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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

**PUBLIC COPY**



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FILE:



Office: VERMONT SERVICE CENTER Date:

NOV 15 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed 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 April 22, 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, and a brief 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 further 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 Ecuador. She entered the United States on or about January 29, 1999 as a B-2 visitor. On February 14, 2001, the petitioner married [REDACTED]<sup>1</sup>, the claimed abusive United States citizen spouse. On November 23, 2007, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.<sup>2</sup> The petitioner indicated that she had resided with the claimed abusive spouse from February 2001 to September 2002.

*Good Faith Entry into Marriage*

The petitioner initially provided no evidence that she had entered into the marriage in good faith. On December 7, 2007, the director issued a request for further evidence (RFE) asking that the petitioner provide evidence, in part, to establish that she had entered into the marriage in good faith. The petitioner provided a statement in which she declared that she met [REDACTED] in October 1999 through friends that lived in her apartment building. The petitioner explained that she was living with her brothers on the second floor of the apartment building and [REDACTED]'s friends lived on the first floor. The petitioner noted that she was pregnant and that [REDACTED] was very kind to her during her pregnancy. The petitioner indicated that she also had a daughter still living in Ecuador and that [REDACTED] always told her that she could count on him to help bring her daughter to the United States. The petitioner stated that she and [REDACTED] continued being friends, that in May 2000 [REDACTED] proposed to her, and that on February 14, 2001 they married. The petitioner indicated further that the couple had a beautiful relationship

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

<sup>2</sup> The petitioner also filed a Form I-360 on August 15, 2003 which was denied on April 20, 2005, for failure to respond to a request for further evidence to establish eligibility for the benefit.

and the remainder of the statement discussed the claimed abuse.

The record also included three affidavits dated in February 2008 and notarized on April 16, 2008 signed by [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] declared that she had known the petitioner and [REDACTED] since December 2001 and had been invited to a Christmas party at their house in Brooklyn, New York. [REDACTED] declared that she had been invited to the petitioner's one-year anniversary party on February 14, 2002 at the petitioner's home in Brooklyn, New York. [REDACTED] declared that she had known the petitioner and [REDACTED] "since December 2000 since they were dating" and that the couple got married on February 14, 2001 and everything was good until then.

The record further included: a Verizon statement dated September 19, 2002 addressed to the petitioner at her address in Brooklyn, New York; a Keyspan statement dated October 4, 2001 addressed to [REDACTED] at the petitioner's address; a ConEdison bill for service as of October 1, 2001 addressed to [REDACTED] and a diminutive version of the petitioner's name at the petitioner's address; and a lease agreement signed by an individual using a diminutive version of the petitioner's name, dated March 1, 2001, indicating that four adults and one child lived in the apartment identified as the petitioner's address. The record further included a photocopy of one photograph of a couple that is so blurred it is not possible to identify the individuals.

On January 5, 2009 and on June 9, 2009, the director issued two additional RFEs requesting, in part, evidence that the petitioner entered into the marriage in good faith. After receiving no response, the director issued an October 26, 2009 RFE again requesting, in part, that the petitioner submit evidence that she had entered into the marriage in good faith. In response, the petitioner provided information unrelated to her intent in entering into the marriage but centered on the claimed abuse. The director determined that the petitioner had not provided sufficient evidence to establish that she had entered into the marriage in good faith.

On appeal, counsel for the petitioner asserts that as the director determined that the petitioner established all elements necessary to demonstrate eligibility for this benefit, the director must also find that the petitioner entered into the marriage in good faith.

We disagree. Each criterion of eligibility for the VAWA benefit must be independently established. Upon review of the petitioner's personal statement, she fails to provide probative testimony regarding her intent when entering into marriage with [REDACTED]. The petitioner does not provide any further detail regarding the couple's interactions, other than as it relates to the claimed abuse. 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. 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 provided only a cursory description of meeting [REDACTED] and then provided no further information relating to their relationship prior to their marriage or to the

interactions of the marriage other than as it related to the claimed abuse. The petitioner's testimony is general and insufficient to establish that she entered into the marriage in good faith.

The three affidavits submitted on the petitioner's behalf also fail to provide the necessary information detailing the petitioner's intent in entering into the marriage. The affiants' similar statements indicating that they attended a party at the petitioner's house and knew the couple provide no probative details regarding the petitioner's relationship with her spouse and their interactions with each other. 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 establish that the petitioner's intent upon marrying [REDACTED] 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.

The documentary evidence submitted also fails to establish the petitioner's intent in entering into the marriage. The three bills are insufficient to establish that the couple commingled resources and shared financial responsibilities, as the bills do not include a significant duration of the time the couple allegedly resided together. The lease agreement is in the petitioner's name only and although it includes a handwritten addendum that the lease is for four adults and one child, the petitioner's indication that she lived with her brothers raises questions regarding the actual occupants of the apartment. The photograph does not clearly identify the couple and moreover one photograph does not assist in establishing the petitioner's good faith in entering into the marriage. While the lack of probative documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf fail to support 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 [REDACTED] 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 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.