

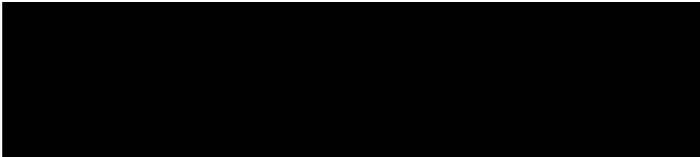
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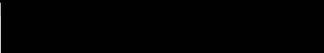


U.S. Citizenship  
and Immigration  
Services

105



FILE:



Office: VERMONT SERVICE CENTER

Date:

**FEB 24 2009**

EAC 06 163 51508

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)

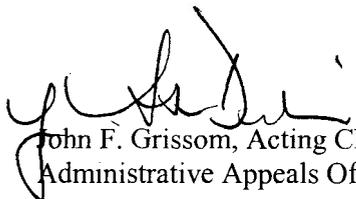
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, 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. The petitioner concurrently filed an appeal and a motion to reopen and reconsider. The director granted the motion to reopen and reconsider, and affirmed his previous decision to deny the petition, as all of the grounds for denial had not been overcome. Specifically, the director found that the petitioner had submitted evidence of the termination of her previous marriage, and thus had overcome the first two grounds of the denial, namely, that she had not demonstrated that she had a qualifying relationship as the spouse of a United States citizen and that she was eligible for immigrant classification based upon that relationship. The director affirmed his previous decision to deny the petition, however, because the petitioner had not submitted sufficient evidence to establish that she had married her husband in good faith. 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.

On appeal, the petitioner submits a letter, additional evidence and copies of documents previously submitted.

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 filed 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 Ghana who was admitted into the United States on June 4, 2002 as a B-2 nonimmigrant visitor for pleasure. On June 11, 2002, the petitioner married [REDACTED], a U.S. citizen, in New York City. [REDACTED] subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on September 21, 2005, along with the corresponding Form I-485, Application to Register Permanent Resident or Adjust Status.

The petitioner filed the instant Form I-360 on April 24, 2006. On December 26, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the legal termination of petitioner's marriage to [REDACTED] and the requisite battery or extreme cruelty, good moral character, and good-faith entry into the marriage. The petitioner responded to the RFE on February 26, 2007. On April 4, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite qualifying relationship, eligibility for immigrant classification based on the qualifying relationship, and good-faith entry into the marriage. The petitioner responded to the NOID by improperly filing an appeal. On July 12, 2007, the director terminated the action on the appeal and refunded the filing fee. On October 10, 2007, the director denied the petition on the three aforementioned grounds. On October 31, 2007, the petitioner concurrently filed an appeal and a motion to reopen and reconsider. The director granted the motion to reopen and reconsider, and affirmed his previous decision to deny the petition, as all of the grounds for denial had not been overcome, namely, that the petitioner entered into the marriage in good faith.

On appeal, the petitioner states that, although her relationship with her husband was not always consistent, she treated it like a bona fide marriage. She states further that she and her husband lived together from 2002 through 2005 at [REDACTED] Bronx, New York 10457, and that her husband left and returned frequently during 2005 through 2006. She also states that her Citibank account was not a joint account because of her husband's credit and debt problems. As supporting documentation, she submits previously submitted documentation and affidavits from [REDACTED] and [REDACTED]. The petitioner's claims and evidence submitted on appeal fail to establish her good-faith entry into their marriage.

#### Good Faith Entry into Marriage

In the December 26, 2006 RFE, the director noted that while the petitioner submitted a life insurance policy and tax returns as evidence of a good faith marriage, these documents were all dated after she claimed to have stopped residing with her husband. The director also noted that the petitioner's 2003 and 2004 income tax returns had been amended on October 21, 2005 from a "Single" filing status to "Married filing jointly," that the petitioner had amended the returns after the date she claimed her husband no longer lived with her, and thus her motive for making the amendments is unclear. The director also noted that the petitioner's Citibank account does not indicate a joint commingling of financial responsibilities during the period that the petitioner claimed she resided with her husband.

