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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

B9.

[Redacted]

DATE: **AUG 09 2011** OFFICE: [Redacted] FILE: [Redacted]

IN RE: [Redacted]

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:
[Redacted]

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)(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 denied the petition on the basis of his determination that the petitioner had failed to establish that she married her husband in good faith. On appeal, counsel submits two memoranda of law.

Applicable Law

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, the following:

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

- (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 ██████████ married B-R-¹ a citizen of the United States, on January 7, 2009. She filed the instant Form I-360 on January 19, 2010. The director issued a subsequent request for additional evidence and the petitioner, through counsel, filed a timely response. After considering the evidence of record, including counsel's response to the request for additional evidence, the director denied the petition on October 1, 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 ground for denying this petition.

Good Faith Entry into Marriage

The sole issue before the AAO on appeal is whether the petitioner married B-R- in good faith. In her December 1, 2009 self-affidavit, the petitioner stated that after meeting B-R- at a backyard barbeque held at the home of her aunt, they began speaking by telephone and eventually had their first date at a Chinese restaurant. The petitioner also stated that, during their courtship, she visited B-R- at his apartment, and that they rented videos and made dinner together. She moved into his apartment and, when B-R- later proposed marriage, she accepted. According to the petitioner, they had a small wedding followed by a reception held in their apartment. The petitioner "certified" that she married B-R- out of love and affection.

The petitioner also submitted an affidavit from ██████████ dated November 16, 2009. ██████████ stated that she saw the petitioner and B-R- together and that they looked very happy together and appeared to be in love with one another. She also stated that the petitioner told her that she was in love with B-R-.

██████████ claimed in his May 20, 2010 affidavit that he is able to "state with complete certainty" that the petitioner married B-R- for love. He explained that he and his late wife introduced the petitioner and B-R- to one another at a barbecue, and recounted that B-R- was very affectionate toward the petitioner during their courtship.

The testimonial evidence of record does not establish that the petitioner married B-R- in good faith. Although the petitioner and her affiants described the couple's first introductions and first date, they

¹ Name withheld to protect individual's identity.

did not describe the couple's ensuing relationship in probative detail. They provide little information regarding the couple's courtship, engagement, shared experiences, or their shared residential routines. Although counsel argues otherwise on appeal and reiterates much of the testimony of the petitioner and her affiants, their testimony contains very little probative information about the couple's relationship, apart from the abuse, beyond their initial meeting and first date.

Nor does the documentary evidence of record establish that the petitioner married B-R- in good faith. Counsel claims on appeal that the director did not afford the documentary evidence of record "sufficient weight." We find no error in the director's assessment. The pictures of the couple together indicate only that they were together at their wedding and on two other occasions, and the fact that the joint automobile insurance policy was issued shortly before an interview conducted in connection with the petitioner's permanent residency petition diminishes its probative value. Although the record contains a residential lease agreement signed by both B-R- and the petitioner, there is no evidence that any rent payments were made by either individual in connection with this lease. Moreover, in the absence of credible, detailed testimony regarding the petitioner's good faith entry into marriage with B-R- this lease, alone, is not sufficient to establish her claim.

Nor does the letter from [REDACTED] a psychologist who evaluated the petitioner on October 12, 2009, establish that the petitioner married B-R- in good faith. [REDACTED] stated that the petitioner told her that the couple's courtship was "romantic and communicative," and that B-R- initially treated her in a gentle, respectful manner. While we do not question [REDACTED] professional qualifications, her letter lacks detailed, probative information about the couple's relationship apart from the abuse. Although counsel notes on appeal that [REDACTED] found the petitioner credible and consistent, such qualities do not compensate for the lack of sufficient, probative information in her affidavit.

On appeal, counsel indicated that the petitioner was trying to gather additional evidence of the bona fides of her marriage, which counsel would send to the AAO. To date, we have received no further evidence from counsel or the petitioner.

The petitioner has failed to establish that she married B-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determination that she failed to establish that she married B-R- in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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.