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

U.S. Citizenship and Immigration Services

[redacted]

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APR 0 6 2010

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 05 053 52327

IN RE: Petitioner: [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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and certified his decision to the Administrative Appeals Office (AAO) for review. The AAO affirmed the decision of the director to deny the petition. The matter is now before the AAO on a motion to reopen. On motion, counsel submits additional evidence. The motion will be granted. The previous AAO decision, dated January 6, 2009, will be affirmed. The petition will be denied.

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 because the petitioner did not establish that she had a qualifying relationship with a U.S. citizen or lawful permanent resident of the United States, her eligibility for preference immigrant classification based on such a relationship, and that she had entered into the qualifying relationship in good faith.

The director erroneously rejected the subsequent appeal and subsequently reopened the matter on U.S. Citizenship and Immigration Services (USCIS) motion, and issued a Notice of Intent to Deny (NOID). On February 7, 2007, upon receiving no response to the NOID, the director denied the petition, as the record did not contain evidence sufficient to overcome the grounds for denial listed in the NOID and certified that decision to the AAO.

On certification, the petitioner's prior counsel submitted additional evidence of the petitioner's qualifying relationship, and asserted that the director did not ask for such evidence in the NOID.

The AAO affirmed the director's decision reasoning that the petitioner had been notified of the required evidence and given a reasonable opportunity to provide it for the record before the petition was adjudicated. The AAO found beyond the decision of the director that the petitioner had not established that she entered into the marriage in good faith.

On motion, counsel for the petitioner states that the motion is based on ineffective assistance of counsel for the following reasons: the petitioner's prior counsel failed to respond to government requests; the petitioner had submitted the requested divorce decree to her prior counsel at the inception of their attorney-client relationship; and the petitioner's prior counsel did not alert the petitioner to the necessity of clarifying the issues presented by the director. As supporting documentation, counsel submits the following: the petitioner's request to reopen and supporting brief; the petitioner's personal affidavit dated February 2, 2009; and the petitioner's grievance with exhibits and subsections.

On motion, counsel provides sufficient documentary evidence to satisfy the petitioner's ineffective assistance of counsel claim. Counsel also requests additional time to submit a supplemental brief. A motion to reopen, however, must be supported by affidavits or other documentary evidence at the time of filing. Thus, the documentary evidence submitted by counsel on motion, listed above, will be considered in this proceeding. However, any additional documentation submitted by counsel

subsequent to the filing of the motion will not be considered.[1]

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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

> (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 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.
>
> (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate

[1] Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) states that a petitioner may be permitted additional time to submit a brief or additional evidence to the AAO in connection with an appeal, no such provision applies to a motion to reopen or reconsider. The additional evidence must comprise the motion. *See* 8 C.F.R §§ 103.5(a)(2) and (3).

> issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner . . . .
>
> * * *
>
> (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.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated January 6, 2009, we will repeat only certain facts as necessary here. In this case, the petitioner married J-W-[2], a U.S. citizen, in Detroit, Michigan on October 9, 1997. The director initially denied the petition on August 25, 2005, finding that the petitioner did not establish that she had a qualifying relationship with a U.S. citizen or lawful permanent resident of the United States, her eligibility for preference immigrant classification based on such a relationship, and that she had entered into the qualifying relationship in good faith. The director reopened the denial and issued a NOID affording the petitioner the opportunity to submit further evidence to establish the requisite qualifying relationship and eligibility based on that relationship. The director certified his decision to the AAO for review. On certification, the AAO affirmed the director's February 7, 2007 decision, finding that the petitioner failed to respond to the director's NOID, and thus the record before the director did not contain proof of the termination of all of the petitioner's prior marriages. The AAO also found beyond the decision of the director that the petitioner failed to establish that she entered into the marriage in good faith.

On motion, counsel submits evidence of the petitioner's March 14, 1990 divorce from

Qualifying Relationship

On the Form I-360, the petitioner stated that she had been married three times. As noted by the director in his August 25, 2005 decision, the petitioner did not submit the requested evidence to establish that all of her prior marriages had been legally terminated. On motion, counsel submits evidence of the petitioner's March 14, 1990 divorce from It is noted that the record also contains evidence of the petitioner's January 20, 1994 divorce from As such, the petitioner has established that all of her prior marriages had been legally terminated prior to her October 9, 1997 marriage to J-W-.

The petitioner therefore has established a qualifying relationship as the spouse of a U.S. citizen. The petition may not be approved, however, because the petitioner has not established that she entered

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

into the marriage in good faith.

Good Faith Entry into Marriage

In its January 6, 2009 decision, the AAO found that the petitioner in her December 23, 2004 personal statement provided insufficient information and lacked details regarding her intent in marrying J-W-, their courtship, and interactions. The AAO also found that the affidavits submitted on the petitioner's behalf, including those affidavits from and , failed to contribute to an understanding of the petitioner's intent in entering into her marriage to J-W-.

