



U.S. Citizenship
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Services

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APR 27 2009

FILE:



Office: VERMONT SERVICE CENTER

Date:

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IN RE:



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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center 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 Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that she entered into marriage with her husband in good faith.

Counsel filed a timely appeal on July 24, 2008.

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:

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 petitioner is a citizen of Kenya who entered the United States in B-2 visitor status on August 30, 2004. She married L-F-,¹ a citizen of the United States, on March 31, 2005. The petitioner filed the instant Form I-360 on June 15, 2007. The director issued a request for additional evidence on June 27, 2007, and requested additional evidence to establish that the petitioner is a person of good moral character; and that she married her husband in good faith. The petitioner responded on August 17, 2007. The director issued a second request for additional evidence on March 7, 2008, and requested additional evidence to establish that L-F- subjected the petitioner to battery and/or extreme cruelty; that the petitioner shared a joint residence with L-F-; and that the petitioner entered into marriage with L-F- in good faith. The petitioner responded on May 22, 2008. After considering the evidence of record, the director denied the petition on June 26, 2008.

Good Faith Entry into Marriage

The sole issue on appeal is whether the petitioner has established that she married L-F- in good faith. In finding the evidence of record insufficient to establish this criterion, the director stated that the mere assertion of a good faith marriage is insufficient, and that the evidence submitted by the petitioner was insufficient to demonstrate that she had entered into marriage with L-F- in good faith.

With regard to the specific evidence submitted by the petitioner as evidence of her intentions upon entering in the marriage, the director stated that the marriage certificate did not demonstrate that the petitioner had entered into the marriage in good faith, as the legal existence of a marriage does not establish that the marriage was entered into in good faith. Nor did the Form I-864, Affidavit of Support, filed by L-F- demonstrate that the petitioner had married him in good faith, as the Form I-

¹ Name withheld to protect individual's identity.

864 did not establish that the petitioner and L-F- had commingled any funds. The director also found the residential lease agreement and the petitioner's testimony in her self-affidavit insufficient. On appeal, the petitioner submits a copy of her 2006 federal income tax return, a copy of an insurance policy, a copy of a bank statement, and an invitation to the couple to join a video club.

In her January 24, 2008 affidavit, the petitioner stated, with regard to her intentions upon entering into the marriage, that she met L-F- shortly after her August 2004 arrival to the United States. They began dating in November 2004, and married on March 31, 2005. The petitioner stated that, during their courtship, they sat and talked; went to movies; and took car rides together in Newark, New Jersey and New York City. The petitioner described how, during the summer of 2006, fissures in the marriage began occurring. She also testified that, in the summer of 2007, she began noticing things missing from the apartment, including mail and pictures of the couple together. According to the petitioner, this is the reason she has no photographs of the couple together or evidence that they shared a joint residence.

Upon review of the entire record of proceeding, the AAO agrees with the director's determination that the petitioner has failed to establish that she married L-F- in good faith. The AAO agrees with the director's finding that the Form I-864 and marriage license are not evidence of the petitioner's intentions upon entering into the marriage. Nor is the car insurance policy evidence of the petitioner's intentions upon entering into the marriage, as the effective date of the policy is August 13, 2007, nearly two-and-a-half years after their wedding, and two months after the Form I-360 was filed. Nor is the business reply card from RBC Ministries inviting the couple to join its video club evidence of the petitioner's intentions upon entering into the marriage, as there is no indication as to when this card was issued. Nor is the 2006 federal income tax return evidence of the petitioner's intentions upon entering into the marriage. First, the AAO questions why tax returns from 2005 and 2007 were not submitted. Further, the AAO notes that the couple filed under the "married, filing separately" category. While it was certainly within their rights to file under that category, and is not evidence that the petitioner entered into the marriage in *bad* faith, it is not evidence that she entered into the marriage in good faith.

While the residential lease agreement names L-F- as a tenant, the AAO notes that he did not sign the document. Further, while the lease is dated April 1, 2005, and is to cover the 12-month period beginning April 1, 2005 through April 1, 2006, the petitioner signed the document on May 1, 2006. The residential lease agreement, therefore, is not evidence of the petitioner's intentions prior to entering into the marriage.

While the petitioner does submit a single bank statement from November 2006, a single bank statement cannot serve as evidence of the petitioner's good faith entry into the marriage. While the AAO acknowledges the petitioner's statement that L-F- removed pictures and mail from the home, the AAO questions why she cannot obtain back copies of the couple's income tax filings, bank statements, or utility statements.

Finally, the AAO turns to the petitioner's January 24, 2008 testimony. As noted previously, the petitioner stated that she met L-F- shortly after her arrival in the United States in August 2004, and began dating shortly thereafter. During their courtship they talked, went to movies, and took car rides together. However, the petitioner's testimony lacks probative, detailed information regarding their courtship and decision to marry. In the absence of documentary evidence (beyond one bank statement) regarding the petitioner's intentions upon entering into marriage with L-G-, or that they actually created a life together, her testimony is critical. However, that testimony lacks specific, detailed information regarding the couple's first introductions; specific activities they enjoyed together during their courtship; their decision to marry; and their wedding. Such information, in the absence of documentary evidence, would have allowed the AAO to make a determination on the petitioner's intentions upon entering into the marriage. The petitioner has failed to establish that she entered into marriage with L-F- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The AAO concurs with the director's determination that the petitioner has failed to demonstrate that she entered into marriage with L-F- in good faith. She is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be 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 appeal is dismissed.