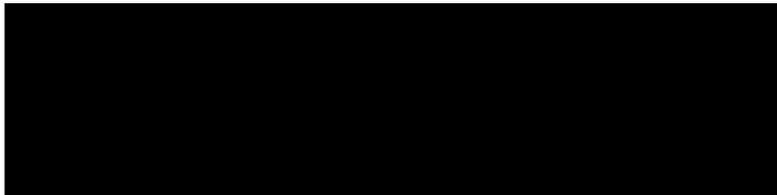


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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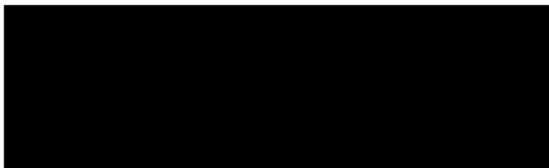


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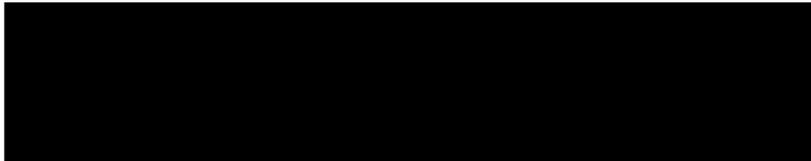
Date: **AUG 03 2010**

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:

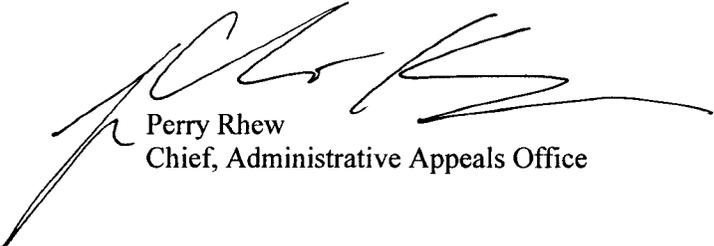


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
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 Immigration and Nationality Act (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 married her husband in good faith. Counsel filed a timely appeal on January 15, 2010.

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 the Dominican Republic who married J-T-¹ a citizen of the United States, on October 7, 2001. She filed the instant Form I-360 on December 18, 2007. The director issued two subsequent requests for additional evidence to which the petitioner, through previous counsel, submitted timely responses. After considering the evidence of record, including the petitioner's responses to his requests for additional evidence, the director denied the petition on December 14, 2009.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO agrees with the director's decision to deny this petition.

Good Faith Entry into Marriage

The sole issue on appeal is whether the petitioner has established that she married J-T- in good faith. As evidence of a good faith marriage, the petitioner submitted her testimony; the testimony of [REDACTED] a copy of her 2004 tax return; a copy of a residential lease; and two pictures taken on what appears to be the couple's wedding day. In his December 14, 2009 denial, the director found that the tax return was not evidence of a good faith marriage because the petitioner and J-T- had filed separate tax returns; that the residential lease was insufficient evidence of a good faith marriage because it was signed by J-T- only; that the testimony of Ms. [REDACTED] lacked probative details about the couple's relationship; and that the two pictures, which were undated and uncaptioned, provided no details about the couple's relationship.

The AAO agrees with the director's analysis. The petitioner's testimony, which focuses on the abuse to which she was subjected, provides no meaningful insight into the couple's relationship apart from that abuse. The petitioner failed to provide a detailed account of the couple's courtship and marriage, apart from the abuse, which would demonstrate her intentions upon entering the

¹ Name withheld to protect individual's identity.

marriage. For example, the petitioner fails to describe, in any meaningful detail, the couple's first introductions; the petitioner's first impressions of J-T-; their decision to date; their first date; their courtship; their decision to marry; their engagement; their wedding; or any of their shared experiences, apart from the abuse. With regard to the documentary evidence submitted by the petitioner, the AAO agrees with the director's finding that it does not establish a good faith marriage. As the 2004 tax return was filed separately, and the lease was not signed by the petitioner, neither of those documents are evidence of jointly shared financial responsibilities, and the two pictures of what appear to be the couple's wedding day are not evidence of the petitioner's intentions upon entering into the marriage. Finally, the AAO agrees with the director's finding that the testimony of Ms. [REDACTED] lacks probative information regarding the couple's relationship. For example, she fails to describe in detail any occasions on which she observed the couple together, and offers no other details regarding the petitioner's feelings for J-T- prior to, and during, their marriage. While documentary evidence is not required to demonstrate entry into a marriage in good faith, the statements of the petitioner and Ms. [REDACTED] lack probative detail providing insight into the petitioner's intentions upon entering into the marriage.

Nor is approval of the Form I-130 (filed by J-T- on the petitioner's behalf) evidence of the petitioner's entry into the marriage in good faith, as counsel asserts on appeal. In general, the fact that a different visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. *See INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9th Cir. 2002) (In subsequent proceedings, "the approved petition might not *standing alone* prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws."). The petitioner's husband bore the burden of proof in the prior Form I-130 adjudication, in which he was required to establish his citizenship and the validity of their marriage. Section 201(b)(2)(A)(i) of the Act; 8 C.F.R. §§ 204.1(g), 204.2(a)(2). In contrast, in this case, the petitioner bears the burden of proof to establish not only the validity of their marriage, but also her own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act. The regulations for self-petitions under section 204(a)(1)(A)(iii) of the Act further explicate the statutory requirement of the self-petitioner's good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii). However, the regulations concerning spousal, immediate relative petitions contain no similar evidentiary requirements to establish the bona fides of the marriage except in cases of marriage fraud (8 C.F.R. § 204.2(a)(1)(ii)); marriages entered into when the alien spouse was in proceedings (8 C.F.R. § 204.2(a)(1)(iii)); and marriage within five years of the petitioner's obtainment of lawful permanent resident status (8 C.F.R. § 204.2(a)(1)(i)). Accordingly, approval of a Form I-130 is not prima facie evidence of the beneficiary's good-faith entry into marriage with her husband under section 204(a)(1)(A)(iii) of the Act

In the absence of both documentary evidence and detailed, probative testimony, the petitioner fails to establish her claim. The petitioner has not overcome this ground for the director's denial on appeal. The petitioner has failed to establish that she entered into marriage with J-T- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that she married J-T- in good faith. The petitioner, therefore, is 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 this 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.