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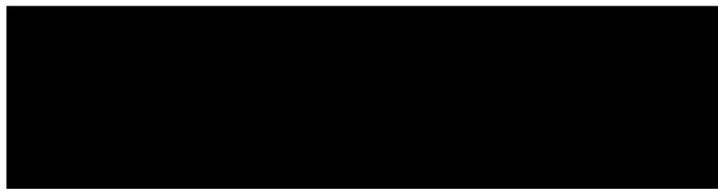
IN RE:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting 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 petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 denied the petition because the petitioner did not establish that she entered into marriage with her United States (U.S.) citizen husband in good faith and resided with him.

On appeal, counsel submits a brief and an additional statement by the petitioner.

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, 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, 8 U.S.C. § 1154(a)(1)(J) 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 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.

* * *

(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 further explicated 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.

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Kenya who entered the U.S. on May 25, 1999 as a nonimmigrant exchange visitor (J-1).¹ On October 24, 2002, the petitioner married D-P-², a U.S. citizen, in New York. D-P- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on September 12, 2003. The petitioner filed this Form I-360 on July 7, 2006. On January 8, 2007, the director issued a Request for Evidence (RFE) of the petitioner's good faith in marrying her husband, that she resided with him and that he subjected her to battery or extreme cruelty. The petitioner responded with additional evidence. On April 17, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish the requisite good-faith and joint residence. The petitioner responded to the NOID with further evidence, which the director found insufficient to

¹ The record shows that the petitioner is subject to the two-year foreign residence requirement at section 212(e) of the Act, 8 U.S.C. § 1182(e). The record indicates that the petitioner has not returned to Kenya, but has remained in the U.S. since she completed her training in September 1999 and has not received a waiver of the two-year foreign residency requirement pursuant to a recommendation from the U.S. Department of State. *Id.*; 8 C.F.R. § 212.7(c). The petitioner is thus ineligible to apply for an immigrant or nonimmigrant visa or adjustment of status pursuant to section 212(e) of the Act.

² Name withheld to protect individual's identity

establish the petitioner's eligibility. The director denied the petition on the grounds cited in the NOID on August 22, 2007 and counsel timely appealed.

On appeal, counsel asserted that the petitioner submitted credible evidence that she resided with her husband and married him in good faith. On the Form I-290B, Notice of Appeal, counsel requested more than 30 days to submit a brief. On January 16, 2009, the AAO, having received nothing further, notified counsel that no brief had been received and requested that counsel inform the AAO if no brief was ever filed or to submit a copy of any brief that was timely filed. Counsel did not respond. With the Form I-290B, counsel submitted copies of documents previously filed below and a new statement by the petitioner. The petitioner's statements on appeal do not overcome the grounds for denial and the appeal will be dismissed.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with her husband in good faith:

- The petitioner's October 13, 2005; February 23 and June 1, 2007 statements submitted below and her September 19, 2007 statement submitted on appeal;
- October 23, 2005 and May 8, 2007 letters of the petitioner's sister, [REDACTED]
- August 5, 2007 letter of the petitioner's sister, [REDACTED]
- June 8, 2007 letter of the petitioner's friend, [REDACTED]
- Printout of June 8, 2007 electronic mail message from the petitioner's friend and roommate, [REDACTED]
- Photocopy of the first page of the petitioner's 2003 federal income tax return marked "Married filing separately;"
- Automobile insurance policy statement of the petitioner dated July 9, 2005, which lists her husband as an excluded driver and household resident; and
- Photocopies of three photographs of the petitioner and her husband at their wedding and on one or two other, unspecified occasion.

In her statements below, the petitioner recounted that she met her husband at a party in New Jersey in October 1999 when she was living in New York. The petitioner states that she found her husband to be nice, charming and interesting and they began dating. Because of her mother's abuse at the hands of her father, the petitioner explains that she was afraid of trusting her husband. In January 2000, the petitioner states that she moved to Colorado because she had a Kenyan friend there who told her the schools were more affordable there and because she was still unsure about her commitment to her husband. After her move, the petitioner explains that she and her husband kept in touch over the telephone. In December 2001, the petitioner states that she went to visit her husband for his birthday, he proposed to her and she accepted. The petitioner explains that she convinced her husband to let her return to Colorado to finish her classes. In July 2002, the petitioner states that she returned to New Jersey where she and her husband lived with his brother. The petitioner reports that her husband's

family and one of her friends attended their wedding ceremony and they had a small reception at his mother's house. After their marriage, the petitioner states that she and her husband moved to their own apartment where they lived until she left him in March 2003.

The petitioner states that when she and her husband lived with her husband's brother, "everything was in his name." When they moved to their own apartment, the petitioner explains that her husband had rented the apartment on his own and did not want to add the petitioner to the lease or the utilities accounts because he was uncertain of how her undocumented status "would affect everything." The petitioner explains that she and her husband did not have any insurance policies because they did not drive in New Jersey and had no health insurance. The petitioner also states that she was not working at the time and her husband did not have a bank account.

