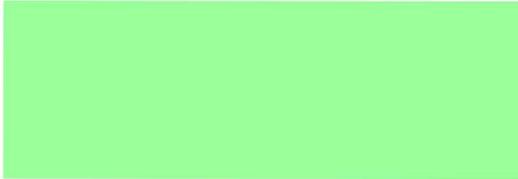




U.S. Citizenship
and Immigration
Services

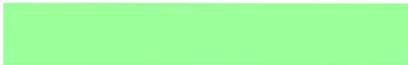
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Date: **SEP 26 2014**

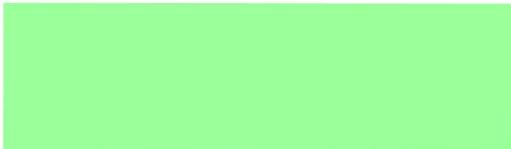
Office: VERMONT SERVICE CENTER

File: 

IN RE: Self-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:

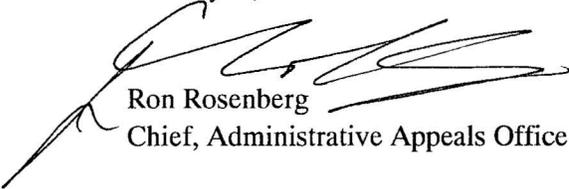


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“the 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 Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(I), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.¹

The director denied the petition for the petitioner’s failure to submit proof that her prior marriage was legally terminated and thus she had a qualifying relationship as the spouse of a U.S. lawful permanent resident and is eligible for immigrant classification based upon that relationship, and failure to establish that she entered into the marriage with her spouse in good faith and that she resided with him.

On appeal, the petitioner submits additional evidence.

Relevant Law and Regulations

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 further states, in pertinent part:

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 for a self-petition under section 204(a)(1)(B)(ii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

* * *

¹ The petitioner refers to her husband as a U.S. citizen on the Form I-360 self-petition and in an affidavit. U.S. Citizenship and Immigration Services (USCIS) records, however, show that he is a lawful permanent resident of the United States, not a citizen.

(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 explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by . . . proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

(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.

Facts and Procedural History

The petitioner is a citizen of Brazil who last entered the United States on December 3, 2000 as a nonimmigrant visitor. On March 15, 2011, the petitioner married A-D-², a national of Peru and lawful permanent resident of the United States, in New York. On June 1, 2012, the petitioner filed the instant Form I-360 self-petition on which she indicated that she was previously married. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, proof that the petitioner's prior marriage was legally terminated, and that she resided with A-D- and entered

² Name withheld to protect the individual's identity.

into her marriage with him in good faith. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented on appeal, the petitioner has not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immigrant Classification

The petitioner has established the validity of her marriage to A-D- on appeal. The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship. The petitioner initially submitted her current marriage certificate but did not submit a divorce decree or other evidence that her prior marriage was legally terminated. On appeal, counsel asserts that the petitioner submitted that evidence "on at least three occasions." No such evidence was previously received. Counsel submits on appeal a "Public Registration of Direct Amicable Divorce." The document indicates that the petitioner married her former husband on October 25, 1996 and they divorced by proxy in Santa Catarina, Brazil on November 18, 2010. The validity of a divorce abroad depends on the interpretation of the divorce laws of the foreign country that granted the divorce and the reciprocity laws in the state of the United States where the petitioner remarried.³ If the divorce is not final under the foreign law, remarriage to a U.S. citizen or lawful permanent resident is not valid for immigration purposes.⁴

Article 226, Paragraph 6 of the Brazilian Constitution determines that a civil marriage may be dissolved by divorce. Divorce in Brazil is regulated by Law No. 6,515 of December 26, 1977 and the Civil Code (C.C.). The C.C. requires that judicial decisions that decree the nullity or annulment of a marriage, divorce, judicial separation, and the reestablishment of conjugal society be registered in a public register. (C.C. art. 10(I)).⁵ In the present case, the petitioner has submitted evidence that her divorce was registered with the Federative Republic of Brazil, State of Santa Catarina, County of Itajai on November 18, 2010. New York Code, Domestic Law Section 8 states in pertinent part: "Whenever, and whether prior or subsequent to September first, nineteen hundred sixty-seven, a marriage has been dissolved by divorce, either party may marry again."

