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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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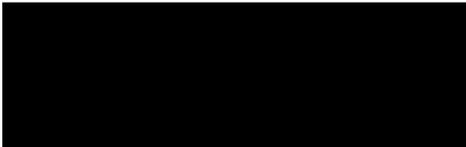
DATE: MAR 02 2012 Office: VERMONT SERVICE CENTER

FILE: 

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)

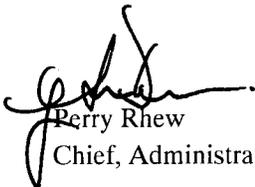
ON BEHALF OF PETITIONER:



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.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, initially approved the immigrant visa petition. Upon review, the director issued a Notice of Intent to Revoke (NOIR) approval and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

The petitioner seeks immigrant classification under 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, in the revocation decision, determined that the petitioner was subject to section 204(g) of the Act and had not submitted clear and convincing evidence that she had married the claimed abusive United States citizen (USC) in good faith. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, and previously submitted documentation.

#### *Applicable Law and Regulations*

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 based on his or her relationship to the abusive spouse, 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].

Section 205 of the Act states: The Secretary of Homeland Security may, at any time, for what she deems to be good and sufficient cause, revoke the approval of any petition approved by her under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The eligibility requirements pursuant to Section 204(a)(1)(A)(iii) of the Act are further set out 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)(A)(iii) 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.

Section 204(g) of the Act states:

*Restriction on petitions based on marriages entered while in exclusion or deportation proceedings.* – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

*Facts and Procedural History*

The petitioner is a native and citizen of Mexico. According to her personal statement she initially entered the United States in or around 1988 without inspection and was arrested and placed in removal proceedings before the immigration court on July 7, 1992. On October 31, 1995, the petitioner requested self-deportation in order to comply with a deportation order entered in absentia. On November 9, 1995, the petitioner departed the United States. The record

includes a copy of the petitioner's receipt for an airline ticket and a November 14, 1995 verification of her arrival in Mexico signed by the assistant district director, United States Immigration and Naturalization Service, in Mexico. The petitioner testified that she re-entered the United States in December 1995 again without inspection. On September 6, 1997, she married R-R-<sup>1</sup>, the claimed abusive USC. On March 11, 2005 the petitioner was again placed in removal proceedings. Those proceedings were administratively closed on December 2, 2005. On April 4, 2005, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant and the petition was approved on January 26, 2006. On March 22, 2010 and again on November 19, 2010, upon review of the record, the director issued Notices of Intent to Revoke approval of the petition and ultimately revoked approval of the petition. As noted above, the director determined that the petitioner was subject to section 204(g) of the Act because she entered into marriage while in removal proceedings and had not established that she was exempt from section 204(g) applicability because she had not established that she entered into her marriage with R-R- in good faith by clear and convincing evidence. On appeal, counsel for the petitioner asserts that the petitioner was not subject to section 204(g) of the Act as she was not under the jurisdiction of the immigration court when she married R-R- in September 1997.

#### *Section 204(g) of the Act*

The petitioner's departure from the United States on November 9, 1995 executed the deportation order and, thus, she was no longer in removal proceedings when she married the claimed abusive USC on September 6, 1997. Consequently, the petitioner is not subject to section 204(g) of the Act. Upon review of the record, however, the petitioner has not established by a preponderance of the evidence that she entered into the marriage with R-R- in good faith, an essential element when establishing eligibility for the Form I-360 benefit. For this reason, the matter must be remanded for the director to determine whether the petitioner has established that she entered into the marriage in good faith. The director must issue a NOIR setting out this ground for revocation and any other grounds the director deems proper.

#### *Good Faith Entry into Marriage*

The director in this matter acknowledged the petitioner's explanation for her lack of documentation relating to her marriage with R-R-. The director noted, however, that the petitioner's personal statement lacked probative details regarding the couple's shared life. We agree. The petitioner does not provide probative testimonial evidence providing insight into her intentions when entering into the marriage. The record provides little detail regarding the petitioner's interactions with R-R- regarding the courtship, wedding ceremony, shared residence and experiences. The petitioner's testimonial evidence fails to provide sufficient probative detail to demonstrate that she entered into marriage with R-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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

*Conclusion*

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The director's decision is withdrawn; however, the petition is currently unapprovable for the reason discussed above. Because the petition is not approvable, the petition is remanded to the director to issue a NOIR setting out the grounds for revocation and to enter a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.