

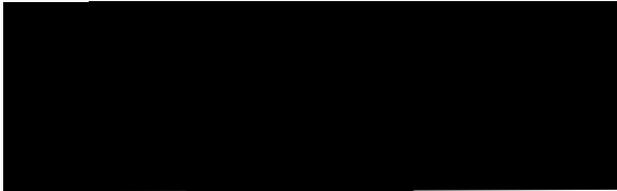
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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC 06 112 50203

Office: VERMONT SERVICE CENTER

Date:

JAN 06 2009

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)

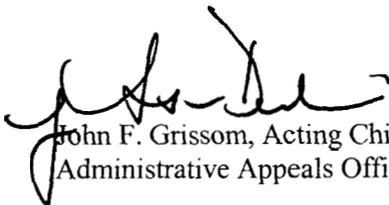
ON BEHALF OF PETITIONER:



**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).

  
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 demonstrate that she entered into marriage with her husband in good faith.

Counsel submitted a timely appeal on February 26, 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 Uzbekistan who entered the United States as a nonimmigrant visitor on November 29, 2002. She married C-S-<sup>1</sup> a United States citizen, on May 8, 2003 in New York. C-S- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on July 3, 2003. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date.

The petitioner filed the instant Form I-360 on March 6, 2006. On June 16, 2006, the director issued a request for additional evidence, and requested additional evidence to demonstrate the petitioner had married her husband in good faith. The petitioner responded on August 9, 2006, and submitted additional evidence. The director issued a notice of intent to deny (NOID) the petition on October 6, 2006, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish that she had married her husband in good faith. Counsel responded the NOID on December 5, 2006, 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 January 23, 2007.

On appeal, counsel submits an appellate brief and additional evidence.

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<sup>1</sup> Name withheld to protect individual's identity.

The sole issue on appeal is whether the petitioner has established that she entered into marriage with her husband in good faith. In finding the evidence of record insufficient to establish this criterion, the director found that the affidavits from friends of the petitioner spoke “mostly to your spouse’s treatment of you during the marriage rather than your intentions upon entering the marriage;” that an application for life insurance made after C-S- abandoned the petitioner was not evidence of a good faith marriage; that a copies of separately filed tax returns are not evidence of a good faith marriage; and that, while several photographs were submitted, photographs do not hold sufficient evidentiary weight to establish good faith entry into marriage.

On appeal, counsel contends that the director erred in denying the petition. Counsel contends that, when considered together, the evidence of record establishes that the petitioner married C-S- in good faith.

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 C-S- in good faith.

In her March 2, 2006 affidavit, the petitioner states that she met C-S- in December 2002 in Manhattan. She states that she had gone to Manhattan in order to go Christmas shopping, and met C-S- when she asked him for directions to Macy’s. She states that C-S- was very nice, and took her to Macy’s himself. He told her stories, was very funny, and they exchanged telephone numbers. The petitioner states they spent a great deal of time together, going to movies, restaurants, and taking “a couple of trips around New York.” She states that C-S- brought her flowers every time they met, and once brought her a ring which, though not expensive, he told the petitioner was a sign of his love. They were engaged in March 2003.

In her February 12, 2007 affidavit, the petitioner states that, in the beginning of their relationship, C-S- treated her “as a queen.” The petitioner states that she suffers from infertility, and that she was bothered by this fact during the courtship, as she worried it would be an obstacle to their happiness. She said that C-S- assured her on numerous occasions that he would be supportive, was hopeful for “modern science,” and that, in a worst-case scenario, they would adopt a child together. She states that it was for this reason that she returned to Uzbekistan for fertility treatment in 2004. The petitioner says that after they were engaged, they constantly spoke of their future family: C-S- wanted a son, and she wanted a daughter, so they decided to have two children together. The petitioner states that C-S- expressed a great deal of interest in her previous life: he asked about Uzbekistan, her family, and her childhood, and that she was equally interested in his previous life.

However, the petitioner’s affidavits still lack sufficient detail regarding her intentions upon entering the marriage. The petitioner states that the couple spent a great deal of time together, but she offers no information regarding how they spent this time beyond general statements such as going to movies and restaurants together. For example, she does not offer examples of any movies they saw together, or the names of any restaurants at which they ate together. The petitioner has failed to provide probative, detailed testimony to establish that she entered into the marriage in good faith.

█ submits two affidavits. In her July 28, 2006 affidavit she states that she has known the petitioner's family since 1986 and met the petitioner in New York in 2000, and from that point began meeting and keeping in touch. In her February 21, 2007 affidavit, █ states that the petitioner introduced her to C-S- in December 2002, by which time the petitioner and C-S- had been dating "for several months already." However, this assertion conflicts with the petitioner's own statement that she did not meet C-S- until December 2002. If the petitioner and C-S- did not meet until December 2002, they could not have been dating for several months by that point. 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. *Id.*

In her February 21, 2007 affidavit, █ states that she has known the petitioner since 2002. She states that when she met C-S-, the petitioner was very happy and looking to the future with great hope. █ states that she went shopping for wedding dresses with the petitioner in April 2003, and that the petitioner was upset due to the high cost of the dresses. She states that C-S- decided to get a bank loan to pay for a dress, but that the petitioner dissuaded him from doing so. █ states that she helped the petitioner make the dress. However, █ affidavit is insufficient to establish good faith entry into the marriage. First, she concedes that she lived far from the petitioner and C-S- and that they did not see each other often. Further, describing the events of a single day – the day they went shopping for a wedding dress – is not enough to establish good faith entry into the marriage. Nor does her statement that she saw movies and visited Central Park with the petitioner and C-S- after they were married speak to the petitioner's intentions prior to entering the marriage.

The information of record regarding the petitioner's good faith entry into the marriage is very general in nature. Although the petitioner discusses in detail how she met C-S-, she has failed to provide detailed, probative information regarding their courtship; their decision to marry; the types of activities they enjoyed together; or their early life together. As such, the AAO finds that the evidence of record fails to demonstrate that the petitioner entered into marriage with C-S- 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. She 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.

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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.