In her second statement, the petitioner explained that her friend and roommate, _____ knew that she returned to New Jersey, but that the petitioner never told _____ about her relationship with her husband because _____ is Kenyan and the petitioner feared that word would get back to her father, who would disapprove of her relationship. The petitioner also stated that she only told her sister _____ about her marriage and residence with her husband and did not tell anyone else in her family for fear of the news reaching her father.

In her first letter, the petitioner's sister _____ states that she is "aware" that the petitioner married her husband "on October 2005," three years after the petitioner was married in 2002. _____ stated that the petitioner and her husband sent pictures of themselves and the family of the petitioner's husband and that the petitioner's husband also communicated with the petitioner's family in Kenya. In her second letter, _____ states that the petitioner first spoke of her relationship with her husband in 2001 and that _____ told the rest of their family after the petitioner was married. _____ states that the petitioner was married in October 2002, but does not explain why she stated the former couple was married in 2005 in her first letter. _____ notes that she spoke with the petitioner's husband on the telephone after learning of their marriage. The petitioner's sister _____ states that she learned of the petitioner's courtship and marriage through _____. _____ indicates that all she knows of the relationship was learned through _____ and that she did not communicate with the petitioner directly.

The petitioner's friend, _____ states that she met the petitioner in Colorado in 2000 and the petitioner spoke to her about her husband during their courtship. _____ states that she knew of the petitioner's engagement and marriage, but that she was unable to attend the wedding. _____ indicates that she never met the petitioner's husband or visited them because she moved to California before the petitioner's marriage. The petitioner's roommate, _____, states that the petitioner was dating her husband in 2000 and went to live with him from 2002 to 2003, during which time they were married. _____ states that "[b]y all accounts [the petitioner and her husband] did appear to be happy during their courtship," but _____ does not indicate that she ever saw the petitioner and her husband together before or after their marriage.

The statements of the petitioner's friends are also of limited weight because the petitioner first indicated that she did not tell anyone in Colorado about her relationship with her husband. On appeal, the petitioner states that she never told [REDACTED] of the relationship "in the beginning," but later disclosed the relationship as it became more serious. The petitioner explains that she previously stated that she never told [REDACTED] of her relationship because she was trying to keep her loved ones "completely uninvolved in [her] personal matters." On appeal, the petitioner also states that she previously did not discuss [REDACTED] knowledge of her relationship because she "was afraid and ashamed of involving other people in [her] personal immigration matters." Regardless of the reasons for the inconsistencies, [REDACTED] and [REDACTED] both fail to provide detailed, probative information regarding the petitioner's relationship with her husband or the petitioner's expressed intentions in marrying him.

The remaining, relevant evidence also fails to demonstrate that the petitioner entered into her marriage in good faith. The partial copy of the petitioner's 2003 income tax return is marked "married filing separately." The automobile insurance policy statement is dated two years after the petitioner states that she left her husband and she admits, in her second statement, that she only included her husband in the policy because the insurance agent advised her to do so when she told him she was still married. The photographs show that the petitioner and her husband were pictured together at their wedding and on one or two other, unidentified occasions, but the pictures alone do not demonstrate that the petitioner married her husband in good faith.

The petitioner has explained her inability to provide further documentation, although we note that the petitioner's sister [REDACTED] stated that the petitioner and her husband sent pictures of themselves to the petitioner's family in Kenya, but [REDACTED] did not include any such photographs with either of her letters. While testimony alone may establish the requisite good faith, in this case, the petitioner's own statements and those of her sisters and friends do not provide detailed, probative information sufficient to establish that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The evidence listed in the preceding section is also relevant to the petitioner's alleged residence with her husband. On the Form I-360, the petitioner stated that she resided with her husband from October 2002 to March 2003, but in her second statement, the petitioner asserted that she lived with her husband from July to October 2002 at her husband's brother's home in Hillside, New Jersey. The petitioner did not explain this discrepancy, but stated that after their marriage, she and her husband resided in an apartment on [REDACTED] in Hillside until she left him in March 2003. The petitioner did not describe either of their joint residences in detail. The petitioner's sisters and friends do not indicate that they ever visited the former couple and they provide no detailed information regarding their allegedly joint residence.

The petitioner explains that she and her husband first resided with her husband's brother and the lease and all the utilities were in his name. She further states that her husband rented their second apartment

and did not put her name on the lease or any of the utilities accounts. The petitioner also explains that she and her husband did not have a bank account or automobile or health insurance. On appeal, the petitioner addresses the inconsistencies between her testimony and the statements of her friends, but she does not provide any further, probative details regarding her claimed residence with her husband. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The petitioner has not demonstrated that she entered into marriage with her husband in good faith and resided with him. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.