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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

PUBLIC COPY



B9

Date:

Office: VERMONT SERVICE CENTER

FILE: 

JUL 15 2011

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:

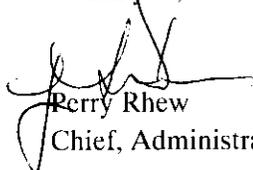


INSTRUCTIONS:

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 the \$630 fee. 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 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)(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 her United States citizen spouse.

The director denied the petition for failure to establish the requisite good-faith entry into the marriage. On appeal, counsel contends that the director ignored the evidence as the record contains a detailed declaration from the petitioner and correspondence between her and her former husband as evidence of their good-faith relationship. As supporting evidence, counsel submits copies of the petitioner’s divorce decree, a psychological evaluation from Dr. [REDACTED] and documentation already in the record.

Applicable Law and Regulations

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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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 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 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.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Facts and Procedural History

The petitioner is a citizen of Iran who last entered the United States as a nonimmigrant visitor in 2008. The petitioner previously was admitted into the United States on April 29, 2006 as a K-1 fiancée of a U.S. citizen. On June 7, 2006, the petitioner married a naturalized U.S. citizen in Florida. The petitioner subsequently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which was rejected on August 14, 2006, due to insufficient funds. The petitioner and her husband were divorced on September 29, 2006.

The petitioner filed the instant Form I-360 self-petition on February 18, 2009. The director subsequently issued requests for additional evidence (RFE) of the requisite joint residence, abuse, good moral character, and good-faith entry into the marriage. The petitioner, through counsel, submitted additional evidence. The director subsequently issued a Notice of Intent to Deny (NOID), requesting evidence of the requisite joint residence, abuse, good moral character, and good-faith entry into the marriage. The petitioner, through counsel, responded with additional evidence. The director denied the petition for failure to establish the requisite good-faith entry into the marriage.

On appeal, counsel contends that the director ignored the evidence as the record contains a detailed declaration from the petitioner and correspondence between her and her former husband as evidence of their good-faith relationship. The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and on appeal does not overcome the director's grounds for denial.

Good Faith Entry into Marriage

In her initial statement dated February 27, 2009, the petitioner stated, in part, that: in 2001, when she returned to Iran from India, she was a pharmacist and had many marriage proposals including one through a former schoolmate who had proposed to her on behalf of her cousin (the petitioner's former U.S. citizen husband); as she had known her former husband's family for many years, she thought he was a nice man and they began communicating via phone and email; she and her former husband talked on the phone almost daily for four months and he went to Iran to meet her in 2004; they began to date and he promised her a comfortable and peaceful life in the United States and suggested that, upon her arrival, she study for her PhD and work as a pharmacist in the United States; after they dated for several months, her former husband planned their engagement in 2004 in Tehran and returned to the United States to petition for her; he spent one and a half years petitioning for her and making travel plans; he also made many promises to her about their future; her former husband was very well off financially; upon her arrival to the United States (on April 29, 2006), her former husband picked her up at the airport in a 15-year-old car, took her to his small, rented apartment, and told her that he had sold his beautiful house and new cars prior to her arrival and that she could buy a newer car as soon as she obtained a job that paid well; she realized that her former husband's wealth was only for him, and his promises were only to get her under his control and to have her work to support him; on July 3, 2006, she decided to leave her former husband and she returned to her parents in Iran, where she was in a bad social position because she was a married woman without a husband; and she decided to return to the United States to confront her former husband and her pain, but he was more abusive than before.

In her March 6, 2010 statement submitted in response to the NOID, the petitioner stated, in part, that: in the winter of 2003, she was a successful pharmacist in Iran when her friend told her that her cousin was looking for an educated woman with her principles; her former U.S. citizen husband called her and introduced himself and she was thrilled to get to know him; her former husband called her three to four times daily and emailed her with love, promises, and big dreams; he was 17 years her senior but reassured her that he was healthy; he told her that she could make \$10,000.00 monthly working as a pharmacist in the United States; he also told her that he was divorced and retired, and that he lived alone in a small, beautiful apartment on [REDACTED] with ocean-view bedrooms; in April 2004, her former husband went to Iran to meet her and, on the day after their meeting, he went to her parents' house with his mother and sisters to ask for her father's permission to marry her; they held an engagement party the following week at her parents' house; her former husband stayed with her for a month before returning to the United States to petition for her; her former husband promised her a nice home and a brand new car as soon as she joined him; when she arrived in Miami, her former husband was cold to her and took her to his small, rented apartment that was not in a good neighborhood; her former husband told her that he had sold his beach house two weeks before her arrival and invested the money in stocks; her former husband abused her until one morning he told her to pack because she had to return to Iran and, within a few hours, she was at the airport.

The petitioner also submitted the following documentation: correspondence between the petitioner and her former husband; photographs of the petitioner with her former husband; and financial information of the petitioner's former husband.

The petitioner's testimony fails to support a finding that she entered into her marriage in good faith. The testimony is general and provides minimal information pertinent to the circumstances of the petitioner's courtship with her former husband, their decision to get married, their wedding, and their shared experiences, apart from the alleged abuse. The petitioner submitted several email messages, the most recent of which was dated May 18, 2005, in which the petitioner's former husband ended his relationship with the petitioner prior to her coming to the United States. The petitioner does not mention in any of her statements her former husband putting an end to their relationship and, in view of this information, the petitioner's intent when she entered into the marriage on June 7, 2006 is unclear. The record also contains inconsistent information. In her February 27, 2009 statement, the petitioner stated that on July 3, 2006, she decided to leave her former husband, as she was left no choice, and thus she returned to her parents. In her March 6, 2010 statement, however, the petitioner stated that one morning at 10:00, her former husband told her to pack her things because she had to return to Iran, and she was at the airport within a few hours. This testimony, along with the other evidence in the record, does not establish the petitioner's good-faith entry into the marriage.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). In this case, we do not find the petitioner's evidence sufficient to meet her burden of proof. The petitioner provided a cursory overview of her courtship with her former husband and did not explain their decision to marry in light of her former husband's May 2005 email message in which he ended his relationship with the petitioner. The photographs submitted showing the couple together do not establish the petitioner's intent at the time of her marriage. Similarly, the greeting cards and financial documents of the petitioner's former husband do not establish that the petitioner and her former husband established a life together. The documents, when considered in the aggregate, do not include the necessary and fundamental information to establish the petitioner entered into the marriage in good faith. While the lack of documentation is not necessarily disqualifying, in this matter, as previously mentioned the petitioner's testimony is insufficient and her statements contain inconsistencies. Upon review, the record in this matter does not include sufficient probative evidence establishing that the petitioner entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Qualifying Relationship and Eligibility for Immigrant Classification

Beyond the decision of the director, we find the petitioner failed to establish that she had the requisite qualifying relationship and eligibility for immigrant classification based upon that relationship. On appeal, counsel submits a Certification of Dissolution of Marriage indicating that the petitioner and her husband were divorced on September 29, 2006. The petitioner therefore was divorced from her spouse for more than two years at the time of filing the petition on February 18, 2009. Accordingly, the petitioner did not establish a qualifying relationship with her former husband and eligibility for immigrant classification based upon that relationship.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The petitioner has failed to establish the requisite qualifying relationship, eligibility for immigrant classification based upon that relationship, and good-faith entry into the marriage.

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

ORDER: The appeal is dismissed. The petition remains denied.