In her February 1, 2007 notarized statement submitted in response to the RFE, the petitioner states that she came to the United States in 2001 and first met her husband at "their end of year party," at which time they "became lovely friends" until their June 11, 2002 wedding. She also states that her husband "came to stay with me" and that they were happily married until September 2004 when he lost his job, at which time he started drinking, smoking, and abusing her, abuse that entailed kicking her and punching her in the face and body. She states further that she filed for a divorce, but withdrew her case because she still loved him. She also states that she has not seen her husband since he returned home on December 20, 2006 to spend Christmas and the New Year with her, and that he left three days later.

In the April 4, 2007 NOID, and in the October 10, 2007 denial, the director repeated his findings that he had noted in his December 26, 2006 RFE regarding the issue of a good faith marriage. The director also found that the information provided by the petitioner in her February 1, 2007 statement did not demonstrate that she had entered into the marriage in good faith, and that the petitioner's assertion in her February 22, 2007 letter that she ran away from home without taking anything but her clothes was inconsistent with the evidence she had previously submitted comprising correspondence addressed to her at the [REDACTED] address.

In the January 23, 2008 decision on the petitioner's motion to reopen and reconsider, the director found that the petitioner had not submitted sufficient evidence to demonstrate that she had entered into the marriage in good faith. The director noted that the two affidavits submitted by the petitioner from individuals who allegedly had known the petitioner for several years lack specific details regarding the petitioner's married life with her husband. The director also noted that the petitioner had not submitted

any of the corroborating evidence that was listed in the RFE.

On appeal, the petitioner submits the same evidence that was submitted in the motion. Again, as noted by the director in his January 23, 2008 decision, the two affidavits submitted by the petitioner from individuals who allegedly had known the petitioner for several years lack specific details regarding the petitioner's married life with her husband, and the petitioner had not submitted any of the corroborating evidence that was listed in the RFE. The petitioner also made an additional, untimely submission of additional evidence on March 31, 2008, comprising three photographs of what appear to be the petitioner and her husband on their wedding day, copies of the petitioner's Citibank account statements from October 24, 2007 through February 25, 2008, reflecting a current balance of \$0, and listing the petitioner's husband as the "ITF", and a copy of a life insurance policy. Again, as noted by the director, the petitioner's Citibank account does not indicate a joint commingling of financial responsibilities during the period that the petitioner claimed she resided with her husband, and the life insurance policy is dated after the petitioner claimed to have stopped residing with her husband. The evidence is insufficient to establish that she entered into her marriage in good faith.

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, as detailed above, the record contains unexplained inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Moreover, the lack of probative detail and substantive information in the petitioner's testimony regarding how she met her husband, their courtship, decision to marry, wedding, and shared residences and experiences, significantly detracts from the credibility of her claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, we find the petitioner failed to establish that she is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. In this case, the petitioner has submitted no affidavit regarding her good moral character. As the petitioner has failed to submit an affidavit regarding her good moral character, she has failed to establish her good moral character. We, therefore, withdraw the director's affirmative determination on this issue and find that the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iv) of the Act.

In addition, we find that the petitioner failed to establish that her husband subjected her to battery or

extreme cruelty during their marriage. Again, the record contains unexplained inconsistencies. In her February 22, 2007 letter, the petitioner stated that her husband became abusive to her after the I-130 petition that he filed on her behalf on December 30, 2002 was "granted," which conflicts with the information she provided in her February 1, 2007 statement that her husband became abusive in September of 2004 when he lost his job. It is also noted that the I-130 petition that was filed on the petitioner's behalf was denied, not approved or "granted." Moreover, in her February 1, 2007 statement, the petitioner describes the abuse by her husband as kicking her and punching her in the face and body, while in her February 22, 2007 letter, the petitioner described the abuse by her husband as his slapping her right cheek many times. The record contains a report from [REDACTED], dated January 24, 2007, who states that the petitioner has evidence of trauma ("hyperpigmented area") to her right cheek that is "consistent with the History of torture described by the patient." While we do not question the expertise of [REDACTED] the unexplained inconsistencies in the record, as discussed above, detract from the probative value of his testimony. The relevant evidence fails to demonstrate that the petitioner's husband subjected her to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.