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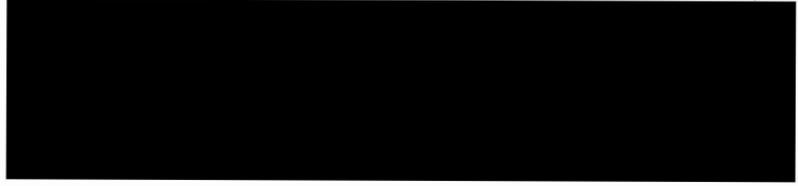
Date: FEB 24 2009

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 classification as a special immigrant 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 the battered spouse of a U.S. citizen. The director denied the petition because the petitioner failed to establish that she entered into her marriage in good faith.

The petitioner submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner 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 regulation at 8 C.F.R. § 204.2(c)(1) provides guidance regarding relevant eligibility requirements:

(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.

Procedural History and Pertinent Facts

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Jordan who was admitted to the United States on January 20, 2001 as a B-2 nonimmigrant visitor. On November 15, 2001, the petitioner married A-P,¹ a U.S. citizen, in New York. On January 25, 2002, A-P- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status. The couple failed to appear for an interview regarding the I-130 Petition, and both the I-130 Petition and the I-485 Application were subsequently denied on January 17, 2004. The couple divorced on April 15, 2005.

The petitioner, through counsel, filed the instant Form I-360 Petition on September 18, 2006; the director issued a Notice of Intent to Deny (NOID) the petition on April 17, 2007. The petitioner responded on May 1, 2008 by submitting additional evidence in support of the I-360 Petition, including a detailed statement explaining inconsistencies in the record. The director found that the petitioner had failed to provide sufficient evidence of eligibility and denied the petition on July 31, 2007.²

The petitioner, through counsel, submits a timely appeal and additional evidence. As will be discussed, the AAO concurs with the findings of the director that the petitioner failed to establish

¹ Name withheld to protect individual's identity.

² The petitioner filed a prior I-360 Petition on June 17, 2005, which was denied on November 9, 2005, also for failure to show that the petitioner entered into the qualifying relationship in good faith. No appeal was filed. The record includes evidence submitted in support of the 2005 I-360 Petition.

that she entered into her marriage in good faith.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's claim that she entered into her marriage with her U.S. citizen spouse in good faith:

- The petitioner's affidavits dated September 30, 2005; September 7, 2006; and June 13, 2007; and two handwritten statements, undated but submitted in support of her I-360 Petition filed on June 17, 2005.
- The petitioner's two Forms G-325A, Biographic Information, on which she stated that she resided at "[REDACTED]" in Peekskill, New York, from October 2001 to 2002; and at "[REDACTED]" in Peekskill, from 2002 to June 2004.
- A statement from [REDACTED], dated August 8, 2006, in which she describes herself as a friend of the petitioner's from Jordan and states that the petitioner called her a few years ago to say she had fallen in love and was getting married, but that later, A-P- turned out to be the wrong choice.
- A statement from [REDACTED] dated April 12, 2005, giving her address at [REDACTED] [REDACTED] in Peekskill, in which she says she was the petitioner's neighbor and coworker and that the petitioner asked to stay with the [REDACTED] when the petitioner's husband threw her out of their apartment in July 2003; and two statements dated July 10, 2006 from [REDACTED] and [REDACTED], respectively, confirming that the petitioner was abused by her husband and was thrown out of her house.
- A statement from [REDACTED], dated July 10, 2006, in which he notes that he has known the petitioner for three years, as a friend and coworker at a Mobil gas station, and was at a party where the petitioner "met her husband [A-P-] for the first time, they fall in love and 15 days later they ask me to be the w[i]tness at their marriage." He also describes abuse suffered by the petitioner at the hands of her husband, and how she would cry but refused to follow his recommendation to call the police.
- A statement from [REDACTED], dated July 11, 2006, in which he notes that he met the petitioner at their workplace and invited her to get together with friends at his apartment, where the petitioner met another friend of his, A-P-; the petitioner and A-P- started dating after that party and "eventually" were married; and he visited them at their apartment at [REDACTED]. He adds, "I experienced a dramatic change in [A-P-'s] behavior and personality and chose not to be in his company . . . His mental state of mind deteriorated from drug and alcohol abuse. I remained close to [the petitioner] and we continue our close friendship to this day."
- Copies of a letter from the petitioner's father, dated November 26, 2005, indicating his disappointment that the petitioner married an American citizen, but adding that he talked to A-P- many times and invited him to visit; and a letter from the petitioner's two children, undated, stating that they heard from their mother about her marriage and afterwards spoke to her husband many times.

