



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **SEP 10 2014** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [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)

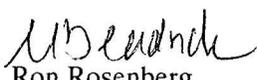
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


f Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“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 pursuant to 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 U.S. citizen.

The director denied the petition for failure to establish that the petitioner entered into marriage with her spouse in good faith.

On appeal, counsel submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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 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 further explicated 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 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.

* * *

(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 is a citizen of Trinidad and Tobago who entered the United States on [REDACTED] 2000 as a nonimmigrant visitor. The petitioner married K-R-, a U.S. citizen, on [REDACTED] 2004 in Virginia.¹ The petitioner filed the instant Form I-360 on January 13, 2012. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the petitioner's good-faith entry into the marriage. The petitioner, through counsel, responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims and the additional evidence submitted on appeal do not overcome the director's determination. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her initial statement, the petitioner briefly recounted that she met K-R- at a shopping mall and they dated for six months and then wed in January 2004. She stated that they separated in March 2010. In her statement submitted in response to the RFE, the petitioner recounted that during their courtship, she and K-R- went out to eat and to the movies, visited the beach, and spent time with K-R-'s mother and friends. She stated that they were engaged in October 2003 and married in January 2004 at a courthouse in Virginia. The petitioner stated that during their marriage, she and K-R- went to a picnic, an air show, made a trip to New York, and visited their relatives. The petitioner, however, did not provide probative, detailed information of the couple's shared experiences to establish her good-faith entry into the marriage.

¹ Name withheld to protect the individual's identity.

In response to the RFE, the petitioner submitted letters from her friends, [REDACTED] and [REDACTED] and her brother, [REDACTED]. Ms. [REDACTED] stated that she socialized with the petitioner and K-R- and they attended a picnic together. [REDACTED] also stated that he socialized with the couple and they attended an air show together. However, neither individual describes any particular visit or social occasion in detail and provides no other detailed information establishing their personal knowledge of the relationship. [REDACTED] stated that he visited the petitioner and K-R- for a few days in 2006. He briefly recounted that during the first night of his stay they “went out for beers and had a good time.” He did not further probatively describe his interactions with the couple, or personal observations of the couple’s relationship, apart from the abuse.

The petitioner submitted the following relevant documentation below: a lease; bank account statements; [REDACTED] bills; the petitioner’s 2009 federal and state tax returns; and an Internal Revenue Service (IRS) transcript for the petitioner’s 2008 tax return. The [REDACTED] bills are in K-R-’s name only and two of the three bills show payment as past due. The tax returns and IRS transcript show that the petitioner filed them separately from K-R-. The lease shows that K-R- and an individual named [REDACTED] were co-residents with the petitioner. K-R-’s marital status is listed as single on the lease. The bank statements reflect that the petitioner and K-R- had a joint checking account from December 2006 until August 2007, but two of the seven bank statements show little transaction activity and display a zero balance, and three of the seven statements show a negative balance.

On appeal, counsel submits: an additional statement from the petitioner; four undated photographs; the petitioner’s 2004 tax return showing her filing status as “married filing separately”; K-R-’s tax records from prior to the couple’s marriage; and the petitioner’s previously filed evidence. In her third statement, the petitioner briefly recounted that during the beginning of her marriage to K-R-, she became pregnant and then had a miscarriage. She stated that the four undated photographs are of her and K-R- at their courthouse wedding ceremony. The petitioner did not further discuss her courtship and marriage to K-R-, or her marital intentions.

On appeal, counsel asserts that the petitioner’s statements, supporting letters from her friends and documentary evidence establishes that she wed her husband in good-faith. Counsel contends that evidence of abuse in the petitioner’s marriage also demonstrates that the petitioner married her husband in good-faith. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Counsel’s assertion that good faith marriage should be presumed because the petitioner established abuse misinterprets the statutory requirements as redundant. Although the same or similar evidence may be submitted to demonstrate, for example, joint residence and good-faith entry into the marriage, meeting one eligibility requirement will not necessarily demonstrate the other.

On appeal, counsel also discusses evidence required for the bona fide marriage exemption at 8 C.F.R. § 204.2(a)(1)(iii)(B). The bona fide marriage exemption, which requires clear and convincing evidence pursuant to section 245(e)(3) of the Act, is only required for individuals who marry while in removal proceedings and do not remain outside of the United States for two years after their marriage. The record shows that the petitioner was placed in removal proceedings on September 21, 2009, after she wed K-R-, and the director made no determination otherwise. As determined by the director, the

petitioner in this case is required to establish her good faith marriage by a preponderance of the evidence.

A full review of the evidence fails to show any error in the director's decision. The relevant evidence shows that the petitioner and her husband shared a residence and held a joint bank account for several months. The petitioner, however, in her statements failed to provide detailed, probative information of her courtship with K-R-, her reasons for marrying, their joint residence and shared experiences to demonstrate her good-faith entry into the marriage. The petitioner's friends and brother also failed to discuss in probative detail their interactions with the couple and personal knowledge of the relationship. Accordingly, the petitioner has failed to demonstrate by a preponderance of the evidence 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.

Conclusion

On appeal, the petitioner has failed to establish that she entered into marriage with her spouse in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.