On motion, counsel submits additional affidavits from the petitioner, and Counsel also submits new affidavits from , and

In her February 2, 2009 affidavit, the petitioner states, in part, that she met J-W- at a shopping mall in the spring of 1993, when he invited her for a cup of coffee and they exchanged phone numbers. The petitioner explains that three months later, J-W- called her at the house where she took care of her employer's mother who had Alzheimer's disease, and she and J-W- talked for about ten minutes about his work and their families. The petitioner states, "I think we both wanted a companion." The petitioner states that the second time she called him, and that most of the time they talked on weekends when she had time off. The petitioner explains, "It took nine months before we actually got together." The petitioner states that after talking on the phone for nine months, they went out on their first date, whereupon J-W- bought her a dozen roses, then to see his house before going out to dinner and returning to his house. The petitioner describes their second date, and explains further that they had known each other for about two and a half years when she returned to the Dominican Republic in September of 1996, and stayed for a year. The petitioner states that she returned to the United States on September 22, 1997, with a work visa to work for the same employer. The petitioner explains that J-W- wanted to marry her but she did not think it was necessary because she had a job and was able to support herself. The petitioner then states that she "wanted to grow old with someone and have a good friend" and didn't want to live and die alone.

In her December 23, 2004 affidavit, the petitioner stated, in part, that she did not remember the exact date she met J-W-, but she remembered "that when we met we spoke on the phone, we spent about a year were [sic] we did not see each other, we only spoke on the phone, after that year I started to go to his house, because I [sic] that time he was working and did not have time to go out, because he was always sleepy, because he worked at night." The petitioner also stated that J-W- behaved well during their relationship until they were married.

In her January 31, 2009 affidavit, states, in part, that she has known the petitioner for many years and that she met the petitioner through her friend . states that she and the petitioner are very close and that she was with the petitioner when the petitioner bought her car. Regarding her previous affidavit, explains that the petitioner's prior attorney gave her "a pre-filled affidavit form" and that she used the space provided and "did not have enough room to put more details." states:

> One day [the petitioner] and [redacted] told me that [the petitioner] met a man named [J-W-]. I was really happy for [the petitioner] because she was alone and she needed somebody to spend her time with and I was happy for her.

In her undated affidavit submitted on motion, [redacted] states, in part, that she met the petitioner in December of 1992, in the Dominican Republic. [redacted] states that one day the petitioner told her that she had met a man. [redacted] explains that she wanted to meet him because the petitioner was so happy and had told her that they were in love. [redacted] states that J-W- used to call the petitioner a lot, and that the petitioner was living with her friend [redacted] when she and J-W- met. [redacted] reports that one day J-W- gave the petitioner a dozen roses. [redacted] states:

> Finally after about two months started coming over to our house and eat [sic]. . . . He took her out to dinner a few times but most of the time he cooked or they did carry-out. [The petitioner] and [J-W-] got married about three years after they met. One day she came to my home with a ring and told me that she was engaged. . . . One day [the petitioner] came to my home and surprised me. She said 'I just got married.' 'I just got married.' She was happy. . . .

In her January 30, 2009 affidavit, [redacted] states, in part, that she met the petitioner through a friend seven years ago, and that she loves the petitioner like a daughter. [redacted] also states that the petitioner said that J-W- was a good and decent man when she met him, and that he appeared to be a gentleman and wanted to marry her.

In her January 2009 affidavit, [redacted] states, in part, that she knows the petitioner through [redacted] mother and that she met her before she married J-W-. [redacted] states, "I got to know [the petitioner] more after she separated from [J-W-]."

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The petitioner, however, has submitted scant evidence to support a finding that she entered into her marriage in good faith. As discussed above, the AAO stated in its January 6, 2009 decision that the statements from the affiants, including [redacted] and [redacted], were general and vague and provided minimal information pertinent to the circumstances of the courtship and marriage of the petitioner and J-W-. The additional affidavit from [redacted] as well as those affidavits from [redacted] and [redacted] submitted on motion again are general and vague and again provide minimal information pertinent to the circumstances of the courtship and marriage of the petitioner and J-W-. For example, as noted above, [redacted] states that she was happy for the petitioner when she met J-W- because she was alone and needed someone to spend time with her. [redacted] and [redacted] also fail to provide any pertinent information. Although the additional affidavit from [redacted] submitted on motion provides details pertaining to the petitioner and J-W-'s engagement, the petitioner herself does not mention the engagement in any of her own testimony, and thus detracts from the probative value of [redacted] testimony. In addition, the petitioner states in her February 2, 2009 affidavit that on September 22, 1997, she returned to the

United States on a work visa, and although J-W- wanted to marry her, she did not think it was necessary because she had a job and was able to support herself. Yet two weeks later on October 9, 1997, the petitioner married J-W-. The record contains no explanation for this inconsistency. As stated by the AAO in its January 6, 2009 decision, the record also contains contradictory information pertaining to the petitioner's address. As discussed above, the petitioner's statements and the statements submitted on her behalf contain inconsistencies. Thus, the petitioner's statements are equivocal and do not fully resolve the discrepancies in the record. In addition, the wedding photographs confirm that the petitioner and J-W- were married, but these documents alone to not establish that the petitioner married her husband in good faith. Moreover, the lack of details regarding petitioner and J-W-'s courtship, decision to marry, wedding, and shared experiences, significantly detracts from the credibility of her claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

In view of the foregoing, the petitioner has not demonstrated that she married J-W- in good faith. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.