

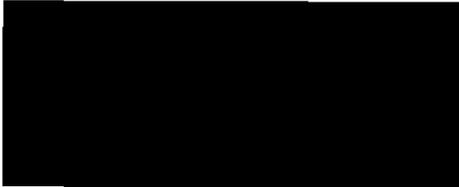
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



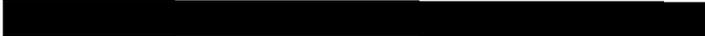
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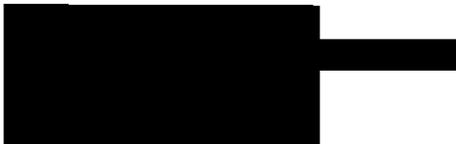
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FILE:  Office: VERMONT SERVICE CENTER Date: SEP 08 2010

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:

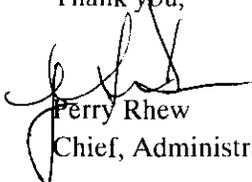


INSTRUCTIONS:

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 a fee of \$585. 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 February 11, 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 brief, 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 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 Mexico. She entered the United States on or about June 2004 without inspection. On June 3, 2006, the petitioner married M-O-¹, the claimed abusive United States citizen spouse. On May 15, 2008, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

Good Faith Entry into Marriage

Counsel for the petitioner initially submitted: the petitioner's marriage certificate showing that the recorded copy of the marriage certificate should be returned to Mr. and Mrs. M-O- at an address on [REDACTED] the petitioner's Mexican Consular ID Card showing an address on [REDACTED] M-O-'s Texas driver's license showing an address on [REDACTED], expiring on October 21, 2006; rental receipts dated in May 2006 showing the petitioner and M-O- as account holders; an ATT statement addressed to M-O- at the [REDACTED] address dated July 24, 2006; a utility statement issued to the petitioner using one iteration of her name, dated February 21, 2007; and photocopies of two photographs with a handwritten date of December 2005, photocopies of five photographs with a handwritten caption June 2006 – their wedding, and a photocopy of one photograph with a handwritten caption December 2006 – petitioner's work Christmas party.

Counsel also submitted the petitioner's undated statement in which the petitioner stated: that she met M-O- in September 2005 and that he was very good to her, he took her children everywhere, and they

¹ Name withheld to protect the individual's identity.

would spend weekends together; that he would take her to her work; that sometimes they would go to the beach; and that she bought him a cake for his birthday but unfortunately he lost his job that day. The petitioner stated further that she accepted his proposal because he loved her. She noted that when Christmas arrived they spent it together in the house of a friend and were happy and that was the way time passed until they got together in the same month of December; that in January M-O- had to go to Houston for work; that they married in June; that M-O- would sometimes help her pick up the children from daycare; and that in reality he loved them and she loved him. The remainder of the petitioner's statement related to her claims of abuse and she noted that before the year ended she "ran him out of the house."

The initial record also included: a September 24, 2007 statement signed by [REDACTED] who indicated that she knew "[the petitioner] and her husband seemed like a happy family when they went out together and when they went out with the children they seemed that they loved each other a lot;" an undated statement signed by [REDACTED] who indicated: that they were a happy family, they lived together, went everywhere together, they did not demonstrate any problems, and it did not appear that the man was an aggressive person; a September 26, 2007 statement signed by [REDACTED] who indicated that she knew the petitioner and M-O- before and after they were married and that they were a beautiful couple and seemed real happy when they went out on Sundays; and a September 24, 2007 statement signed by [REDACTED] who indicated that the petitioner and M-O- were a beautiful couple, he always went to get the petitioner at work, they were always with the children, and they appeared happy at the beginning of their marriage.