- A copy of a payroll check deposit receipt from Wal-Mart to Marine Midland Bank for the petitioner at [REDACTED], dated June 5, 2003.
- A copy of a patient registration form for Hudson River Healthcare, Inc, listing the petitioner and A-P- as husband and wife residing at [REDACTED]. It is neither dated nor signed; the section for "Insurance Information" is blank.
- Copies of various photographs, undated, of the petitioner and A-P- taken in an apartment and a mall and at what appears to be a civil marriage ceremony.
Copies of a joint bank statement from HSBC Bank, [REDACTED] showing that deposits and withdrawals were made from November 29, 2002 to December 26, 2002, when the account was closed, with no address listed; and two Consolidated Statements of Account addressed to the petitioner and A-P- at "[REDACTED] Mohegan Lake, NY on December 26, 2002 and "[REDACTED] Wendell NC" on December 31, 2002.
- A copy of a pre-application form for an apartment with [REDACTED] dated November 1, 2002, listing the petitioner and A-P- as the proposed occupants; and another with [REDACTED], dated October 3, 2002, showing that the petitioner and A-P- reside at [REDACTED].
- On appeal, the petitioner, through counsel, submits a brief and copies of two documents from Hudson River Health Care, the first dated February 4, 2002 stating that the petitioner was approximately 6.1 weeks pregnant; and the second, dated March 4, 2002, noting that the petitioner is following up from a miscarriage. Neither document shows an address for the petitioner.

In support of the instant I-360 Petition, the petitioner provided her affidavit, dated September 7, 2006; and in response to the NOID, she submitted another affidavit, dated June 13, 2007. The September 7, 2006 statement is lengthy and reports incidents of abuse and how unprepared the petitioner was "for the shock of discovering [A-P-'s] drug addiction, sexual perversions, and homosexuality." Other affidavits describe their abusive relationship. She also states that she moved in with A-P- at his apartment at [REDACTED] after they got married (they married on October 15, 2001) and moved to [REDACTED] in 2002. She adds that he was soft and non-threatening and he was easy to trust because they knew people in common and he knew people where she worked. She later stated in the same affidavit that her husband had only one friend, [REDACTED] her coworker, who invited her to the party where she met her husband, and that [REDACTED] was her husband's ex-boyfriend. She claimed that [REDACTED]'s friendship with her husband broke up when she and A-P- married. She states that their relationship ended in July 2003, when she returned from a trip to Jordan to find A-P- with another woman, and that he kicked her out of the apartment and that she found herself alone, in a strange country without any help. She later submitted the affidavits noted above from friends in support of her claim.

The director pointed out numerous inconsistencies in the evidence, including that the current claim includes many instances of abuse on various occasions that were not reported in the petitioner's initial claim in 2005. The director also noted that the petitioner had previously submitted an affidavit, dated September 30, 2005, in support of her prior 2005 I-360 Petition, in

which she claimed that she had nobody she could ask for affidavits about her relationship with her husband, yet she obtained several affidavits for the current I-360 Petition. The director also noted that the petitioner failed to report that she had insurance on her Patient Registration Form with Hudson River Healthcare, yet claimed that her husband was on her Wal-Mart insurance. Finally, the director found a discrepancy in the petitioner's failure to provide details regarding all the incidents of abuse that her co-workers might have noticed, as reported by [REDACTED] in his statement.

In her statement submitted in response to the NOID, the petitioner attempted to explain these inconsistencies. Counsel repeats these explanations in her appeal brief, but adds no further evidence.

Regarding the director's findings of inconsistencies, the AAO does not find the petitioner's statement that her husband was on her insurance with Wal-Mart to be inconsistent with her failure to include insurance information to Hudson River Healthcare. The record indicates that she did not, in fact, have medical coverage. The petitioner never stated that she had health insurance with Wal-Mart, only that her husband was on her "insurance policy" with Wal-Mart, which she later explained was for life insurance; moreover, in her initial statement in support of her prior I-360 Petition, the petitioner clearly states that she asked her husband to add her to his health insurance and he refused.

