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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

[redacted]

B9

DATE: AUG 11 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 Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed.

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 citizen of the United States.

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:

> *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.

Pertinent Facts and Procedural History

The director denied the petition on February 11, 2008 on the basis of his determination that the petitioner had failed to establish that she married her ex-husband in good faith. The petitioner, through counsel, appealed the director's decision to the AAO and, in our April 3, 2009 decision, we agreed with the director's decision and found further that the petitioner had failed to establish that she is a person of good moral character. Although we found the petitioner ineligible for the benefit sought, we nonetheless remanded the petition to the director on technical grounds for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).[1]

The director issued the requisite NOID on February 19, 2010, and counsel submitted the following: (1) a memorandum of law; (2) a self-affidavit executed by the petitioner on March 8, 2010; (3) criminal background checks issued by the State of [redacted] (4) a copy of the petitioner's military spouse identification card; and (5) a copy of the Form I-130, Petition for Alien Relative, that the petitioner's current husband filed on her behalf. The director found counsel's response sufficient to demonstrate the petitioner's good moral character. However, the director found the response insufficient to establish that the petitioner had married her ex-husband in good faith and denied the petition on that ground on March 16, 2011. The director notified the petitioner that his decision would be certified to the AAO for review and that she had 30 days during which to submit a brief or other written statement to be considered during our review. As no further documentation has been received from counsel or the petitioner, we deem the record complete as it now stands.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the petitioner has failed to establish that she married her ex-husband in good faith. Beyond the decision of the director, we additionally find that the petitioner's remarriage during the pendency of the petition precludes it approval. The contents of our April 3, 2009 decision,

[1] On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (April 17, 2007). The rule became effective on June 18, 2007, after the filing of this petition on December 26, 2006.

as well as the evidence of record upon which we based that decision, are part of the record and their contents need not be repeated in full.

Good Faith Entry into Marriage

In our April 3, 2009 decision we found that the record as it then existed failed to establish that the petitioner entered into marriage with her ex-husband in good faith. Accordingly, on certification we will only consider the evidence submitted by the petitioner after that decision.

The only evidence of record relevant to the question of whether the petitioner married her ex-husband in good faith that we did not previously address is the petitioner's March 8, 2010 self-affidavit. Nor have we yet considered counsel's March 23, 2010 memorandum of law. In our April 3, 2009 decision, we found the petitioner's testimony regarding her alleged good faith entry into marriage with her ex-husband lacking in probative detail. Although the petitioner does offer some additional information in her March 8, 2010 self-affidavit, it still lacks the probative detail necessary to establish her claim, and counsel's March 23, 2010 memorandum of law merely repeats her testimony.

Upon review, we affirm the director's decision denying the petition, as the new evidence of record fails to overcome the previous decisions of the director and the AAO. The petitioner has failed to demonstrate that she married her ex-husband in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Remarriage of the Petitioner

The record indicates that the petitioner and her ex-husband divorced on April 17, 2007, and that she remarried on May 15, 2009. The petitioner, therefore, remarried during the pendency of this petition, and the regulation at 8 C.F.R. § 204.2(c)(1)(ii) specifically states that remarriage prior to final adjudication of a self-petition shall be a basis for denial. For this additional reason, the petition may not be approved.

Conclusion

The petitioner has failed to establish that she married her ex-husband in good faith. Beyond the decision of the director, the petitioner's remarriage during the pendency of the petition precludes its approval.[2] Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must remain denied.

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[2] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 and the appeal will be dismissed.

ORDER: The director's March 16, 2011 decision is affirmed. The petition remains denied