

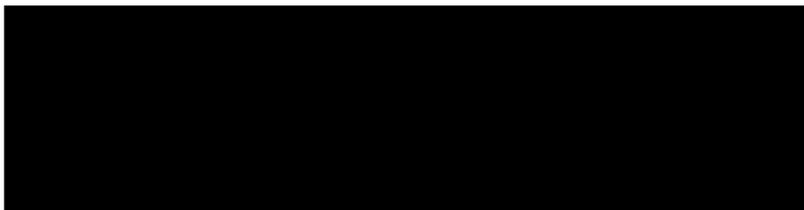
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: JUL 11 2011

Office: VERMONT SERVICE CENTER

FILE:

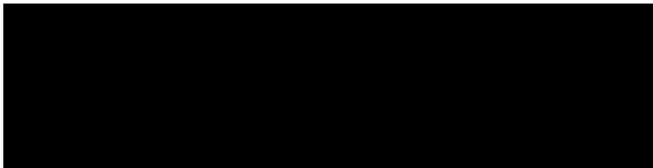


IN RE: Petitioner:



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 Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 United States lawful permanent resident.

The director determined that the petitioner had not established that she had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a brief, previously submitted documentation, additional banking records, and three affidavits.

Applicable Law and Regulations

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful 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 to be classified as a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, 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 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:

(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)(B)(ii) of the Act are set forth 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.

Facts and Procedural History

The petitioner is a native and citizen of Colombia. She entered the United States on November 15, 2001 as a B-2 visitor with authorization to remain in the United States for a temporary period not to exceed May 14, 2002. She married L-V-¹ the claimed abusive United States lawful permanent resident on February 6, 2009. On August 17, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner notes on the Form I-360 that she resided with L-V- from December 2008 until July 2009. On September 15, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides a brief, previously submitted documentation, additional banking statements, and three affidavits in support of the appeal.

Good Faith Entry Into Marriage

The petitioner does not provide a personal statement for the record regarding her intentions when entering into her marriage or her interactions with her spouse subsequent to the marriage. The record before the director included one bank statement addressed to the couple for a joint account. The record also included credit card statements and insurance issued solely to the petitioner and information regarding L-V-'s request for a separate credit card account and car insurance issued solely to L-V-. The record further included photographs of the couple at their wedding ceremony and on one or two other occasions.

The director observed that the petitioner had submitted documents in her name only and documents in L-V-'s name only and the only documentary evidence for both individuals included a bank statement for a joint bank account and the couple's marriage certificate. The

¹ Name withheld to protect the individual's identity.

director determined that the record did not include sufficient evidence to demonstrate that the petitioner had entered into the marriage in good faith.

On appeal, counsel submits additional bank statements for the couple's joint account for the months February 2009 through December 2009. Counsel also submits three identical affidavits signed by [REDACTED] on January 22, 2011. Each affiant declares that he or she had known the couple for two years and knew that the couple married, had a bona fide marriage, and lived together as a married couple. Counsel appears to assert that as the petitioner married an individual who adjusted status to that of a lawful permanent resident pursuant to section 1 of the Cuban Adjustment Act (CAA) of November 2, 1966, she has the burden of establishing that the marriage was bona fide and the director has the burden of showing that the petitioner entered into the marriage for the purpose of evading immigration laws using a substantial and probative evidentiary standard. Counsel contends that the petitioner has met her burden of establishing that the marriage is bona fide by submitting extensive documentary evidence and that the director has not met his burden of establishing that the marriage was entered into to circumvent immigration laws.

Contrary to counsel's reading of the denial decision, the director determined only that the petitioner had not established that she had entered into the marriage with her lawful permanent resident husband in good faith as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act. Upon review of the record, we find no error in the director's assessment of the relevant evidence and concur with his decision. The petitioner in this matter has provided no statements describing her initial meeting with L-V-, their courtship, their interactions prior to or during the marriage. The petitioner provides no information regarding the marriage except information regarding an incident that occurred on July 20, 2009 resulting in L-V-'s arrest for battery. The three affidavits submitted on appeal provide no probative information regarding the petitioner's marriage or her alleged good faith intent when entering into the marriage. The affiants provide no probative details regarding their observations of specific incidents or events that assist in establishing the petitioner's allegedly good faith intent when entering into marriage with L-V-.

Although the petitioner has submitted documents addressed to her at the claimed marital address and documents addressed to L-V- at the same address, these documents do not establish the petitioner's intent when entering into the marriage. Similarly, the photographs with no identifying information are of little probative value in ascertaining the good faith intent of the petitioner when entering into the marriage. The photographs submitted show that the petitioner and L-V- may have been together on a few unidentified occasions, but this evidence alone fails to establish the requisite good faith. The bank statements submitted on appeal without the underlying transactional information is insufficient to establish that the couple used the joint account for the necessities of a life together and similarly, do not assist in establishing the petitioner's intent in entering into the marriage.

Upon review of the totality of the evidence of record, the petitioner has failed to provide any probative testimony regarding her courtship with and marriage to L-V-. The petitioner does not describe the couple's mutual interests, she does not describe their daily routines in detail, and she does not provide any probative information for the record that assists in determining her intent

when entering into the marriage. 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). In this matter the petitioner has not set forth her intent in probative detail in her statements to United States Citizenship and Immigration Services (USCIS). Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with L-V- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Conclusion

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 petition remains denied.