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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  
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**JAN 03 2011**

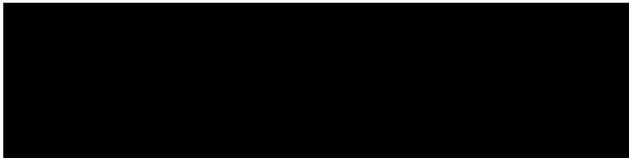
IN RE:

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,

Jerry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, revoked approval of the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The approval of the petition will remain revoked.

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 July 19, 2010, the director revoked approval of 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 that were previously submitted.

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:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have

taken place during the self-petitioner's marriage to the abuser.

\* \* \*

(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.

\* \* \*

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

\* \* \*

(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 Republic of Trinidad and Tobago. She first entered the United States in July 2000. She married E-L-<sup>1</sup>, the claimed abusive United States citizen spouse on January 22, 2001. On or about April 17, 2001, E-L- filed a Form I-130, Petition for Alien Relative, on her behalf. The petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on May 15, 2001. On May 16, 2002, E-L- and the petitioner were interviewed regarding the Form I-130. On May 17, 2002, E-L- and the petitioner were scheduled for a follow-up interview to take place on June 17, 2003. United States Citizenship and Immigration Services' (USCIS) records show that interviews on the petitioner's Form I-485 were also scheduled. On February 27, 2003, the petitioner notified USCIS that she missed her appointment on the Form I-485 interview because of a change in address. On July 9, 2004 she notified USCIS that she had missed the appointment but no reason was given. USCIS records also show that the petitioner and E-L- were again notified of an interview to take place April 3, 2006 on E-L-'s Form I-130 filed on behalf of the petitioner. The petitioner provided a response in which she noted that they were unable to keep the appointment because "My husband [sic] is inaviable [sic] he went out of state and did not make it this morning." The Form I-130 appointment was rescheduled for June 7, 2006 and the petitioner responded: "Respondent & Petitioner are currently having marital problems & they are trying to work things out. He did not attend today." The Form I-130 interview was rescheduled for July 6, 2006 and the petitioner notified USCIS that she wanted to reschedule her interview because she intended to file a Form I-360 petition and wanted to withdraw the Form I-130. On January 29, 2007, E-L- was informed at his last reported address that the Form I-130 had been denied because he had failed to attend a scheduled interview on December 12, 2006. Also on January 29, 2007, USCIS notified the petitioner that the December 20, 2006 withdrawal of her Form I-485 application had been accepted. The record includes a Default Divorce Judgment dissolving the petitioner's marriage to E-L- which is dated August 3, 2009.

On July 14, 2006, the petitioner filed her first Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant and concurrently filed a Form I-485. On May 21, 2007, the director issued a request for evidence (RFE). Upon review of the petitioner's response to the RFE, the director issued a denial decision on August 20, 2007, determining that the petitioner had not established that she had entered into the marriage in good faith. The director denied the petitioner's Form I-485 petition on the same date. On September 19, 2007, counsel for the petitioner filed a Motion to Reopen and Reconsider the director's decision and on November 30, 2007, the director dismissed counsel's motion.

On February 19, 2008, the petitioner filed her second Form I-360, the instant petition that is the subject of this appeal. On March 25, 2009, the director issued a Notice of Intent to Deny (NOID) the petition and counsel submitted a rebuttal dated April 22, 2009. The director approved the petition on May 13, 2009. On April 20, 2010, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition, determining that the petitioner had not established that she had entered into the marriage in good faith. Counsel provided a rebuttal dated May 18, 2010. On July 19, 2010, the director revoked

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

approval of the petition, determining that the petitioner had not overcome the grounds listed in the NOIR. Counsel timely files an appeal.

Upon review of the record, the director initially approved the instant Form I-360. Upon further review, however, the Vermont Service Center director issued the NOIR, determining that the record did not support the approval. The director noted that the couple's 2001 IRS Form 1040 was dated April 18, 2002 and appeared to have been prepared solely for the petitioner's immigration filing. The director noted in addition that subsequent evidence from the IRS showed that the petitioner had not paid the taxes due as a result of the jointly filed 2001 return and that the petitioner was attempting to make E-L- solely responsible for the taxes due. The director noted further that the petitioner's statements and statements submitted on her behalf did not detail her courtship, her wedding ceremony, or memorable experiences in her married life. The director also acknowledged the evidence the petitioner had submitted but found that the petitioner had not established that she had entered into the marriage in good faith.