In response to the director's request for further evidence (RFE) counsel for the petitioner provided additional statements. In the May 5, 2009 affidavit of [REDACTED] added to her previous statement by indicating that she was invited to the petitioner and M-O-'s wedding and that they looked like they were in love. In an undated statement signed by [REDACTED], she reiterated that the petitioner and M-O- seemed like a happy couple, that they visited her house, and seemed to be in love forming a real pretty couple. In the May 4, 2009 statement of [REDACTED] indicated that she was a witness to the couple's wedding and that M-O- would accompany the petitioner when she was going to church and that their relationship was based on love not interest. In the May 4, 2009 statement of [REDACTED] indicated that she attended the couple's wedding and that she saw M-O- with the petitioner's children picking the petitioner up at work. In the May 4, 2009 statement of [REDACTED] indicated that she had met M-O- and that he would pick "them" up at church and that he accompanied the petitioner to her baptism at the Island. In the May 6, 2009 statement of [REDACTED] stated that the petitioner and M-O- formed a happy family and when they visited with the children he looked like a very attentive husband. In the statement of [REDACTED] indicated that they were witnesses at the petitioner and M-O-'s wedding and that they accompanied them to the church where they are the pastors.

Counsel also provided an Internal Revenue Service (IRS) letter dated July 24, 2006 addressed to M-O- at the [REDACTED] address. Counsel also submitted additional rental receipts dated in May 2006 showing the petitioner and M-O- as account holders and resubmitted the same photographs of the couple.

As observed above, the director denied the petition. On appeal, counsel for the petitioner asserts that the protective order that was issued on July 31, 2007 is primary evidence indicating the petitioner's marriage and residence. Counsel references the 103 District Court's indication in the order that the couple are married and that there is family violence. Counsel also asserts that the police report regarding an incident on August 14, 2006 shows that M-O- was arrested for Assault Class C, Family Violence (Intimidation) establishes both residency and relationship. Counsel also references the previously submitted rental receipts and the statements from the petitioner and her friends indicating that the couple was involved in a relationship. Counsel notes that one of the rental receipts clearly shows that a television is owned by both the petitioner and M-O-. Counsel asserts that as the petitioner provided primary evidence and her own declaration, she has met the "any credible evidence" standard for VAWA self-petitions.

Upon review of the information in the record, the AAO finds that the petitioner has not provided probative evidence of her intent when entering into the marriage. The petitioner provided little information regarding her intent when entering into the marriage. The petitioner stated generally that she met M-O- in September 2005, they dated, he would take her to work, she bought him a cake for his birthday, they spent Christmas together, and that M-O- would sometimes help her pick up the children from daycare. The petitioner stated that they married because "[h]e in reality loved us and [she] loved him." The petitioner's statement does not provide any specific information regarding her intent in entering into the marriage. A general statement that she loved the claimed abuser is insufficient to establish good faith 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 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 AAO has also reviewed the statements submitted from the petitioner's friends and neighbors. The declarants all provide brief statements indicating their belief that the family was happy and that they loved each other. In response to the director's RFE, the declarants noted that they attended the wedding and generally that they saw the couple together. The declarants, however, do not provide the probative detail necessary to establish the petitioner's intent when entering into the marriage. The declarants do not describe specific incidents wherein they witnessed the alleged bona fides of the couple's marital relationship. The AAO acknowledges that the petitioner's marriage certificate confirms the petitioner's marriage; however, a marriage certificate is insufficient to establish the petitioner's own good faith in entering into the marriage.

The AAO has also reviewed the rental receipts and the utility bills and although these documents show that the couple may have resided together or received mail at the same address, the documents do not assist in establishing the petitioner's own good faith in entering into the marriage. Similarly, the photographs submitted show that the petitioner and her husband were together on their wedding

day and on one or two other occasions, but this evidence is also insufficient to establish the petitioner's requisite good faith in entering into the marriage.

The AAO has also reviewed the August 14, 2006 police report resulting in M-O-'s arrest for intimidation and the June 26, 2007 temporary ex-parte protective order. The AAO notes that the temporary ex-parte protective order contains errors, including a statement that M-O- is the biological father of the petitioner's children. The AAO has also reviewed the July 31, 2007 protective order that was issued without the presence of M-O-. The AAO observes that both the temporary and final protective orders were issued without M-O-'s presence and were issued more than a year and one-half after the petitioner allegedly "ran [M-O-] out of the house and he left." The AAO does not find that the August 14, 2006 police report or either protective order assists in establishing the petitioner's own good faith in entering into the marriage. The documents submitted as referenced above, are insufficient to establish that the petitioner intended to establish a life with M-O- when she entered 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 also 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 M-O- 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.