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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**

B9

FILE:

EAC 03 204 51438

Office: VERMONT SERVICE CENTER

Date: **APR 19 2010**

IN RE:

Petitioner:

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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO, dated March 26, 2009, will be affirmed and 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.

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:

(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 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.

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 March 26, 2009, we will repeat only certain facts as necessary here. In this case, the petitioner is a native and citizen of Zambia who was admitted into the United States on October 13, 2002, as a B-2 nonimmigrant visitor. On April 3, 2003, the petitioner married A-W-¹, a U.S. citizen, in Indiana. The director initially denied the petition on July 6, 2007, finding that the petitioner failed to establish that she entered into marriage with her U.S. citizen husband in good faith, that she resided with him, and that he battered or subjected her to extreme cruelty during their marriage. On appeal, the AAO determined that the petitioner's husband subjected her to battery or extreme cruelty during their marriage pursuant to section 204(a)(1)(A)(iii)(I)(bb) of the Act. The AAO, however, agreed with the director's determination that the evidence of record was insufficient to establish that the petitioner entered into the marriage in good faith and that she resided with him.

On motion, counsel submits a brief and copies of documents previously submitted.

Good Faith Entry into Marriage

In its March 26, 2009 decision, the AAO found that the petitioner was inconsistent in her June 28, 2003 and April 17, 2007 affidavits. The AAO also found that the petitioner did not explain why she did not submit testimony from her friends, [REDACTED] and [REDACTED] whom the petitioner repeatedly mentioned in her testimony. The AAO found that the affidavit submitted on the petitioner's behalf from [REDACTED] lacked probative details and failed to contribute to an understanding of the petitioner's intent in entering into her marriage with A-W-.

¹ Name withheld to protect individual's identity.

On motion, counsel states that, as the AAO determined that the petitioner provided sufficient testimony, including statements from herself and from [REDACTED] regarding her husband's abuse, "[i]t is therefore unclear as to why the same evidence would not be probative as to the bona fides of the marriage." Counsel asserts: "While the regulations might have multiple prongs, it is clearly erroneous that the same affidavit would be found to be credible and consistent on one part and incredible and inconsistent in another."

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 testimonial evidence to support a finding that she entered into her marriage in good faith. As discussed above, the AAO stated in its March 26, 2009 decision that the petitioner was inconsistent in her June 28, 2003 and April 17, 2007 affidavits. Specifically, in her June 28, 2003 affidavit, the petitioner stated that A-W- told her that they had to get married so that the petitioner "could work and help him pay money he owed to people he had bought drugs from on credit . . .", which is inconsistent with the petitioner's April 17, 2007 affidavit, in which she states that she told A-W- that she would stay with him only if could find her a job. The AAO acknowledges the following statement from counsel on motion: "If, as the AAO infers, it was employment authorization that Petitioner sought would she not have married sooner rather than trying to plan a church wedding." It is noted, however, that the record contains no evidence that the petitioner was trying to plan a church wedding. Nor did the petitioner make such a claim in her June 28, 2003 affidavit. Again, the record contains no explanation for this inconsistency. It is also noted that, in the "history" section of his May 2, 2005 evaluation report, [REDACTED] did not mention that the petitioner reported an attempt on her part to plan a church wedding. The AAO also stated in its March 26, 2009 decision that the affidavit submitted on the petitioner's behalf from [REDACTED] lacked probative details and failed to contribute to an understanding of the petitioner's intent in entering into her marriage with A-W-, and that the petitioner did not explain why she did not submit testimony from her friends, [REDACTED] and [REDACTED] whom the petitioner repeatedly mentioned in her testimony. The AAO acknowledges counsel's assertions on motion that the petitioner "has not maintained contact with the only two people she had established a relationship with in Indiana" and "there is no further evidence to be produced . . ." The AAO also acknowledges counsel's assertion that the affidavits "have clearly and concisely stated that Petitioner has been unable to obtain further evidence" and that "if [the petitioner's prior attorney] had acted effectively in 2004, it is possible he would have been able to access additional evidence." It is noted here, however, that in visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. As discussed above, the inconsistencies in the petitioner's testimony and the lack of probative details in [REDACTED] affidavit detract from the credibility of the petitioner's claim. Upon review of the record in its entirety, 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.

Joint Residence

In its March 26, 2009 decision, the AAO found that the petitioner's testimony was insufficient to demonstrate that she resided with her husband. Specifically, the petitioner did not state the address of the apartment or describe their shared residence in any probative detail. Nor did the photographs or [REDACTED] testimony establish the petitioner's claim.

On motion, counsel states, "This was a short term relationship in which the husband . . . had an already established a lease and utilities [sic]; without employment authorization and a social security number there was no way for Petitioner to accumulate other documentation."

In this matter, the petitioner states on the petition that she lived with A-W- from October of 2002 until May of 2003, and listed the last address at which they lived together as: [REDACTED] Indianapolis, Indiana. As discussed above, the petitioner's testimony is insufficient to demonstrate that she resided with her husband, and the remaining evidence, including the photographs and [REDACTED] testimony, also do not demonstrate that the petitioner resided with her husband. Again, while the AAO acknowledges counsel's assertions on motion regarding the petitioner's inability to obtain further evidence, in visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Upon review of the record in its entirety, the relevant evidence does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The petitioner has not demonstrated that she resided with her husband and that she entered into their marriage in good faith. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 previous decision of the AAO, dated March 26, 2009, will be affirmed and the petition will be denied.

ORDER: The decision of the AAO, dated March 26, 2009, is affirmed. The petition is denied.