In counsel's May 18, 2010 rebuttal to the NOIR, counsel takes issue with the failure to take certain steps prior to issuing the NOIR as set out in a USCIS memorandum and contends that the lone issue raised in the NOIR regards the jointly filed 2001 tax return. Counsel asserts that as the NOIR did not follow Service policy it should be rescinded and the file should be returned to the Hartford, Connecticut office for further processing of the petitioner's permanent residency.

On July 19, 2010, the director revoked approval of the petition. The director observed that the Vermont Service Center had found good and sufficient cause to revoke approval of the petition and clearly articulated the reasons for the NOIR. The director determined that as the petitioner had not addressed the issues in the NOIR, the grounds for revocation had not been overcome and revoked approval of the petition.

On appeal, counsel for the petitioner asserts that a rebuttal was provided as he referenced previously submitted material. Counsel again contends that the NOIR does not mention anything developed at the petitioner's November 17, 2009 adjustment of status interview which would require a NOIR. Counsel asserts that the petitioner did not marry for immigration purposes and provides articles related to domestic abuse and the development of VAWA. Counsel avers that as USCIS has consistently found that the petitioner had been subjected to battery or extreme cruelty and the petitioner has stated why she did not have evidence of a good faith marriage, USCIS should not require documentation to establish that she entered into the marriage in good faith.

Preliminarily, the AAO finds that although a petitioner is not required to produce corroborating evidence to establish eligibility for a VAWA petition, a petitioner must provide detailed, consistent testimony regarding the criteria to establish eligibility for the benefit. Upon review of the totality of the evidence in the record, the record does not include sufficient evidence to establish that the petitioner entered into the marriage in good faith. The approval of the Form I-360 that is the subject of this appeal was clear error, as will be discussed below. The Vermont Service Center director, upon review of his prior erroneous approval decision and the totality of the record, had good and sufficient cause to issue a NOIR. Counsel and the petitioner have had ample opportunity to submit

clarifying statements on the issue of the petitioner's good faith in entering into the marriage but have failed to do so or to adequately explain why such evidence was not forthcoming. Moreover, the AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

### *Good Faith Entry into Marriage*

Upon review of the totality of the record, the record includes the following documentation to establish that the petitioner entered into her marriage in good faith:

- The petitioner's June 22, 2007 personal statement submitted in support of the first filed Form I-360;
- The petitioner's April 22, 2009 personal statement submitted in response to the director's March 25, 2009 NOID;
- A September 12, 2008 Internal Revenue Service (IRS) notification regarding overdue taxes on a 2001 Form 1040, which cites both the petitioner and E-L-'s social security numbers and an April 12, 2009 IRS letter indicating that the IRS was researching the petitioner's request for innocent spouse relief;
- A copy of the couple's uncertified 2001 IRS Form 1040, showing their address on [REDACTED];
- An April 4, 2009 letter signed by [REDACTED] indicating that she was a guest at the petitioner's wedding on January 22, 2001 and that the couple was happy and so much in love on their wedding day;
- An April 4, 2009 affidavit signed by [REDACTED] declaring that he had been friends with the petitioner and E-L- prior to their wedding and was best man and witness at their wedding, and that their marriage was "faithful and two people deserving of each other;"
- A photograph of the couple in front of a desk;
- An April 29, 2002 letter from a representative of Chase Manhattan Bank indicating that the couple opened a savings account on November 29, 2001, which is addressed to the couple at the [REDACTED] address; and
- Two receipts (1) No. 666212 dated April 10, 2002 for rent from March 28, 2002 to April 28, 2002 identifying the payers as the petitioner and E-L- and (2) No. 666230 also dated April 10, 2002 for rent from April 28, 2002 to May 28, 2002 identifying the payers as the petitioner and E-L- both for the [REDACTED] address.

In the petitioner's June 22, 2007 statement, she stated generally that: she met E-L- in September 2000; they dated a short while; in October he asked her to move in with him and they lived on [REDACTED]; and after a couple of months they decided to get married. The remainder of the petitioner's statement regards the claimed abuse. She indicated that she moved out of the home on Friday, May 17, 2002, the day after the couple's immigration interview. In the petitioner's April 22, 2009 personal statement, the petitioner declared that: she married E-L- on January 22, 2001; they lived

together on [REDACTED] from September 2000 to June 2002; and she has provided every piece of paper she has to prove that she did not marry E-L- for a green card. The petitioner referenced rent receipts that had been given to USCIS, as well as a joint account at Chase Bank, and health insurance that E-L- cancelled in November 2001. The petitioner declared that she could not get her name on anything as she did not have a social security number, that everything they had was given to the immigration officer at their first interview, and that they never got the second interview because immigration sent the interview notice to the wrong address and they never received it.

