

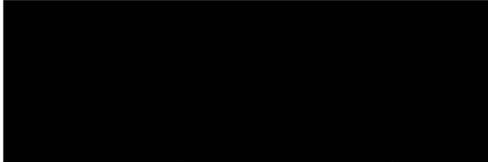
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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



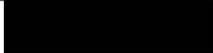
U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: FEB 18 2009

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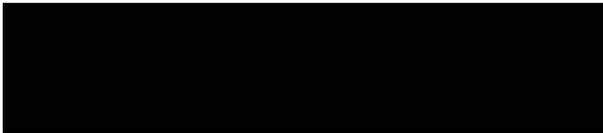
IN RE:

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:

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 Director, Vermont Service Center, 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 United States citizen.

The director denied the petition because the petitioner did not establish that she entered into marriage with her U.S. citizen husband in good faith.

On appeal, counsel submits additional evidence.

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 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Japan who entered the United States (U.S.) on August 30, 2002 as a nonimmigrant student (F-1). On June 14, 2004, the petitioner married A-W-¹, a U.S. citizen, in Hawaii. A-W- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on July 5, 2006. The petitioner's concurrently filed Form I-485, Application to Adjust Status, was denied on July 19, 2006.

The petitioner filed this Form I-360 on September 1, 2006. On April 16, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good-faith entry into the marriage. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish her eligibility. The director denied the Form I-360 petition on July 30, 2007 and counsel timely appealed.

On appeal, counsel reasserts the petitioner's eligibility and submits further evidence. We concur with the director's determination. Counsel's statements and the evidence submitted on appeal do not overcome the ground for denial and the appeal will be dismissed.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with A-W- in good faith:

- The petitioner's August 8, 2006 and May 29, 2007 affidavits submitted below;
- Rental agreement dated January 16, 2005, listing the petitioner and her husband as tenants and initialed by both of them;
- Letter of the petitioner's neighbor, [REDACTED]

¹ Name withheld to protect individual's identity.

- Letter of the petitioner's friend, [REDACTED];
- Affidavit of the petitioner's employer, [REDACTED];
- Affidavit of [REDACTED], former co-worker of the petitioner;
- Handwritten translation of a letter written by the petitioner's husband to her mother;
- Carbon copy of a personal check dated March 10, 2004, signed by the petitioner, made payable to "District Court" and noting that the check was "For [A-W-];" and
- Copies of six photographs and one photograph of the petitioner and her husband.

In her first affidavit, the petitioner states that she met A-W- in November 2003 and they started dating. The petitioner reports that the former couple was married on June 14, 2004 and they rented an apartment together. In her second affidavit, the petitioner explains that one of the photographs was taken at her apartment. The petitioner does describe how she met her husband, their courtship, wedding, shared residence and experiences (apart from the abuse) in any probative detail. The petitioner's brief testimony is insufficient to establish her good faith in entering the marriage.

The remaining relevant evidence also fails to provide probative information sufficient to demonstrate the petitioner's good faith in marrying A-W-. The lease shows that the petitioner and her husband resided together, but it does not demonstrate the petitioner's good faith in entering their marriage. The petitioner's neighbor, [REDACTED], merely states that the petitioner and her husband lived together. He provides no other relevant information. [REDACTED] states that he corresponded with A-W- by electronic mail and that he "could see his affections for [the petitioner] were genuine . . . as clearly he was in love." [REDACTED] letter indicates that A-W- loved the petitioner, but it provides no insight into the petitioner's feelings and intentions in entering the marriage. Similarly, [REDACTED] attests that he saw A-W- bring the petitioner lunch and pick her up from work and that A-W- called him occasionally to discuss the petitioner's well being. [REDACTED] does not, however, provide any probative information about the petitioner's behavior towards her husband or her intentions in marrying him. [REDACTED] states, "it was clear that [the petitioner] was completely devoted to her husband," but he does not state the basis for his knowledge or describe the petitioner's behavior towards her husband or her expressed intentions in marrying him. In addition, [REDACTED] states that "he had no occasion to interdict his presence into the relationship."

The handwritten translation of A-W-'s letter to the petitioner's mother is not certified as complete and accurate pursuant to the regulation at 8 C.F.R. § 103.2(b)(3). Yet even if the translation were properly certified, the letter would only attest to A-W-'s good faith, not the petitioner's own, in entering their marriage. The carbon copy of the petitioner's check shows that she once paid \$30.00 to a district court on her husband's behalf, but the petitioner does not explain the circumstances surrounding this payment or provide any other testimony or documentation regarding her financial support of her husband. Finally, the photographs show that the petitioner and her husband were pictured together on unspecified occasions, but the photographs alone are insufficient to establish the petitioner's good faith in entering their marriage.

On appeal, counsel asserts reasons why the petitioner did not provide further documentation, but the petitioner herself provides no such explanation. The assertions of counsel do not satisfy the petitioner's burden of proof as the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has failed to provide detailed, probative testimony regarding how she met her husband, their courtship, wedding, shared residence and experiences (apart from the abuse). The testimony of the petitioner's friend, neighbor, co-worker and employer fail to provide relevant information to demonstrate her good faith in marrying her husband. The lease, photographs and the carbon copy of one of the petitioner's checks are also insufficient to establish the petitioner's claim. The preponderance of the evidence does not demonstrate that the petitioner entered into marriage with A-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.