

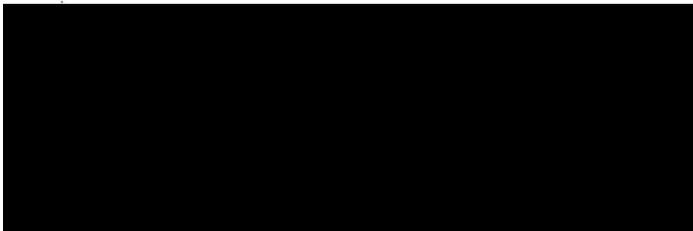
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date:

JAN 06 2009

EAC 05 078 52603

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 United States citizen.

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 submitted a timely appeal on April 9, 2007.

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:

(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.

* * *

(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 record of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Brazil who entered the United States, without inspection, on or around May 13, 1999. She was later granted voluntary departure through August 31, 2001. On August 29, 2001 she was readmitted to the United States as a public interest parolee. The petitioner married A-C-¹ a United States citizen, on May 3, 2003 in South Lake Tahoe, Nevada.

The petitioner filed the instant Form I-360 on January 21, 2005. On August 18, 2006, the director issued a request for additional evidence, and requested additional evidence to clarify whether the petitioner and the applicant were still married; whether the petitioner had been subjected to battery and/or extreme cruelty by her husband; whether the petitioner is a person of good moral character; and whether the petitioner had married her husband in good faith. Counsel responded on October 18, 2006, submitted some of the requested evidence, and requested additional time in which to submit the remaining requested evidence. The director issued a notice of intent to deny (NOID) the petition on November 22, 2006, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish that the petitioner had married A-C- in good faith. Counsel responded the NOID on January 16, 2007, and submitted additional evidence. After considering the evidence of record, including the evidence submitted by the petitioner in response to the NOID, the director denied the petition on March 8, 2007. Counsel submitted a timely filed appeal.

¹ Name withheld to protect individual's identity.

Good Faith Entry into Marriage

The sole issue on appeal is whether the petitioner has established that she married A-C- in good faith. In finding the evidence of record insufficient to establish this criterion, the director stated that the affidavits of record spoke mostly of A-C-'s treatment of the petitioner during the marriage rather than the petitioner's intentions upon entering into the marriage; that the record contains no specific details about the petitioner's relationship with A-C- prior to the marriage; and that the photographs of the wedding ceremony do not establish good faith entry into marriage, as a wedding ceremony is a one-day event.

On appeal, counsel contends that the director erred in denying the petition. Counsel contends that the affidavits of record explain that the petitioner and A-C- dated exclusively before they were married, and that had the petitioner not married A-C- in good faith, there would have been no courtship. Counsel asserts that the couple had an elaborate wedding ceremony, and that everyone in attendance understood it to be a good faith marriage, and that the director's finding that the wedding ceremony was a one-day event is incomprehensible, as most weddings are one-day events. Counsel points to congratulatory gifts and cards the couple received, as well as the fact that the petitioner's mother sent photographs of the ceremony to friends; counsel states that the petitioner's mother would not have been excited to share pictures of the ceremony if her daughter's marriage were not real. Counsel states that the petitioner's daughter and A-C- had a close relationship, and that the petitioner would not have nurtured that relationship if she had not entered into the marriage in good faith. Counsel points to A-C-'s outrage over the petitioner's departure from the marriage, stating that such outrage demonstrated his need for the relationship to exist, which is evidence of a good faith marriage.² Counsel states that the short time in which the couple lived together (May 2003 through September 2003, according to the Form I-360) "did not realistically allow for the production of traditional evidence towards establishing a bona fide marriage."

Upon review, the AAO agrees with the director's conclusion that the record, as presently constituted, fails to establish that the petitioner entered into marriage with A-C- in good faith. As noted by the director, the petitioner's January 10, 2005 affidavit speaks primarily to A-C-'s conduct during the marriage. While such testimony (and supporting evidence) satisfied the other criteria at issue in this case, it does not satisfy the petitioner's requirement to demonstrate that she entered into marriage in good faith. The only information she provides relevant to a determination of good faith entry into marriage is her statement she met A-C- while working as a caregiver to A-C-'s brother; that the couple married in May 2003; and that she was very happy in the beginning, especially because the petitioner's daughter loved having A-C- as her stepfather.

² Counsel argues that "[a]buse and the emotional relationships between a batterer and his victim would never be present in a fraudulent marital relationship . . . [w]omen do not risk their lives or health to marry abusive or violent citizens or lawful permanent residents in order to get green cards."