In counsel's February 14, 2008 letter in support of the second filed Form I-360, counsel references Title 8 of the Code of Federal Regulations, Part 103.2(a)(17)(ii)<sup>2</sup> which addresses USCIS's obligation to assist self-petitioners who are spousal-abuse victims, in determining the abuser's citizenship or lawful permanent resident status. Counsel asserted that similarly USCIS should review the petitioner's complete record including the non-record side of her file for evidence of the petitioner's intent at the time of the marriage including any notes taken or Q & A or affidavits that relate to the credibility of the petitioner. In counsel's April 22, 2009 rebuttal to the NOID, counsel for the petitioner asserted that the petitioner had provided all the evidence she had, that the petitioner was forced to leave with what she had or could carry, and that a Google background check for E-L- showed that he still lived in Brooklyn. Counsel attached the results of the search which showed that E-L-'s listed address was at the [REDACTED] address.

Upon review of the complete file, the file does not include a lease agreement for the couple's claimed residence on [REDACTED] or any other residence, it does not include utility bills with either individual's name, and it does not include IRS 1040 Forms filed for 2000 or 2001. The record includes a Form I-864, Affidavit of Support Under Section 213A of the Act, signed by E-L- on April 19, 2002.<sup>3</sup> The Form I-864 does not bear a date stamp. The record also includes E-L-'s commercial driver's license issued February 12, 2002 showing an address on [REDACTED]. The couple's marriage certificate dated January 22, 2001 also shows that both parties live at the [REDACTED] address.

As referenced above, while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf must support a finding that she entered into the marriage in good faith. As the director observed in the NOIR, the petitioner does not provide any detail regarding her courtship, her wedding ceremony, or memorable experiences in her married life. In addition, we observe that the petitioner does not describe her reasons for moving into E-L-'s residence, she does not detail the residence(s), or provide any shred of testimonial evidence that would establish 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

<sup>2</sup> The correct citation is 8 of the Code of Federal Regulations, Part 103.2(b)(17)(ii).

<sup>3</sup> The record also includes a Form I-864 signed before a Notary on April 11, 2001, which does not bear a date stamp.

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's statements are simply inadequate in establishing that she entered into the marriage in good faith.

In addition, the petitioner declares in both of her statements that the couple lived on [REDACTED] before and after their marriage. As is noted below, the petitioner's statements conflicts with the address she provided for her marriage certificate and conflicts with a letter provided by Chase Manhattan Bank. Similarly, the April 4, 2009 letter of [REDACTED] and the April 4, 2009 affidavit of [REDACTED] indicate only that they attended the wedding and the couple seemed happy. Neither the letter nor the affidavit provides any probative details regarding the petitioner's relationship with her spouse and their interactions with each other.

In addition, the documentary evidence that is in the file raises significant questions regarding the credibility of the petitioner. For example, the petitioner's marriage certificate shows that she and E-L- resided at the [REDACTED] address. The petitioner's personal statements indicate that the couple always lived at the [REDACTED] address. There is no information regarding the couple's move to a new or different address. The rental receipts provided, although dated the same date, are for consecutive months. In addition, the rental receipts show that she and E-L- resided at the [REDACTED] address from March 28, 2002 to May 28, 2002 while the April 29, 2002 letter from Chase Manhattan Bank is addressed to the couple at the [REDACTED] address. Further, in her June 22, 2007 statement the petitioner states that she left her former husband's home in May 2002, but she does not explain why she would inform USCIS in March 2006 that her "husban [sic] is inaviable [sic] he went out of state and did not make it this morning." Similarly, her acknowledgement in June 2006 that she and her husband were currently having marital problems and are trying to work things out conflicts with her Form I-360 statements that indicate she separated from her husband in May or June 2002. The documentary evidence in the record, rather than assisting the petitioner in establishing that she entered into the marriage in good faith, casts doubt on the veracity of the petitioner's statements.

The record in this matter does not provide probative, consistent details about the petitioner's initial relationship with E-L- and her subsequent interactions with E-L- 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 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 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 approval of the petition remains revoked.