U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 1 0 2009

EAC 07 233 50258

IN RE: [redacted]

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:

[redacted]

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

Counsel filed a timely appeal on August 21, 2008.

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:

> (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 petitioner is a citizen of Ukraine who entered the United States in K-1 fiancé status on October 1, 2004. She married E-C-,[1] a citizen of the United States, on December 17, 2004. According to the petitioner's testimony on the Form I-360, she and E-C- lived together between October 2004 and April 2005.

The petitioner filed the instant Form I-360 on July 27, 2007. The director issued a request for additional evidence on February 27, 2008, and requested additional evidence to establish that the petitioner is a person of good moral character, and that she married E-C- in good faith. The petitioner responded on April 28, 2008. After considering the evidence of record, the director denied the petition on July 21, 2008.

Good Faith Entry into Marriage

The sole issue on appeal is whether the petitioner has established that she married E-C- in good faith. In finding the evidence of record insufficient to establish this criterion, the director noted that the mortgage deed was in E-C-'s name only; that the copies of bills and receipts were all either in E-C-'s name only, or in the petitioner's name only; that there was no evidence of any jointly-held accounts; and that although photographs were submitted, photographs are only acceptable as proof of a good faith marriage when they are accompanied by other credible documentation.

On appeal, counsel contends that the director erred in denying the petition. Counsel states that E-C- "personally courted" the petitioner in Ukraine before they were married; that E-C- submitted evidence of that courtship in support of the fiancé petition he filed on behalf of the petitioner; that,

[1] Name withheld to protect individual's identity.

because the fiancé petition was approved, "the legal conclusion has already been reached about the bona fides of the marriage"; that the petitioner has satisfied her burden of proof; and that "it would be completely illogical for a U.S. citizen to abuse an alien spouse if the marriage was one of convenience." Counsel also contends that the "lack of financial corroboration or commingling of assets and debts is part and parcel of the emotional abuse."

The AAO agrees with the director's decision to deny the petition. With regard to counsel's assertions regarding the fiancé petition that E-C- filed on behalf of the petitioner, the AAO notes that approval of a Form I-129F, Petition for Alien Fiance(e), under section 214(d) of the Act is not prima facie evidence of the beneficiary's good-faith entry into the subsequent marriage under section 204(a)(1)(A)(iii) of the Act. The statutory and regulatory framework for fiancé(e) petitions significantly differs from the requirement that self-petitioners under section 204(a)(1)(A)(iii) of the Act demonstrate that they "entered into" the marriage with the abusive U.S. citizen "in good faith." The U.S. citizen petitioner bears the burden of proof in fiancé(e) cases to establish prospectively that the petitioner and beneficiary intend to and are able and willing to enter a valid marriage. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). The corresponding regulation does not, however, define what constitutes a "bona fide intention to marry" under section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). In contrast, for self-petitions under section 204(a)(1)(A)(iii) of the Act, the alien bears the burden of proof to establish that she or he entered into the marriage in good faith and the regulation specifically defines the term "good faith marriage" and what types of evidence will suffice to meet that eligibility criterion. 8 C.F.R. §§ 204.2(c)(1)(ix), (c)(2)(vii). Hence, the fact that a self-petitioner was the beneficiary of an approved Form I-129F filed by his or her spouse will not establish that the alien actually entered into the marriage in good faith.

Moreover, while evidence submitted with a Form I-129F petition filed on the alien's behalf may be relevant to a determination of the alien's good faith entry into the subsequent marriage, reliance on such evidence alone is unwarranted. In such instances, the U.S. citizen petitioner would have borne the burden of proof in the fiancé(e) case and reliance on the abusive spouse's representations of the alien's intentions at the time of their engagement is of little probative value.

The AAO also rejects counsel's assertion that "it would be completely illogical for a U.S. citizen to abuse an alien spouse if the marriage was one of convenience." Even if such an assertion were taken at face value, it would be relevant to E-C-'s intentions upon entering into the marriage, and not those of the petitioner.

With regard to counsel's assertion that the "lack of financial corroboration or commingling of assets and debts is part and parcel of the emotional abuse," the AAO acknowledges that, in many cases, documentary evidence of good faith entry into marriage is simply unavailable. In such cases, the testimony of the petitioner is crucial. However, in this case the petitioner's testimony regarding her intentions upon entering into the marriage is vague and general in nature. The petitioner testifies that she met E-C- through a marriage agency in 2002. After corresponding for five months, she and E-C- met in Turkey, and spent two weeks together. Three months later, in September 2003, E-C- visited her in Ukraine, and proposed marriage. E-C- returned to Ukraine for another visit in

December 2003. E-C- returned to Ukraine for another visit in April 2004, and they traveled in Ukraine and Hungary for 24 days. A few months later, E-C- returned to Ukraine for a fourth visit, and stayed for two months. The petitioner's description of this courtship, however, is deficient, and lacks detailed, probative information. While the petitioner describes E-C-'s actions, she fails to explain, in probative detail, her own thoughts and feelings in reaction to his actions. Such information, in the absence of documentary evidence, would have allowed the AAO to make a determination on the petitioner's intentions upon entering into the marriage.

Finally, the AAO turns to counsel's assertions regarding the petitioner's burden of proof. 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 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, "All forms of relevant credible evidence will 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 his or 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. As discussed above, while the evidence of record may be credible, the AAO does not find it sufficient to satisfy the petitioner's burden of proof. The petitioner has failed to establish by a preponderance of the evidence that she entered into marriage with E-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 E-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.

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.