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U.S. Citizenship
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FILE:

[REDACTED]
EAC 07 022 50581

Office: VERMONT SERVICE CENTER

Date:

MAR 05 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 establish that she entered into marriage with her husband in good faith.

Counsel submitted a timely appeal on October 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 Ghana who entered the United States in B-2 status on December 27, 2003. She married K-T-,¹ a United States citizen, on October 15, 2005. K-T- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on November 25, 2005. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on that same date. The Forms I-130 and I-485 were denied on August 7, 2006, after the petitioner failed to appear for a scheduled interview. In response to counsel's August 16, 2006 motion, the district director of the New York District Office reopened the petitions on August 21, 2006. The Forms I-130 and I-485 were again denied on September 12, 2006, after the petitioner again failed to appear for a scheduled interview.

The petitioner filed the instant Form I-360 on October 27, 2006. On June 13, 2007, the director issued a notice of intent to deny (NOID) the petition, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish that she shared a joint residence with K-T-; and that she married K-T- in good faith. The petitioner responded to the NOID on July 7, 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 October 5, 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 K-T- in good faith. In finding the evidence of record insufficient to establish this criterion, the director stated that the affidavit that the petitioner had submitted from [REDACTED], in which he stated that he had visited the petitioner and K-T- at their apartment, and that the couple had visited [REDACTED] home for a barbeque, was insufficient. The director stated that, since the petitioner was married to K-T- for more than a year, it is reasonable to expect that there would be documentary evidence to establish that the petitioner had married K-T- in good faith. On appeal, the petitioner contends that she was unable to obtain any of the evidence suggested by the petitioner because she did not have work authorization, and therefore could not obtain a social security number. Without a social security number, she was unable to have her name placed on any of the household accounts. She states that by the time she obtained work authorization, and was able to obtain a social security number, she feared for her life and could not stay with K-T- any longer.

As evidence that the petitioner married K-T- in good faith, the record contains the affidavit from [REDACTED] referenced in the denial; two affidavits from the petitioner; and a copy of a residential lease.

In [REDACTED]'s July 25, 2007 affidavit, he states that he is the petitioner's cousin; that he visited the petitioner and K-T- at their apartment on numerous occasions; and that the couple came to his home on July 4, 2006 for a barbeque.

In her October 16, 2006 affidavit the petitioner stated, with regard to her intentions upon entering into the marriage; that she and K-T- met in March 2004, on a bus in Yonkers, New York. The petitioner was carrying a heavy shopping bag, and K-T- approached her and offered to help the petitioner carry it. **Two months later, in May 2004, they met again on the same bus. They** exchanged telephone numbers, and K-T- called the petitioner that evening. They began speaking regularly. K-T- invited the petitioner to a family barbecue at his parents' home on July 4, 2004 and, afterwards, asked the petitioner to be his girlfriend. The petitioner stated that she grew to love K-T- very much. K-T- showed the petitioner around New York. According to the petitioner, K-T- was very kind and loving, and made her laugh. K-T- asked the petitioner to marry him on December 31, 2004. Although she loved K-T- very much, she told him that they were too young to be married. However, K-T- insisted, saying that they needed to settle down now, rather than "sleeping around" with others, as it was unsafe to do so. The petitioner agreed, and decided to marry him. They were married on October 15, 2005.

In her October 25, 2007 affidavit, the petitioner states that she was unable to provide any of the documents suggested by the director to demonstrate that she married K-T- in good faith. She states that after K-T- filed her immigration petitions, the couple went to banks in Yonkers, New Rochelle, and Mount Vernon to open a joint account, but that none of them would allow her to open an account because she did not have a social security number. She was also unable to add her name to any of the utility accounts because she lacked a social security number. The petitioner states that

when her employment authorization card finally arrived in June 2006, she applied for a social security number immediately. However, by that time K-T- was physically abusing her, she feared for her safety, and could not stay with K-T- any longer. The petitioner also states that K-T- did not own any real estate or a car, so there were no such items to place into joint ownership.

The record also contains a copy of a residential lease signed by both the petitioner and K-T-.

Upon review, the AAO agrees with the director's determination that the record, as presently constituted, fails to establish that the petitioner married K-T- in good faith. While the AAO acknowledges the petitioner's statements on appeal that she was unable to add her name to utility accounts or open a joint bank account with K-T- because she did not have a social security number, the AAO finds, nonetheless, that the petitioner has failed to satisfy her burden of proof. The petitioner's affidavits speak primarily to K-T-'s behavior during the marriage. The petitioner fails to provide a detailed account of the couple's courtship, which would assist the AAO in evaluating her intentions upon entering the marriage. In a case such as this, where there is little physical evidence of the petitioner's intentions upon entering the marriage, the petitioner's testimony is crucial. However, the petitioner's testimony, with regard to her intentions upon entering the marriage, is vague and generalized. The record indicates that the couple dated for at least five months before becoming engaged, and that they were engaged for ten months before marrying. There is very little information of record regarding the events that transpired during that time period. For example, the petitioner fails to describe, in a detailed manner, the types of activities the couple enjoyed together during this time; the places they went; the petitioner's thoughts at the time regarding the couple's future together; and the petitioner's thoughts with regard to K-T-'s family; etc. Such information would allow the AAO to examine the petitioner's intentions upon entering into the marriage. Without such information, the AAO cannot examine the petitioner's intentions, as there is no physical evidence that speaks to her intentions upon entering the marriage. The evidence of record fails to demonstrate that the petitioner entered into marriage with K-T- 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 K-T- 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.