born on February 23, 2002 and stated in her December 19, 2007 affidavit that she had known L-G- since August 2000. The petitioner also provided photocopies of photographs of the couple and bills and receipts dated prior to the qualifying relationship and prior to the petitioner's marriage to J-R-. In response to the director's RFE, the petitioner stated: "I have been living with my current husband, [L-G-] prior to our marriage and prior to the birth of our son, "[m]y husband's abusive behavior prevented me from entering into a marriage with him during our early courtship and co-habitation," and "[a]fter my husband's numerous promises to change and never abuse me again and after considering the welfare of our child together, I married him on July 17, 2007." The affidavits submitted on the petitioner's behalf speak of the abuse and of the petitioner's rollercoaster relationship with L-G- but do not provide timelines of the couple's interactions, and do not discuss the petitioner's marriage to J-R-. On appeal, the petitioner states: that she does not have documentation of her relationship with L-G- because she did not put him on a lease because of his abusive behavior; they did not file joint tax returns because she was an illegal alien; she married J-R- because he took her out of her abusive relationship with L-G-; that J-R- and she divorced because of the constant harassment of L-G-; and that she married L-G- because he had seemed to change and was attending church services.

The AAO acknowledges that the petitioner had a relationship with L-G- prior to her marriage to J-R- and that she and L-G- had a son together. However, the record does not include any detailed information regarding the petitioner's intent upon entering into a marriage with L-G- after her divorce from J-R- in December 2006. The only information in the file regarding the petitioner's intent upon entering her second marriage is her statement in response to the RFE and her statement on appeal. The petitioner, in her second affidavit, stated "[a]fter my husband's numerous promises

to change and never abuse me again and after considering the welfare of our child together, I married him on July 17, 2007.” The petitioner, on appeal, added her reason for marrying L-G- is that L-G- had seemed to change and was attending church services.

Upon review of the record, the AAO concurs with the director’s determination that the evidence of record fails to establish that the petitioner entered into the marriage in good faith. The AAO has reviewed the petitioner’s two statements regarding the reason she married L-G- after her marriage to J-R- was dissolved; however, these two general statements, especially in light of the past abusive behavior of L-G-, do not provide the necessary information relevant to the events or circumstances of the changed behavior of L-G- to assist in demonstrating the petitioner’s intent upon entering the marriage. The record requires more than a statement that the individual entered into the marriage in good faith. The affiants’ testimony on behalf of the petitioner provides no probative details regarding their observations of the petitioner’s allegedly good faith entry 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 provided do not substantiate that the petitioner’s intent upon marrying L-G- was to establish a life together. In fact, one affiant seemed to acknowledge that the couple could not share a household. The statements are bare of the essential detail necessary to assist in determining the legitimacy of the marriage. The petitioner’s marriage certificate confirms the marital relationship but does not establish the petitioner’s own good faith in entering into the marriage.

Similarly, although we acknowledge that the petitioner and L-G- did produce a child from their relationship, the child was born in February 2002, more than five years before the petitioner married L-G- in July 2007. 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). Given the lack of testimonial and documentary evidence, the fact that the petitioner and L-G- had a child five years prior to their marriage, by itself, does not sufficiently establish that the petitioner intended to establish a life with L-G- at the time of their marriage and that she entered into her marriage in good faith.

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 fail to support a finding that she entered into this marriage in good faith. There are no probative details about the petitioner’s sudden desire to enter into a marital relationship with L-G- four years after their child had been born and six months after her marriage to J-R- had ended. Other than the information regarding the abuse, there are no details regarding interactions with L-G- 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 into 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.

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.