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



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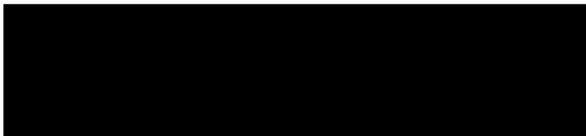
FILE: [REDACTED] Office: VERMONT SERVICE CENTER

Date: JAN 25 2011

IN RE: Petitioner: [REDACTED]

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, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains 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.

The director denied the petition after determining that the applicant had not established that she had been subjected to battery or extreme cruelty by her United States citizen spouse.

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 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.

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(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 [REDACTED]. She entered the United States on December 13, 2008 on a K-

1 visa. She married A-H-¹ the claimed abusive United States citizen spouse on [REDACTED]. On February 11, 2009, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which was denied on June 11, 2009. On June 22, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On December 11, 2009, A-H- divorced the petitioner, terminating the marriage. The petitioner stated on the Form I-360, that she resided with the claimed abusive United States citizen spouse from December 31, 2008 to April 6, 2009. The director issued a request for evidence (RFE) on February 2, 2010 and upon review of the response provided determined that the petitioner had not established that she had been subjected to battery or extreme cruelty.

Abuse

The record includes the following in support of the petitioner's claim that she was subjected to battery or extreme cruelty perpetrated by her former spouse:

- The petitioner's undated handwritten statement submitted in support of the Form I-360, the petitioner's March 31, 2010 personal statement in response to the director's RFE, and an undated personal statement submitted on appeal;
- A statement signed by the petitioner's [REDACTED] in support of the Form I-360 and a second statement signed by [REDACTED], dated March 31, 2010;
- A March 31, 2010 statement signed by the petitioner's [REDACTED];
- A March 4, 2010 statement signed by [REDACTED];
- The petitioner's voluntary April 6, 2009 statement to the [REDACTED] Police Department;
- A February 10, 2010 temporary restraining order against A-H- entered subsequent to the December 11, 2009 termination of the marriage; and
- A report prepared by [REDACTED] a licensed clinical social worker, regarding evaluations of the petitioner conducted on April 22, 2009 and May 26, 2010.

In the petitioner's initial statement, the petitioner declared that: when she entered the United States A-H- met her and her son at the airport although the petitioner expected that her relatives would also meet her; A-H- told her he did not want her near her relatives; on Christmas she met with her relatives and she forgave A-H-'s behavior; the couple married on [REDACTED]. A-H- subsequently accused her of not acting like a wife although she cooked and cleaned for him; because he worked at night, she and her son stayed quiet in the day so A-H- could sleep because he yelled if he did not get enough sleep; A-H- fought with her regarding her son who A-H- did not want to come between them; and A-H- threatened that he would send her son back to [REDACTED] if he did not change. The petitioner declared further that: A-H- "throws profanities" at her calling her names; she tried to help A-H- when he was having financial difficulties and talked to her [REDACTED] about them living with her [REDACTED] until the petitioner could get work; they moved into the petitioner's [REDACTED] house on [REDACTED]; the petitioner saved enough money to purchase a second hand vehicle through the

¹ Name withheld to protect the individual's identity.

tip money A-H- gave to her; she is very tight with money, saving as much as she can through what he gives and she is content with that and never asked for more; she and her son do not go out much, as they are only allowed to go out during A-H-'s off days when they are with him; and A-H- has a temper, is verbally abusive, is very demanding and vindictive. The petitioner declared that she did not like the kind of life she had with A-H-, that she felt like a hostage and was mentally and emotionally abused until A-H- abandoned her and her son.

In [REDACTED] statement, she confirmed that the petitioner, the petitioner's son, and A-H- moved into her house because they were having financial problems. [REDACTED] noted that A-H- did not respect her and that on April 6, 2009, he kept yelling at the petitioner that he was going to send them back to [REDACTED] and he started pulling stuff out and abandoned the petitioner and her son.

In the April 6, 2009 statement the petitioner gave to the police department, she indicated that her husband always shouted at her, verbally and emotionally abused her, and that she did not know what he was capable of doing. The petitioner told the police that A-H- called her derogatory names, that she had not done anything to deserve those abusive words, and that she was reporting him because he threatened that he will show her what he can do to her and will show her how to fight for her life.

