

PUBLIC COPY

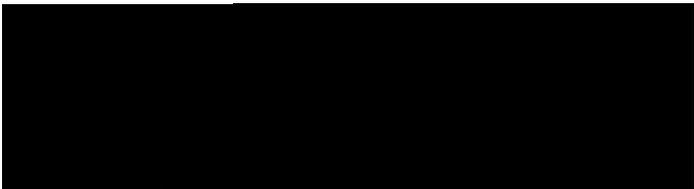
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090

identifying data deleted to
prevent closely unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

B9



FILE: [REDACTED]
EAC 06 138 51683

Office: VERMONT SERVICE CENTER

Date: **FEB 26 2009**

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

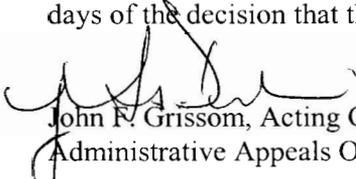
ON BEHALF OF PETITIONER:



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, 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 pursuant to 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 her United States citizen spouse.

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

The petitioner, through counsel, submitted a timely appeal

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 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:

(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.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but

that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(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.

* * *

(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.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(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 Kenya who entered the United States on May 7, 2004 with a visitor's visa. On October 1, 2004, the petitioner married W-B-¹, a U.S. citizen, in Kansas City, Kansas. The petitioner filed this Form I-360 on March 30, 2006. On August 29, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite battery or extreme cruelty, good-faith entry into the marriage, and good moral character. The petitioner, through counsel, responded to the NOID with additional evidence. The director denied the petition on January 23, 2007 on the ground that the evidence submitted was not sufficient to demonstrate that the petitioner married W-B- in good faith. On February 21, 2007, the petitioner, through counsel, filed a motion to re-open and/or reconsider and submitted additional evidence. On July 2, 2007, the director granted the motion and after "a complete review of the record of proceeding, including [the petitioner's] motion" determined that the grounds for denial had not been overcome.

On appeal, counsel argues that the director "rejected credible evidence and required unreasonably specific documentation." Counsel also argues that the director "failed to follow the 'all credible evidence requirement.'" As discussed below, the evidence in the record of proceeding fails to overcome the ground for denial.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's claim that she entered into marriage with her husband in good faith:

- A copy of the petitioner's marriage license indicating that she married W-B- in Kansas City, Kansas on October 1, 2004;
- The petitioner's statement submitted in support of her Form I-360 petition, the petitioner's affidavit dated September 20, 2006 and October 19, 2006 affidavits submitted in response to the director's NOID;
- Affidavits and letters from [REDACTED] and [REDACTED];
- Copies of bank statements indicating that the petitioner and W-B- had a joint account and that money was withdrawn by two separate ATM cards;
- A copy of a lease for a period beginning on October 1, 2004 and ending on September 31, 2005 listing the petitioner and W-B- as tenants;
- A Comcast bill;
- Mail addressed to both the petitioner and W-B; and

¹ Name withheld to protect individual's identity.

- Photocopies of photographs taken of the petitioner and W-B-.

In her initial statement, the petitioner states that she came to the United States for a three week vacation to visit a friend in Boston and a friend in Kansas. The petitioner states that she met W-B- in Kansas during a barbeque hosted by her friend. The petitioner does not provide a date for the meeting or provide a general timeframe for this meeting. The petitioner goes on to state that W-B- showed interest in getting to know her and began calling her daily, "up to three times a day." The petitioner states that she and W-B- "saw each other at least a couple of times a week and then after about a month [they] spent more and more time together." The petitioner states that W-B- did not want her to return home and the petitioner felt the same way. In her statements, the petitioner goes on to say that she and W-B- began to talk about marriage, the petitioner met W-B-'s mother and they married on October 2, 2004. According to the petitioner, the wedding was attended by a few friends. The AAO notes that the petitioner does not state that her mother-in-law attended the wedding and the record of proceeding contains no statements from any of the wedding guests. In December 2004, after two months of marriage, W-B- was incarcerated. W-B- was released from prison in April 2005. In an affidavit dated October 19, 2006, the petitioner states that she never visited W-B- while he was incarcerated. Although the petitioner's affidavits mention meeting W-B-, the statements contain a general discussion regarding their courtship, her feelings for her spouse or her reasons for marrying him, why she did not visit W-B- during his incarceration, and offer no details of their life together after their marriage except as it relates to the claimed abuse.

The petitioner also submitted several affidavits from acquaintances; the majority of the affidavits refer only to the alleged abuse. The affidavits from [REDACTED] and [REDACTED] contain only general statements regarding the petitioner's relationship with her former spouse, such as stating that each has knowledge that the petitioner was excited about meeting, dating and marrying W-B-. However, the affidavits provide no probative details regarding the petitioner's relationship with her spouse and their interactions with each other.

The petitioner also submitted a lease, a Comcast bill, and mail addressed to both the petitioner and W-B- at the same address. On appeal, counsel states that the director did not take the documents submitted into consideration as credible evidence. These documents demonstrate that the petitioner and W-B- lived together but are not evidence that they entered into a good faith marriage. Although the lack of documentary evidence of a good faith marriage is not automatically disqualifying, as discussed above, the testimonial evidence submitted by the petitioner does not establish that she entered into the marriage in good faith. Accordingly, the petitioner failed to demonstrate that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Counsel suggests that the director's adjudication of the petition was unfair because the director did not give the petitioner's joint bank account more weight. The director took the bank account into consideration and noted that there is no evidence that the account was used by both the petitioner and W-B-. The AAO agrees with counsel that the amount in the account is not a reason to discount the joint account as evidence. However, in her affidavit, the petitioner stated that she would provide

evidence that W-B- also used the account. The record of proceeding contains no such evidence. The petitioner has not demonstrated any error by the director in conducting its review of the petition. Nor has the petitioner demonstrated any resultant prejudice such as would constitute a due process violation. *See Vides-Vides v. INS*, 783 F.2d 1463, 1469-70 (9th Cir. 1986); *Nicholas v. INS*, 590 F.2d 802, 809-10 (9th Cir. 1979); *Martin-Mendoza v. INS*, 499 F.2d 918, 922 (9th Cir. 1974), *cert. denied*, 419 U.S. 1113 (1975).

Finally, in his decision, the director noted that W-B-'s signature in the lease submitted appeared to be different from his signature in other documents contained in the record of proceeding. Neither counsel nor the petitioner addressed this concern. 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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record does not demonstrate that the petitioner entered into marriage with her husband in good faith. 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.

The petition will be denied for the above stated reason. 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.