The preponderance of the evidence demonstrates that the petitioner's divorce was valid under Brazilian law and that she was free to marry A-D- in New York. Consequently, the petitioner has established that she has a qualifying relationship as the spouse of a U.S. lawful permanent resident and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(B)(ii)(II)(aa) and (cc) of the Act. The director's contrary determination is withdrawn. The appeal cannot be sustained, however, because the petitioner has not overcome the remaining ground for denial.

³ *Matter of Luna*, 18 I&N Dec. 385 (BIA 1983); *Matter of Ma*, 15 I&N Dec. 70 (BIA 1974).

⁴ See *Matter of Ma*, 15 I&N Dec. 70, 71 (BIA 1974); *Matter of Miraldo*, 14 I&N Dec. 704 (BIA 1974).

⁵ Information provided by the Law Library of Congress, Global Research Center, L.L. File No. [REDACTED] USCIS Request No. 98, December 18, 2013.

Good Faith Entry into the Marriage

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into marriage with A-D- in good faith. In the petitioner's first affidavit, she stated that she was very happy to meet A-D- in 2010 and her family was happy to learn she was getting married and settled in the United States. She did not describe in detail their first meeting, courtship, engagement, wedding ceremony, marital residence or shared experiences apart from the abuse. Though notified of this deficiency in the RFE, the petitioner did not address her marital intentions in her second affidavit.

Affidavits from three of the petitioner's friends were submitted below and are nearly identical in wording and content. [REDACTED] all stated that the petitioner told them in late 2010 she was planning to get married, she married on March 15, 2011, and they were present for her reception. None of the affiants described the wedding reception or any social occasion they shared with the couple, apart from the abuse, and none indicated that they observed the petitioner's relationship with A-D- before the marriage or had personal knowledge of the petitioner's marital intentions.

Joint checking account statements from March 28, 2011 to August 10, 2011 show ending balances between \$3.26 and \$17.96 and withdrawals made from only one debit card. Two envelopes reflect the claimed marital residence, but are addressed to the petitioner and A-D- individually. Photographs picture the petitioner and A-D- at their wedding and on four other occasions, the significance of which the petitioner did not explain.

On appeal, counsel asserts that the petitioner has done her best to provide evidence of the requisite good-faith entry into marriage but as she explained in her first affidavit, A-D- burned their photographs and withheld her mail. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the affidavits of the petitioner and others do not establish her claim because they contain insufficient information regarding the petitioner's marital intentions. A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination and counsel's claims on appeal do not overcome this ground for denial. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with A-D- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Joint Residence

The record also fails to demonstrate that the petitioner resided with A-D-. As discussed above, joint checking account statements from March 28, 2011 to August 10, 2011 show ending balances of less than \$4.00 to less than \$18.00 and withdrawals made from only one debit card. Two envelopes reflect the claimed marital residence, but are addressed to the petitioner and A-D- individually. Photographs show the petitioner and A-D- at their wedding and on four other occasions, of which the petitioner did

not explain the significance. Nonetheless, traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). In the present case, however, the petitioner's affidavit and those of others do not establish her joint residence.

In her first affidavit, the petitioner stated that she and A-D- moved to a home on [REDACTED] New Jersey a few months before they married on March 15, 2011. On the Form I-360, the petitioner indicated that she lived with her spouse from January 1, 2011 to October 1, 2011. In the RFE, dated May 13, 2013, the petitioner was asked to explain why if she and A-D- were residing together prior to their marriage, the marriage certificate indicates that they were living at two separate addresses as of March 15, 2011. The petitioner did not address the issue in her second affidavit and submitted no evidence to resolve the discrepancy. On appeal, counsel claims that A-D- maintained an apartment on [REDACTED] New York before he and the petitioner married, they kept separate addresses because they were living as boyfriend and girlfriend, and that is why his address is listed separately on their marriage certificate. The petitioner has made no such assertions herself in her affidavits nor has she described or discussed the marital residence. The three friends' affidavits are silent as to whether the petitioner resided with A-D-. The petitioner has not submitted a supplemental affidavit on appeal and the claims of counsel are insufficient to resolve the discrepancy of which the petitioner was notified in both the RFE and the director's denial decision. Accordingly, the record does not establish that the petitioner resided with her spouse, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has established that her prior marriage was legally terminated and she had a qualifying relationship as the spouse of a U.S. lawful permanent resident and is eligible for immigrant classification based upon that relationship. The petitioner has not, however, overcome the director's determinations that she did not enter into the marriage in good faith and did not reside with her spouse. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.