In response to the director's RFE, the petitioner added that: when she asked A-H- why she and her son could not go out without him, he said that there were a lot of [expletive deleted] American people; he ordered her not to open the door when someone knocks, even if it is her relatives; he did not want her bonding with her relatives because he thought they were a bad influence; he treated her like a servant, insulted her culture, beliefs, religion and race, and that she never knew he was such a racist; he wanted her to focus on him 24 hours a day, he did not want her playing solitaire or watching television, and he is very possessive and jealous; he wanted sex even if she was sick; and he did not let her have access to the family income. The petitioner also added that: A-H- would not enroll her son in school and is jealous of her son; on April 6, 2009, A-H- harassed her to pack her son's things to be sent back to [REDACTED] and when she refused, he yelled and slammed the door; when that incident woke her [REDACTED], her [REDACTED] tried to talk to A-H- but that A-H- abandoned her and left her for good. The petitioner also reported an incident that occurred in January 2010, after A-H- had divorced the petitioner, which caused her to ask the court for a restraining order against him.

In the March 31, 2010 statement of the petitioner's [REDACTED] reported what the petitioner had told her and also indicated that the petitioner and her son would cry when she talked to them and that she would buy them groceries and beg A-H- to let her inside the apartment to give them the groceries.

In the March 31, 2010 statement of the petitioner's [REDACTED] noted that: the couple and the petitioner's son moved into her house in February 2009, but that the petitioner and her son looked like prisoners in her home; she cooked for her niece and her son because she knew they were not eating an everyday meal; she heard the petitioner crying and knocked on their door but A-H- told her it was none of her business; and the worst thing was when A-H- said he was going to send the boy back and the petitioner said why not send them both back; and A-H- took his stuff and

threatened the petitioner saying he was not filing the petition for her. [REDACTED] noted that was the day she took her niece to the police station to file a police report.

In the March 4, 2010 statement of [REDACTED] stated that: he had been associated with A-H- for five years; he tried to see the petitioner on several occasions, but A-H- would not allow him; and A-H- bragged at work about how stupid the petitioner and her son were, and he always blamed the child for everything that went wrong, and threatened to ship him back to [REDACTED]

Upon review, the director determined that the petitioner had not provided consistent evidence that she had been subjected to battery or extreme cruelty by A-H-. The director noted that the incident that allegedly occurred on January 13, 2010, occurred after the termination of the marriage and thus the incident and the restraining order, based only on the petitioner's testimony, were insufficient to establish the petitioner's claim as it occurred outside the marriage. The director observed that the petitioner initially indicated that she had talked to her [REDACTED] about living in her house, but later indicated that A-H- limited her outside involvement and that A-H- did not allow her to talk with her family. The director also observed that [REDACTED] indicated in her statement that when she talked with the petitioner and her son alone, they would cry. The director further observed that the petitioner initially indicated that she was very tight with the money that A-H- would give her but in her statement in response to the RFE, indicated that A-H- never let her have access to the family income. The director determined that the petitioner's inconsistent statements and statements that were inconsistent with her [REDACTED] statements undermined her credibility and that the statements provided were not sufficient to establish her claim. The director also reviewed the statement of [REDACTED] and noted that he did not provide sufficient probative details of specific incidents or instances that established the petitioner's claim.

On appeal, counsel for the petitioner provides the petitioner's statement and a report prepared by [REDACTED] Counsel asserts that the petitioner's first language is not English and thus she lacks knowledge of the subtleties and nuances of phrasing in the English language. Counsel asserts that the petitioner's statement and the evaluation submitted on appeal show that the petitioner did have contact with her [REDACTED] but that it was restricted, that the petitioner did not have any personal spending money but that A-H- gave money to the petitioner to save to buy a car for himself, and that A-H- caused the petitioner to engage in sexual conduct she did not want and that A-H- always threatened to separate the petitioner from her son by sending him back to [REDACTED] Counsel notes that the evaluation submitted on appeal was not submitted earlier because of the cost of a written evaluation.

In the petitioner's statement on appeal, she adds information regarding the couple's relationship prior to the marriage, and indicates that: A-H- locked the door from the outside so they could not get out and there was no telephone; he would not take her to a doctor when she was sick but he let one of her [REDACTED] come to the house for a short visit; [REDACTED] came to the apartment twice to bring furniture and heard A-H- calling her names; A-H- asked her [REDACTED] if they could come and live with her and then he handed the phone to the petitioner to confirm what he had said; A-H- gave her

money to hold and save to buy a truck so that he would not lose the money gambling, so she did not actually have access to family income; on April 6, 2009, he wanted to send her son back to [REDACTED] so he did not have support him, they had an argument that her [REDACTED] witnessed and after A-H- made threats, he kicked the door and left; the petitioner and her [REDACTED] filed a report with the police; and that evening A-H- returned, took his things and the bed, called her names, and abandoned them.

