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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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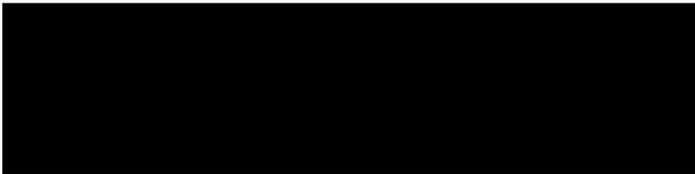
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FILE:  Office: VERMONT SERVICE CENTER Date: JAN 10 2011

IN RE: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

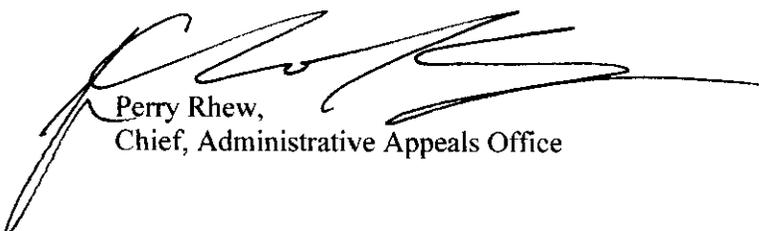


INSTRUCTIONS:

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 \$630. 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 service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that she and her husband shared a joint residence; and (2) that she married her husband in good faith. On appeal, counsel submits a brief asserting the petitioner's eligibility and additional testimonial evidence from the petitioner.

Applicable Law

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B) 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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 standard and guidelines for a self-petition filed under section 204(a)(1)(B)(ii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Colombia, married D-G-,¹ a lawful permanent resident of the United States, on August 5, 2002. She filed the instant Form I-360 on April 14, 2008. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a

¹ Name withheld to protect individual's identity.

timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on May 4, 2010.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition.

Joint Residence

The first issue before the AAO on appeal is whether the petitioner shared a joint residence with D-G-. On the Form I-360, the petitioner stated that she and D-G- began living together in August 2002. However, this statement conflicts with the petitioner's statement on the Form G-325A, Biographic Information, that she signed on August 16, 2002 indicating that they began living together in May 2002. The petitioner's May 24, 2010 statement submitted on appeal does not clarify the matter, as the petitioner states first that they began living together after their marriage in August 2002, and then later states that they began living together in February 2002. Nor do the letters from [REDACTED] the petitioner's landlord, resolve these inconsistencies. In his May 24, 2004 letter [REDACTED] stated that he began renting an apartment to the couple on September 9, 2002. However, in his January 12, 2008 letter, [REDACTED] stated that he began renting an apartment to the couple in February 2002. These inconsistencies diminish the probative value of the testimony of the petitioner and [REDACTED] with regard to the petitioner's allegedly joint residence with D-G-.

As further evidence that she shared a joint residence with D-G-, the petitioner submitted copies of canceled checks; bank statements; mailings; one joint, unfiled, income tax return; and drivers' licenses displaying the same addresses for the petitioner and D-G-. In addition, the petitioner submitted a May 21, 2010 letter from [REDACTED], who stated that he attended a birthday celebration at the couple's home in August or September of 2002.

When considered in the aggregate, the relevant testimonial and documentary evidence fails to establish that D-G- and the petitioner shared a residence. As noted, the petitioner's testimony is inconsistent with regard to the time the allegedly joint residence began. However, even if these inconsistencies were not present, the testimony of the petitioner would still not demonstrate her joint residence with D-G- because she provided no probative information about the shared residence. For example, she did not describe their apartment, their building, their furnishings, their jointly-owned belongings, their neighborhood, their neighbors, or their shared, residential routines. Nor did [REDACTED] provide any of that information.

Nor is the location of the alleged joint residence clear. On the Form I-360, the petitioner stated that she and D-G- resided at [REDACTED] until January 26, 2008. However, [REDACTED] stated that the apartment he rented to the couple was located at [REDACTED]. When she filed the instant petition on April 14, 2008, the petitioner listed her address as [REDACTED] and, as

previously noted, also stated that she had been living with D-G- at the address until January 26, 2008. However, in his January 6, 2010 RFE, the director stated that his search of law enforcement databases had shown that the petitioner set up the utilities at the on October 26, 2007, which was inconsistent with her statement that she had been living elsewhere until January 26, 2008. In response, the petitioner stated that although she connected the utilities at the in order to help a friend with a negative credit history, she did not move into that apartment with her friend until she was forced to do so following the cessation of her joint residence with D-G-. Given the inconsistencies in the petitioner's testimony outlined above, her claim that she did not move into the

In the absence of detailed, probative testimony, the photocopies of documents listing the petitioner and D-G- as sharing an address are not sufficient to establish their joint residence, particularly in light of the inconsistencies contained in the petitioner's testimony regarding that allegedly joint residence.

