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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

DATE:

APR 28 2015

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Director of the Vermont Service Center (the director) denied the immigrant visa petition (Form I-360) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification pursuant to 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 for failure to establish that the petitioner entered into the marriage in good faith. On appeal, the petitioner submits a brief.

*Relevant Law and Regulations*

Section 204(a)(1)(B)(ii)(I) 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 states, in pertinent part, that:

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 further explicated 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 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:

(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. . . .

\* \* \*

(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 Honduras who entered the United States on July 30, 1999 as a G-5 nonimmigrant. The petitioner married J-C-<sup>1</sup> a lawful permanent resident of the United States, on [REDACTED] and filed this Form I-360 petition on December 26, 2013. On March 21, 2014, the director sent a Request for Evidence (RFE), to which the petitioner timely responded. The director denied the petition on June 17, 2014, for failure to establish the petitioner's good-faith entry into the marriage. The petitioner filed a timely appeal.

We review these proceedings *de novo*. Upon a full review of the record, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

#### *Entry into the Marriage in Good Faith*

As evidence of her good-faith intent, the petitioner referred in her initial statement to the fact that she took J-C-'s last name when they married. This fact, in and of itself, sheds no light into the petitioner's marital intentions. Moreover, the petitioner failed to provide any details to establish her good faith marriage. The petitioner asserted generally in her initial statement, that she and J-C- "lived together for a long time" prior to their marriage, until they separated due to his abuse. The petitioner asserted in a May 23, 2014 statement, submitted in response to the director's RFE, that she met J-C- "a while ago," and that she entered into her marriage with him in good faith. Neither statement provides probative and detailed information regarding the petitioner's relationship with J-C-, the couple's courtship, shared residence and experiences, and the petitioner's intentions for marrying J-C-.

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

The petitioner also asserted that approval of the Form I-130, Petition for Alien Relative (Form I-130) filed by J-C- on her behalf, serves as evidence of her good-faith marriage to J-C-. The fact that a visa petition based on the marriage in question was previously approved, however, does not automatically entitle that beneficiary to subsequent immigrant status. *See Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9<sup>th</sup> Cir. 2002) (In subsequent proceedings, “the approved petition might not *standing alone* prove . . . that the marriage was bona fide and not entered into to evade immigration laws.”) Further, although similar, the parties, statutory provisions, and benefits procured through sections 204(a)(1)(B)(i) (Form I-130) and 204(a)(1)(B)(ii) (Form I-360) of the Act are not identical. The petitioner’s spouse was the petitioner and bore the burden of proof in the Form I-130 adjudication, in which he was required to establish his lawful permanent residence status and the validity of their marriage. *See* Section 203(a)(2)(A) of the Act, 8 U.S.C. § 1153(a)(2)(A); 8 C.F.R. §§ 204.1(f), 204.2(a)(2). In the present Form I-360 proceeding, the petitioner bears the burden of proof to establish her own good-faith entry into the marriage. *See* Section 204(a)(1)(B)(ii)(I)(aa) of the Act. In making a decision on the self-petition, U.S. Citizenship and Immigration Services (USCIS) has sole discretion to determine what evidence is relevant and credible and the weight to be given that evidence. *See* 8 C.F.R. § 204.2(c)(2)(i). In the present matter, the petitioner provided only a cursory description of her marital relationship; moreover, the remaining relevant evidence contains discrepancies and lacks probative information to meet her burden of proof. The approved Form I-130 does not establish the petitioner’s good-faith entry into the marriage for purposes of the instant self-petition.

Regarding their shared residence, the petitioner submitted a July 11, 2013 letter from the administrative assistant at [REDACTED] Apartment Homes indicating that the petitioner and J-C- resided together at [REDACTED] Maryland between February 28, 2005 and August 17, 2007. The letter does not reflect that the administrative assistant visited or saw the petitioner and J-C- at the apartment. The letter also fails to describe any interactions that would establish the administrative assistant’s knowledge of the petitioner’s relationship with J-C- prior to their marriage in 2001. Similarly, a May 29, 2012, Comptroller of Maryland Payment Plan Cancellation Notice, addressed to the petitioner and J-C- at [REDACTED] Maryland, is dated after the petitioner’s claimed separation date from J-C-, and does not demonstrate the petitioner’s good-faith entry into her marriage.

Federal income tax return evidence for 2008 and 2009 submitted with the Form I-360 indicates a shared address at [REDACTED] Maryland. The tax returns do not contain the petitioner’s or J-C-’s signatures, however, and the record lacks evidence that the tax returns were filed with the U.S. Internal Revenue Service. Furthermore, address information provided by the petitioner on his May 23, 2012, Biographic Information (Form G-325) contained in the record, indicates that the petitioner lived at [REDACTED] Maryland between May 2007 and November 2011. The petitioner does not list the [REDACTED] address on his Form G-325. The Form G-325A address information also conflicts with the information provided in the [REDACTED] Apartment Homes letter.

The 2008 and 2009 tax returns also indicate that the petitioner and J-C- claimed a son, D-S-<sup>2</sup> as their dependent. D-S- is also listed, with a [REDACTED] birth date, on the petitioner’s Form I-485, Application to Register Permanent Residence or Adjust Status and on a previous Form I-360 filed by the petitioner.

<sup>2</sup> Name withheld to protect individual’s identity.

The record contains no evidence that the petitioner and J-C- had a child together. Moreover, D-S- does not have J-C-'s last name and the record lacks information clarifying the petitioner's relationship to D-S-'s father before and after the child's birth. Additional 2011 and 2012 federal income tax return evidence, submitted by the petitioner in response to the RFE, also lacks probative information regarding the petitioner's marital intentions, as the tax returns are in the petitioner's name only, and are dated after the petitioner's claimed separation from J-C-. Photographs submitted in response to the director's RFE also do not reflect the petitioner's marital intentions when she married, as they are undated and without context, and do not identify the individuals or events depicted.

On appeal, the petitioner again generally asserts that she and J-C- lived together before and during their marriage until it became unbearable, and that they "lived together in various places" until they were able to get an apartment in their own name between 2005 to 2007. The petitioner's statements are vague and lack substantive information regarding the petitioner's relationship with J-C- and her intentions for marrying him.

Overall, the evidence contained in the record lacks probative and detailed information regarding the petitioner's relationship with J-C-. Moreover, the evidence contains inconsistencies with regard to the petitioner's and J-C-'s joint residence. Accordingly, the petitioner has failed to establish, by a preponderance of the evidence, her good-faith entry into the marriage, as required by section 204(a)(1)(B)(ii) of the Act.

#### *Conclusion*

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.