Regarding the failure to initially report certain kinds of abuse, the petitioner explained that her former immigration lawyer told her she needed a police report to prove that her husband hit and slapped and punched her. She stated that these were the kinds of abuse she failed to initially report because she had no police reports, and that in her culture a good wife is one who keeps her marriage problems confidential. She noted that she had initially stated that she and her husband would fight every time they had sex, and that these were the physical fights that she later more fully described. A more detailed account at a later date is understandable, but some inconsistencies remain unresolved. The AAO notes that the statement from [REDACTED] also refers to incidents of abuse that were not reported by the petitioner in support of her initial claim. The petitioner's claim that it was important to keep her marriage problems confidential is not entirely credible in light of an affidavit submitted later from a co-worker to whom she had provided details of abuse. Moreover, [REDACTED] claimed in his statement to have known the petitioner for three years and to have attended the party where she met her future husband; however, his statement was notarized on July 10, 2006, more than five years after the party he refers to and the couple's marriage on November 15, 2001. His statement has no weight, therefore, as evidence of the events he describes.

The fact that the petitioner was able to provide the eight statements or affidavits noted above after initially claiming that she had no one to contact who could provide information about her relationship with her husband also raises doubts as to the credibility of some of her claims. The AAO notes that there are additional contradictions regarding the dates and addresses of residence

with her husband. Notably, the petitioner's Form G-325A, dated May 13, 2005, which shows that the petitioner lived at [REDACTED] until June 2004 is later contradicted by her claim, and supporting statements from friends, that her husband threw her out of their home in July 2003.

In addition to the unexplained discrepancies noted, the record lacks credible evidence that the petitioner entered into her marriage in good faith. While the petitioner and others describe an abusive relationship in detail, neither she nor others who claim to have known her before her marriage provide any credible details regarding her feelings for her husband before her marriage or her plans for a future with her husband. She states only that she met him at a party, they had a conversation and, at that time, she thought he was a decent man, a sensitive person with a kind heart, and adds, "This is why I accepted when he asked to marry me." She does not provide any dates or time frame for their courtship. The petitioner claims that her husband had only one friend, [REDACTED], and no social life; that she had been ostracized by the Arabic community because she had married an American, and that her social life dwindled to nothing. She provided no further details of her own and claimed that she was not in touch with anyone in New York who might be able to write an affidavit regarding their courtship and marriage because they were so isolated.

She later provided affidavits from her father and two children, who claim to have spoken numerous times to the petitioner's husband but offer no information about how or why the couple married or what plans they had for a future together that would indicate a good faith marriage. The petitioner also provided statements from friends who claim to have known her before she married, but these friends also fail to provide relevant details about the feelings or plans or activities of the couple during their courtship or marriage, but rather focus on the abusive relationship. The one long-time friend of A-P-, [REDACTED] states only that the couple met at his party, started dating and eventually married and that he later noticed a dramatic change in A-P's behavior – that his mind deteriorated from drug and alcohol abuse; and that he remained a close friend of the petitioner's. This statement provides no details of the couple's relationship and tends to contradict the petitioner's description of her husband as a drug abuser from the time he was a teenager. [REDACTED], in noting his continuing close friendship with the petitioner, also contradicts her claim that she had nobody she could ask for affidavits about her relationship with her husband.

On appeal, the petitioner provided relevant evidence that she became pregnant and suffered a miscarriage during the time she claims to have resided with her husband. Otherwise, the only other relevant documents, copies of a joint bank statement from HSBC Bank, showing that deposits and withdrawals were made from November 29, 2002 to December 26, 2002, contradict the petitioner's claim that she resided with her husband at either [REDACTED] or [REDACTED] at that time, as the statements were not addressed to the couple at either address.

Conclusion

While the petitioner reported that the former couple lived together as husband and wife from November 15, 2001 until he threw her out in July 2003 and that she tried to make the marriage work, there is no evidence that she intended to establish a life with her U.S. citizen spouse and no description, from the petitioner, her family or friends, describing their courtship, decision to marry, their wedding or any of their shared experiences, apart from the alleged abuse. Evidence of good faith at the time of marriage is absent from the record. *See* 8 C.F.R. § 204.2(c)(2)(vii). Moreover, inconsistencies in the record diminish the credibility of the petitioner's claim.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the petitioner has submitted documents that contradict her prior statements regarding her residence and relationships during her marriage. Moreover, the lack of probative detail and substantive information in the petitioner's testimony regarding the couple's courtship, decision to marry, wedding, and shared residences and experiences, significantly detracts from the credibility of her claim. In sum, the petitioner has failed to establish 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.

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.

ORDER: The appeal is dismissed.