The relevant evidence fails to demonstrate that the petitioner resided with D-G-, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The second issue before the AAO on appeal is whether the petitioner has established that she married D-G- in good faith. In her March 26, 2008 declaration, the petitioner stated that she met D-G- on April 9, 2002. She stated that she found him to be very kind and, when he proposed marriage four months later, she accepted. In her May 24, 2010 declaration submitted on appeal, the petitioner stated that she met D-G- while he was selling flowers in her neighborhood. She stated that they started dating and married four months later in a small ceremony. As noted previously, the petitioner also submitted copies of canceled checks; bank statements; mailings; one joint, unfiled, income tax return; and drivers' licenses displaying the same addresses for the petitioner and D-G-. She also submitted photographs of the couple together and letters from friends.

The relevant evidence fails to establish that the petitioner married D-G- in good faith. As a preliminary matter, the AAO incorporates here its previous discussion regarding the inconsistencies between the testimony of the petitioner and that of and between their testimony and the petitioner's prior statements to U.S. Citizenship and Immigration Services (USCIS) regarding the couple's alleged joint residence, which undermines the evidentiary value of her claim that they lived together after the marriage. Also, the petitioner's assertion that she met D-G- on April 9, 2002 conflicts with statement that he began renting an apartment to the couple in February 2002. Moreover, the petitioner fails to provide a detailed account of the couple's courtship and marriage, apart from the alleged abuse. For example, she failed to describe, in any meaningful detail, the couple's first introductions; her first impressions of D-G-; their decision to date; their first date; their courtship; their decision to marry; their engagement; their wedding; or any of their shared experiences, apart from the alleged abuse. Although the record contains several brief and

general statements from friends regarding the bona fides of the marriage, none of them provide any meaningful insight into the couple's relationship that would allow the AAO to examine the petitioner's intentions upon entering into the marriage. Rather, they simply attest to the validity of the marriage without providing a probative explanation of the basis of their knowledge.

Nor does the documentary evidence submitted by the petitioner establish that she married D-G- in good faith. Although the photographs establish that D-G- and the petitioner were together on several occasions, they do not establish her intentions upon entering into the marriage. Because there is no indication that D-G- had access to the accounts, the canceled checks and bank statements are not evidence of any shared financial obligations. Nor are the income tax returns evidence of the petitioner's good faith entry into the marriage. Although the record contains copies of four income tax returns allegedly filed during the couple's marriage, and only one of them – for tax year 2006 – was a joint return, and there is no evidence it was ever filed with the Internal Revenue Service. The petitioner filed her 2003, 2004, and 2005 tax returns individually, and she filed her 2009 tax return as married, filing separately. Although the record indicates that the petitioner purchased a health insurance policy covering herself, D-G-, and a "relative," this evidence is, alone, insufficient to establish her good faith entry into the marriage or shared financial obligations.

On appeal, counsel argues that the director "based his decision on the record without considering that the Petitioner has been subject[ed] to extreme cruelty." Counsel's argument is misplaced. In his May 4, 2010 decision denying the petition, the director made a specific finding that the petitioner had established that she had been subjected to battery or extreme cruelty by D-G- during their marriage. The issue on appeal is not whether the petitioner was abused, but whether she has met her burden of proof in establishing that she married D-G- in good faith. As set forth above, she has not done so. Counsel also argues that the petitioner's failure to produce affirmative evidence of the bona fides of the marriage is not, alone, sufficient for a finding that she failed to establish her good faith entry into marriage. We agree. However, as set forth above, her testimony, as well as that of her affiants, also fails to establish that she married D-G- in good faith.

The petitioner has failed to establish that she entered into marriage with D-G- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's grounds for denial and has not established that she jointly resided with D-G-; or that she married him in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act, and her petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.