However, the petitioner's affidavit provides no other information regarding her intentions upon entering into marriage. For example, the petitioner provides no information regarding the circumstances surrounding the petitioner and A-C-'s first introductions; their first impressions of each other; their courtship; their decision to marry; or their early life together. She offers no details about the types of activities they enjoyed together. The affidavit is devoid of information such as how long the couple dated before they became engaged or the length of the engagement. The AAO takes counsel's point that, since the couple did not live together long, typical items such as joint bank accounts, etc., are unavailable. However, such being the case elevates the petitioner's own statements to an even higher level of importance. Despite being specifically placed on notice of the insufficiency of her affidavit via the denial, the petitioner elects on appeal not to submit additional details.

[REDACTED] December 15, 2006 affidavit suffers similar deficiencies with regard to the demonstration of good faith entry into marriage. Again, and as noted by the director, her affidavit speaks primarily to A-C-'s conduct during the marriage. While such testimony (and supporting evidence) satisfied the other criteria at issue in this case, it does not satisfy the petitioner's requirement to demonstrate that she entered into marriage in good faith. The only information [REDACTED] provides relevant to the issue of whether the petitioner entered into marriage with A-C- in good faith are her statements that she met A-C- while working as a caregiver to A-C-'s brother; that they "went out for a while," that they then began to date exclusively, got married, and were initially "very happy." No other information regarding the petitioner's intentions upon entering into marriage are provided. [REDACTED] affidavit is deficient for the same reason as the petitioner's: it lacks sufficient detail. Generalized statements that the petitioner and A-C- dated, were married, and were very happy are insufficiently detailed to allow the AAO to ascertain the petitioner's intentions upon marrying the A-C-.

The information provided by [REDACTED] in his November 2, 2006 affidavit also lacks sufficient detail that would allow the AAO to ascertain the petitioner's intentions. He states that he met the petitioner when she began dating A-C-; that the couple decided to get married "after a time"; and that they had a very nice wedding service in Lake Tahoe. The other information in his affidavit relates to the issue of A-C-'s treatment of the petitioner during the marriage. Again, the AAO is unable to enter a finding that the petitioner entered into marriage with A-C- in good faith on the basis of this affidavit, as it is insufficiently detailed.

The AAO agrees with the director regarding the photographs of the wedding ceremony. As noted by the director, a wedding ceremony is a one-day event. Counsel asserts that the director's statement that a wedding ceremony is a one-day event was incomprehensible, and that most weddings are one-day events. However, counsel's assertion misses the director's point. The director was not implying that most wedding ceremonies are not one-day events. Rather, his point was that a one-day event does not constitute evidence of good faith entry into marriage. Further, counsel's statement that everyone in attendance at the wedding ceremony understood it to be a good faith marriage is misplaced. Whether the wedding guests considered the marriage valid is irrelevant, as it is the petitioner's intentions upon entering the marriage, not those of her friends and

family, which are determinative. Congratulatory letters regarding the wedding ceremony are insufficient for the same reason.

For similar reasons, the AAO finds immaterial counsel's assertions regarding the opinions of the petitioner's mother, the petitioner's daughter, A-C-, and A-C-'s family. Again, their feelings regarding the marriage are not the issue; the issue is whether the petitioner herself entered into the marriage in good faith.

Counsel states that the evidence of record "clearly satisfies the 'any credible evidence' standard required by self-petitioner's. . . ." Counsel's interpretation of the "any credible evidence" standard, however, is mistaken. Section 204(a)(1)(J) of the Act requires USCIS to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [U.S. Citizenship and Immigration Services (USCIS)]. **Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i).** The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "Other forms of relevant credible evidence will also be considered." 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). **To require otherwise would render the adjudicatory process meaningless.**

In this particular case, while the AAO finds petitioner's evidence credible, it does not find it sufficient to satisfy her burden of proof. As noted previously, the information of record regarding the petitioner's good faith entry into the marriage is very general in nature. Again, the petitioner provides no information regarding the circumstances surrounding the petitioner and A-C-'s first introductions; their first impressions of each other; their courtship; their decision to marry; the types of activities they enjoyed together; or their early life together. The record lacks such information as how long the couple dated before they became engaged or the length of the engagement. Rather than submit additional details on appeal, counsel elects instead to assert that the evidence before the director at the time he issued the denial was sufficient to establish that the petitioner entered into marriage with A-C- in good faith. As set forth above, the AAO disagrees with counsel's assertions. As such, the finds that the evidence of record fails to demonstrate that the petitioner entered into marriage with A-C- 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 A-C- in good faith. Se 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.