In the report prepared by [REDACTED] notes that she had two clinical interviews with the petitioner on April 22, 2009 and again on May 26, 2010. [REDACTED] also notes that she talked with the petitioner's two [REDACTED] [REDACTED] provides information that adds to or contradicts the petitioner's earlier statements, including that: the petitioner and her son were supposed to stay inside and watch television all day; the petitioner was raped ten times by A-H- during the marriage and forced to perform oral sex; and A-H- banged the petitioner's shoulder and twisted her hand. [REDACTED] finds that the petitioner was socially alienated and subjected to dramatic changes in A-H-'s behavior, physical abuse, financial control, and sexual abuse. [REDACTED] opines that the petitioner was a victim of domestic violence and was subjected to extreme cruelty and recommends that the petitioner continues counseling.

Upon review of the record, the AAO observes that the petitioner has gradually escalated the severity of the abuse over the course of the petition process. When she filed the petition, the petitioner's claim of abuse was focused on generally described name calling, feeling like a hostage because she and her son could only go out with A-H-, and threats regarding returning the petitioner's child to [REDACTED]. The petitioner did not provide probative details of any specific incident or event regarding threats to her son. Her statements focused generally on her unhappiness with the kind of life she had with A-H-. In the petitioner's response to the RFE, her claim of abuse expanded to include verbal attacks on her race, social isolation, and controlling financial behavior. On appeal, the petitioner further expands upon her claim of abuse, by telling [REDACTED] of incidents of rape and physical abuse. The petitioner's escalation of the severity and type of abuse in each subsequent response she provides to USCIS amounts to inconsistent testimony on the part of the petitioner, which undermines the credibility of her testimony.

The petitioner's sequence of events also includes inconsistencies which she attempts to explain on appeal but which further confuse her story. For example, the petitioner initially stated that during her three-month and one-week residence with A-H- during the marriage, she had little contact with her relatives and she was isolated and not allowed to go out. The petitioner does not sufficiently explain why, when she was living in her [REDACTED] house for the majority of the time she resided with A-H-, she felt socially isolated and why she initially indicated that she was not allowed to be with her family. Similarly, the petitioner does not provide a reasonable explanation regarding her inconsistent statements regarding her lack of access to the family finances. The petitioner first noted that A-H- gave her his tip money and she stated that she was the one who was tight with money and who tried to save, a statement the petitioner changed in her response to the RFE indicating that she did not have access to the family income. Her explanation and counsel's interpretation that A-H- used the petitioner as a bank to save money to buy a truck is not detailed sufficiently to explain the change

inconsistencies. The petitioner also creates new inconsistencies in her testimony on appeal. For example, the petitioner initially indicated that she was ordered not to open the door to anyone but on appeal states that the door was locked from the outside so she would not have been able to open the door at all. The petitioner fails to explain why she did not initially reference incidents of physical abuse or provide detailed information regarding incidents of physical abuse in response to the director's RFE. The petitioner changes the timing of the events that occurred on April 6, 2009 which resulted in A-H-'s abandonment. It is the inconsistency in the petitioner's testimony that fails to support a claim that she was subjected to psychological or sexual abuse or exploitation as set out in the regulation.

The petitioner has provided limited descriptive information regarding the circumstances and events she experienced with her former husband, including the claimed threats that he would return her son or both of them to [REDACTED]. The petitioner's statements that she felt controlled by her former husband and socially isolated are not detailed and do not provide the requisite consistent information that shows she was 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 or any psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution. Based on the information in the record, the petitioner was not forcibly detained and lived with her relatives for the majority of her joint residence with her former husband. The petitioner's testimony does not provide probative detail of circumstances that demonstrate that she was subjected to extreme cruelty or that she was the victim of any act or threatened act of physical violence or extreme cruelty, that A-H-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over her. Her statements in this regard are insufficient.

