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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
EAC 05 004 52453

Office: VERMONT SERVICE CENTER

Date: SEP 09 2010

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 \$585. 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) dismissed a subsequent appeal. The AAO twice affirmed its dismissal of the appeal in response to motions to reopen and reconsider. The matter is again before the AAO on a motion to reconsider. The motion will be granted. The AAO will affirm its dismissal of the appeal.

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 July 19, 2006, on the basis of his determination that the petitioner had failed to establish that she married her husband in good faith.

The AAO dismissed counsel's timely appeal on February 12, 2007. In its decision, the AAO agreed with the director's determination that the petitioner had failed to establish that she married her husband in good faith. The AAO also found, beyond the decision of the director, that the petitioner had also failed to demonstrate that she had shared a joint residence with her husband. In response to subsequent motions, the AAO affirmed its dismissal of the appeal on December 5, 2008 and May 26, 2009.

Counsel submitted the instant motion on June 26, 2009. On motion, counsel submits a brief. In his brief, counsel contends that the AAO should have considered all evidence submitted in the two previous motions. The instant motion to reconsider is granted and the AAO will fully consider all evidence submitted with the prior motions.

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:

- (v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

- (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.

* * *

- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

- (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 pertinent facts and procedural history of this case were set forth in the AAO's February 12, 2007 decision. As such, the AAO will only repeat such facts as necessary here. The petitioner, a citizen of Nigeria, married I-O-,¹ who was then a lawful permanent resident of the United States,² on February 27, 2001. The petitioner filed the instant Form I-360 on October 4, 2004. The director issued a subsequent request for additional evidence (RFE) and notice of intent to deny (NOID) the petition to which the petitioner, through counsel, submitted timely responses. After considering the evidence of record, including the petitioner's responses to the RFE and NOID, the director denied the petition on July 19, 2006. Counsel contends that the AAO erred in its February 12, 2007 decision dismissing

¹ Name withheld to protect individual's identity.

² I-O- became a citizen of the United States on June 14, 2002.

the appeal. Specifically, counsel contends that AAO erred in its determination that the petitioner had failed to establish that she shared a residence with her husband or that she married him in good faith.

As the AAO fully analyzed the evidence of record prior to issuing its February 12, 2007 decision, the AAO need only consider the evidence submitted into the record after that date (with the two prior motions), which includes the following:

- An updated affidavit of the petitioner, dated March 12, 2007;
- A June 16, 2003 letter addressed to the petitioner and her husband from the legacy Immigration and Naturalization Service, scheduling an interview;
- A photograph of the petitioner and her husband that the petitioner indicates was taken in July 2001;
- A statement from [REDACTED] dated January 5, 2009; and
- A statement from [REDACTED] dated January 6, 2009.

Joint Residence

The first issue before the AAO on motion is whether the petitioner has established that she shared a joint residence with I-O-. In its February 12, 2007 decision, the AAO noted that the petitioner's testimony with regard to her alleged joint residence with I-O- lacked probative details regarding the couple's purported joint residence, such as descriptions of their residential buildings, apartments, home furnishings, neighbors, or any of their jointly-owned belongings.

The AAO noted further that the petitioner's testimony conflicted with documentary evidence of record. As noted by the AAO in its decision, the petitioner stated on the Form I-360 that she resided with her husband from February 2000 until July 2003 and, in her September 20, 2004 statement, the petitioner stated that that couple moved into an apartment in Silver Spring, Maryland in February 2000 and moved to an apartment in Gaithersburg, Maryland in July 2001. However, their marriage certificate lists the apartment in Silver Spring as the residence of the petitioner's husband, but lists a different address in Greenbelt, Maryland as the petitioner's residence. The marriage certificate is dated February 27, 2001, a year after the petitioner claimed that she and I-O- began residing together. As noted by the AAO, the petitioner did not acknowledge or explain this discrepancy in any of her four affidavits.

In her March 12, 2007 affidavit submitted on motion, the petitioner asserted that at the time she and I-O- became engaged in November 2000, they were living in separate apartments, and continued doing so after their engagement: it was not until after their wedding that she moved into I-O-'s apartment in Silver Spring. The petitioner stated that her husband stated, in error, that the two had been living together since February 2000 when he filed her permanent residency petition in April 2001.

