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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: **MAY 25 2011** OFFICE: VERMONT SERVICE CENTER

FILE: 

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)

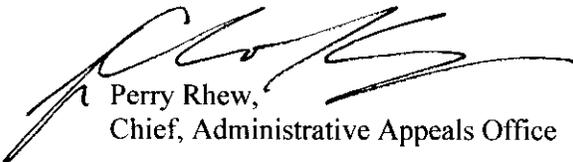
ON BEHALF OF PETITIONER:


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 former husband shared a joint residence; and (2) that she married her former husband in good faith. On appeal, counsel submits a brief reasserting the petitioner's eligibility.

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 Nicaragua, married L-R,¹ a lawful permanent resident of the United States, on July 29, 2006, and they divorced on June 24, 2008. She filed the instant Form I-360 on January 8, 2008. The director issued two subsequent requests for additional evidence to which the

¹ Name withheld to protect individual's identity.

petitioner, through counsel, filed timely responses. After considering the evidence of record, including counsel's responses to the requests for additional evidence, the director denied the petition on December 8, 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.

On appeal, counsel reiterates that because of the petitioner's former husband's abuse, she could not obtain further evidence to support her claims. We recognize the difficulties that abused spouses may face in trying to document their claims. Accordingly, to the extent that the director implied that documentary evidence of joint residence or good faith entry into marriage is required, that portion of his December 8, 2010 decision is hereby withdrawn. Self-petitioners may, but are not required, to submit primary, corroborative evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i).

Joint Residence

The relevant evidence fails to establish that L-R- and the petitioner shared a residence. First, the petitioner's testimony is inconsistent with regard to the time the alleged joint residence began: on the Form I-360, the petitioner stated that she resided with L-R- from November 2004 until May 2007. However, she stated in her July 16, 2010 self-affidavit that L-R- asked her to live with him in April 2004. Moreover, the petitioner's testimony lacks any probative details about the alleged joint residence apart from the abuse. For example, she failed to describe their home; their neighborhood; any of their furnishings or other jointly-held possessions; or their shared, residential routine. Although the director notified the petitioner of these deficiencies in his decision denying the petition, she did not supplement the record with such information on appeal.

On appeal, counsel contends that the director's determination that the petitioner had failed to establish that she resided with L-R- despite his determination that she did establish that he abused her during their marriage was "totally contradictory" as well as "absurd, illogical, inconsistent[,] and inconceivable." Counsel misinterprets the separate statutory requirements as redundant. The statute prescribes six independent eligibility requirements at section 204(a)(1)(A)(iii) of the Act. While the same or similar evidence may be relevant to more than one requirement, each eligibility ground must be met independently. Counsel fails to articulate how the evidence of abuse in this case also demonstrates that the petitioner resided with her former husband. As discussed above and by the director in his decision denying the petition, the petitioner's testimony lacked probative information about the alleged joint residence, and no attempt to cure that deficiency has been made. In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The relevant evidence fails to demonstrate that the petitioner resided with L-R-, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In her July 16, 2010 self-affidavit, the petitioner stated that she met L-R- “around the beginning of 2004” at a restaurant/disco in Kendall, Florida. She stated that she and L-R- talked and danced, and that he bought flowers for her and for her sister. They exchanged telephone numbers, and began dating. She stated that L-R- asked her to move into his residence in April 2004, that he asked her to marry him “[a]t the end of 2006,” and that they married on December 29, 2006.

The petitioner’s testimony does not establish that she entered into marriage with L-R- in good faith, as she failed to provide probative details regarding her relationship with him. For example, although she described the night on which they met, she did not provide any probative information about the rest of their courtship, except to state that L-R- asked her to move into his residence in April 2004 which, as noted previously, conflicted with her statement on the Form I-360 that they did not begin living together until November 2004.

The petitioner also provided incorrect information regarding the date of her marriage on two separate occasions, which detracts from her claim. As noted above, the petitioner stated in her self-affidavit that L-R- proposed marriage in late 2006, and that they married on December 29, 2006. However, their marriage certificate states that they married on July 29, 2006. The petitioner also stated on the Form I-360 that she and L-R- married on July 26, 2006. However, that was the date on which the marriage license was issued; again, they married on July 29, 2006.

Nor do the pictures of the couple establish that the petitioner married L-R- in good faith; they establish only that she and L-R- were together on a few occasions.

On appeal, counsel contends that because the director found that the petitioner had established that L-R- subjected her to battery or extreme cruelty during their marriage, the director’s subsequent determination that the petitioner had failed to establish that she married L-R- in good faith was “totally contradictory” as well as “absurd, illogical, inconsistent[,] and inconceivable.” Again, counsel misinterprets the distinct statutory eligibility grounds as redundant. The question of whether L-R- abused the petitioner during their marriage is a separate issue from the petitioner’s intentions upon entering into the marriage, and the evidentiary deficiencies regarding the petitioner’s testimonial and documentary evidence regarding her intentions upon entering into the marriage are set forth above.

Counsel also cites the submitted arrest report as evidence of the petitioner’s good-faith entry into the marriage.² However, this arrest report pertains to the petitioner’s arrest, and not that of L-R-.

² The record contains a copy of an arrest report made by the Miami Police Department on October 17, 2008, Police Case Number [REDACTED]. As no other arrest report is contained in the record, we presume counsel is referring to this document.

Nor does it appear as though L-R- was the other party involved in the altercation.³ Regardless, counsel fails to explain how the petitioner's arrest on a felony aggravated battery charge on October 17, 2008, nearly four months after her divorce from L-R-, supports her assertion that she married L-R- in good faith.

The petitioner has failed to establish that she married L-R- 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 resided with L-R- 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.

³ The arrest report did not name the victim. However, the language of the arrest report does not indicate that L-R- was the victim of the alleged aggravated battery. As noted, the petitioner was arrested on October 17, 2008, nearly four months after her divorce from L-R-. The arrest report stated that the petitioner and the victim were "currently resid[ing] together and [were] boyfriend and girlfriend." It also stated that they had been dating one another for seven months.