Upon review of the statements submitted on her behalf, the declarants do not provide specific detail of incidents they witnessed. Their statements are general and fail to provide the requisite information necessary to establish that the petitioner was subjected to battery or extreme cruelty as defined in the statute and regulation. Moreover, the statements of the petitioner's aunts confuse rather than confirm the petitioner's situation with her former husband. The petitioner's statement to the police does not include definitive information that demonstrates she was subjected to extreme cruelty as defined in the statute and regulation and she does not report to the police that she had ever been the victim of physical abuse perpetrated by A-H- at any time.

The report prepared by [REDACTED] is based on two clinical interviews of unspecified length with the petitioner on April 22, 2009 and again on May 26, 2010. [REDACTED] also intersperses comments made by the petitioner's [REDACTED] in her report and adds to or contradicts the petitioner's earlier statements. For example, the petitioner indicated that A-H- did not want her enjoying her hobbies including reading books and magazines and watching television, but she indicated to [REDACTED] that she and her son were supposed to stay inside and watch television all day. The petitioner also added significant events of physical abuse to her story that she had not reported to the police or provided to U.S. Citizenship and Immigration Services (USCIS) in her initial statements. Based on the inconsistent information provided to [REDACTED] and her limited interviews of the

petitioner, her report does not reflect the insight commensurate with an established relationship with a mental health professional. Moreover, [REDACTED] provides a general diagnosis and her report reflects information garnered from the petitioner that is inherently inconsistent. The probative value of [REDACTED] report is diminished as it is based on inconsistent information.

The AAO acknowledges that psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution are acts of violence and that 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. However, neither the petitioner's initial statement nor the supplemental statements submitted provide the detailed, consistent, and probative evidence that establishes eligibility for this benefit. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient consistent detail of specific events and incidents to result in such a conclusion. In this matter they do not. The petitioner does not provide the requisite detail to demonstrate that her former spouse's actions were accompanied by violence or threats of physical or mental injury. In this matter, the petitioner has failed to establish that A-H-'s actions are comparable to the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Good Faith Entry into Marriage

Beyond the decision of the director, the petitioner has failed to establish that she entered into the marriage in good faith. In the petitioner's statements, she noted that her [REDACTED] introduced her to her former husband in July 2006 by giving her phone number to A-H- and that they communicated via phone calls and letters and that he asked her to marry him. She noted that the couple met in person in [REDACTED] in January 2007 for two weeks and that they had a great time together. She noted that although she did not get too much information about him, she still loved and trusted him and he promised to take care of her son. Other than the petitioner's brief statements, the record included a health insurance card for the petitioner and photographs of the couple.

Upon review of the petitioner's statements in the record, the petitioner has not provided detailed information that demonstrates that she entered into the marriage in good faith. 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 her introduction and interactions with her former spouse prior to the marriage and during the marriage, other than as her interactions related to the alleged abuse. 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). The petitioner's statements when reviewed in their totality do not demonstrate that the petitioner's intent to enter into the marriage was

in good faith.² “An intent to obtain something other than or in addition to love and companionship from that life does not make a marriage a sham. Rather, the sham arises from the intent not ‘to establish a life together.’” *U.S. v. Orellana-Blanco*, 294 F.3d 1143, 1151 (9th Cir. 2002). The petitioner’s testimony does not reveal the necessary good faith intent when entering into the marriage. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with A-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. For this additional reason, the petition will be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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. The petition remains denied.

² Approval of a Form I-129F, Petition for Alien Fiance(e), under section 214(d) of the Act is not prima facie evidence of the beneficiary’s good-faith entry into the subsequent marriage under section 204(a)(1)(A)(iii) of the Act. The statutory and regulatory framework for fiancé(e) petitions significantly differs from the requirement that self-petitioners under section 204(a)(1)(A)(iii) of the Act demonstrate that they “entered into” the marriage with the abusive U.S. citizen “in good faith.” The U.S. citizen petitioner bears the burden of proof in fiancé(e) cases to establish prospectively that the petitioner and beneficiary intend to and are able and willing to enter a valid marriage. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). The corresponding regulation does not, however, define what constitutes a “bona fide intention to marry” under section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). In contrast, for self-petitions under section 204(a)(1)(A)(iii) of the Act, the alien bears the burden of proof to establish that she or he entered into the marriage in good faith and the regulation specifically defines the term “good faith marriage” and what types of evidence will suffice to meet that eligibility criterion. 8 C.F.R. §§ 204.2(c)(1)(ix), (c)(2)(vii). Hence, the fact that a self-petitioner was the beneficiary of an approved Form I-129F filed by his or her spouse will not establish that the alien actually entered into the marriage in good faith.