This attempted clarification is deficient. As noted by the AAO in its February 12, 2007 decision, the petitioner herself stated on her Form I-360 and in her September 20, 2004 affidavit that she began living with I-O- in February 2000; the AAO made no reference to the permanent residency petition filed by I-O- in that portion of its decision dismissing the appeal. The discrepancy regarding the former couple's shared residence arose from the petitioner's own prior statements, not I-O-, and her explanation that the discrepancy is attributable to I-O- is not credible. The petitioner has failed to explain why she stated on the Form I-360 and in her 2004 affidavit that the couple's period of joint residence began in February 2000 if such was not the case. Although the petitioner submits additional statements and one jointly-addressed document on motion, she fails to resolve the significant discrepancy arising from her own prior statements.

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with I-O-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The second issue before the AAO on motion is whether the petitioner has established that she married I-O- in good faith. In its February 12, 2007 decision, the AAO found that although the petitioner had submitted four self-affidavits, she had failed to provide any probative details regarding how she met I-O- in Nigeria and in the United States, their courtship, wedding, honeymoon (if any), shared residence, marital life, and any of their shared experiences, apart from the abuse. The AAO found further that although the supporting affiants stated that they knew the petitioner and her husband, attended their wedding or visited the former couple, they provided no probative details regarding their observations of the petitioner's allegedly good-faith entry into marriage with I-O-.

In her March 12, 2007 affidavit, the petitioner provides additional, if cursory, information regarding her relationship with I-O-. The petitioner states that she began dating I-O- in late 1999 and that during their courtship they saw movies, went out to eat, and visited friends. She briefly describes how her I-O- proposed marriage. She states that they were married at the Prince Georges County, Maryland Courthouse, and that after the ceremony they celebrated with family and friends. The majority of the petitioner's 2007 affidavit consists of physical descriptions of the former couple's allegedly joint residences. Regarding their marital relationship, the petitioner simply states that she and I-O- were happy initially, and they frequently attended soccer games, saw movies, had dinner together, and visited friends and family.

In his January 5, 2009 letter, [REDACTED] described the abuse to which the petitioner was subjected by I-O-. In her January 6, 2009 letter, [REDACTED] stated that she knows the petitioner married I-O- in good faith because she and the petitioner were "much in contact" after [REDACTED] moved to Maryland several months after their marriage. She also described meeting I-O- several months after the petitioner married him.

The additional statements of the petitioner, [REDACTED] submitted on motion are insufficient to overcome the AAO's February 12, 2007 decision. [REDACTED] does not discuss the petitioner's intentions upon entering into the marriage; his letter focuses on the abuse to which the petitioner was subjected, which is not at issue here. [REDACTED] general assertion that the petitioner married I-O- in good faith is of little probative value as she does not describe any of her visits to the former couple or any other instances where she observed their relationship in probative detail.

Nor does the additional testimony of the petitioner establish that she married I-O- in good faith. The 2007 declaration, the applicant's fifth, still fails to provide a sufficiently detailed and probative account of her reasons for entering into marriage and her marital relationship with I-O-. For example, the statement that she and I-O- saw movies, went out to eat, and visited friends during their courtship is vague and lacking in probative details. The petitioner's failure to explain any of those types of activities, and place them into any sort of context within their relationship, prevents the AAO from undertaking a meaningful analysis as to whether she entered into the marriage in good faith. In addition, the mere assertion that the petitioner and I-O- were able to reconcile their religious differences (I-O- was a Muslim, the petitioner is a Christian) because they "loved each other very much" offers no insight into how such differences were reconciled which, again, would place such reconciliation into the context of their relationship and allow the AAO to make a meaningful determination as to whether the petitioner entered into the marriage in good faith.

Nor do the picture and letter from the legacy INS establish the petitioner's claim to have married I-O- in good faith. The picture demonstrates only that the petitioner and I-O- were together on one occasion, and the letter from the legacy INS provides no insight into the petitioner's intentions upon entering into the marriage. Accordingly, the evidence submitted on motion fails to establish that the petitioner entered into marriage with I-O- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to overcome the AAO's grounds for dismissal of the appeal and has not established that she shared a joint residence with I-O- or that she married him in good faith. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and this 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.

ORDER: The AAO's decision of February 12, 2007 is affirmed. The petition remains denied.