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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**

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DATE:

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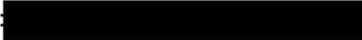
Office: VERMONT SERVICE CENTER

File:



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 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,


Jerry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the Administrative Appeals Office (AAO) withdrew the director's decision in part and affirmed the director's decision in part. The matter is now before the AAO on a motion to reopen or reconsider. The matter will be reopened. The AAO's previous decision will be affirmed and the petition will remain denied.

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.

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 lawful permanent resident 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 203(a)(2)(A) 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 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 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 guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are set forth 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.

* * *

(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 regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: “A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.”

The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Facts and Procedural History

The petitioner is a native and citizen of Ghana. She entered the United States on August 21, 2000 as a B-2 visitor with temporary authorization to remain in the United States until February 20, 2001. On February 22, 2006 she married D-S-¹, the claimed abusive United States citizen. On August 31, 2009, she filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The director issued a request for evidence on January 21, 2010 regarding several issues including the petitioner's intentions when entering into the marriage. Counsel for the petitioner clarified that the petitioner resided with D-S- beginning in July 2005 although she continued to maintain her separate residence until their marriage in February 2006. Counsel indicated that the petitioner left the marital home in April 2006 due to abuse and resided again with D-S- in May 2008 until February 2009. Upon review of the evidence of record, the director denied the petition on July 2, 2010 determining that the petitioner had failed to establish that she was subjected to battery or extreme cruelty as defined in the statute and regulation and that she had failed to establish that she entered into the qualifying relationship in good faith. The petitioner timely appealed the decision to the AAO. The AAO withdrew the director's determination on the issue of battery and/or extreme

¹ Name withheld to protect individual's identity.

cruelty and affirmed the director's decision on the issue of the petitioner's good faith entry into the marriage.

On this instant motion to reopen or reconsider, counsel for the petitioner asserts that the petitioner was unable to provide documents in common with her United States citizen husband and that most of the time they lived together, they resided with the petitioner's husband's family. Counsel submits the petitioner's supplemental statement to detail her interactions with her husband.

Good Faith Entry Into Marriage

The AAO observed in its previous decision that the petitioner's statements and the statements submitted on her behalf lacked probative detail providing insight into the petitioner's intentions upon entering into the marriage. To rectify this deficiency, the petitioner provides a January 17, 2011 personal statement in which she declares that she met D-S- at a Ghanian party at a friend's house in 2004, that the couple danced, and that D-S- said he would call her and did so three days later. The petitioner notes that the couple went to the movies, they visited his family's house, and they would go to the mall and just hang out together. The petitioner states that in November 2005, D-S- proposed after they watched a movie wherein a couple got married and that they called her mother that evening. The petitioner also states that on February 22, 2006, D-S- showed up at her apartment and told her he had a surprise for her and took her to the courthouse in Arlington and wanted to marry her right then. The petitioner notes that they decided she would move in with his family so they could save money to buy a place of their own.

Upon review of the petitioner's supplemental statement submitted on motion, the petitioner adds detail to her interactions with D-S-, but she does not provide the requisite credible and probative testimony to establish that her intentions upon entering into her marriage were to establish a life with D-S-. The petitioner states on motion that the couple began spending all their free time together prior to the marriage at the home that D-S- shared with his family. The petitioner states that much did not change after her marriage, and cites an example of her cooking a big Ghanian meal each Sunday for D-S- and his family, which sometimes included his three children from a prior relationship. In her statement to [REDACTED] the doctor who prepared a March 8, 2009 evaluation that she submitted to support her I-360 petition, the petitioner stated that she did not have problems with D-S- until six months after their marriage when she learned that he had three children that he had never told her about. Her statement to [REDACTED] about her being unaware of D-S-'s three children until after her marriage is inconsistent with her statement on motion that his three children were included in the Sunday meals that she cooked for D-S- and his family and that she, along with D-S- and his children, would go out as a family.

Another inconsistency in the record concerns the petitioner's response to the director's Request for Evidence (RFE) wherein the petitioner declares through counsel that she began "staying at her husband's place exclusively starting July 2005." She indicated further that although she continued to maintain a separate residence she "began residing in her husband[s] home in July 2005." In her statement on motion, when describing how D-S- proposed to her, the petitioner indicated that D-S- unexpectedly appeared at her apartment one night while she was watching television with a friend and took her to the courthouse to get married. The petitioner has

provided two different versions of her living situation prior to her marriage: on motion, the petitioner states that while she and D-S- spent much of their time together at his family's home, they continued to live apart; however, when responding to the director's RFE, she indicated that she lived exclusively with D-S- beginning in July 2005, which was six months prior to her marriage. Although we recognize the petitioner's statement that she maintained her apartment even while living with D-S- and his family, her statements regarding her and D-S-'s interactions prior to their marriage contain inconsistencies.

This inconsistencies noted above impact the petitioner's veracity regarding her intentions when she entered the marriage. She has not provided a consistent account of their relationship, including their living arrangements and her awareness of his children, prior to their marriage. Accordingly, the record does not present a consistent and detailed version of events that sufficiently establishes her good faith when entering into the marriage.

Conclusion

Upon review of the petitioner's testimony submitted subsequent to the AAO's December 15, 2010 decision, the record still does not establish that the petitioner entered into the marriage in good faith. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The petitioner's motion to reopen is granted. The AAO's December 15, 2010 decision is affirmed and the petition remains denied.