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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**

Bq

[Redacted]

FILE: [Redacted]
EAC 06 168 51031

Office: [Redacted]

Date: **AUG 10 2010**

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:

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 [Redacted]. 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,

[Redacted Signature]

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 married her ex-husband in good faith. Previous counsel filed a timely appeal on November 7, 2007, and the appellate submissions of previous and current counsel include a one-page legal argument attached to the Form I-290B, Notice of Appeal, a four-page brief, and additional testimonial evidence.

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.

[REDACTED] a citizen of the United States, on December 31, 2003. They ceased living together in November 2004, and divorced in November 2005. The petitioner filed the instant Form I-360 on May 8, 2006 and the director issued a subsequent request for additional evidence to which the petitioner, through previous counsel, submitted a timely response. After considering the evidence of record, including the petitioner's response to his request for additional evidence, the director denied the petition on October 11, 2007.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. [REDACTED]* 381 F.3d 143, 145 (3d Cir. 2004).

[REDACTED]

The sole issue on appeal is whether the petitioner has established that she married B-H- in good faith. As evidence of a good faith marriage, the record contains the petitioner's testimony; the testimony of [REDACTED] and [REDACTED] a psychological evaluation; a copy of the couple's 2004 tax return and copies of correspondence from the Internal Revenue Service (IRS); a copy of the petitioner's health insurance identification card and a copy of an Explanation of Benefits (EOB) relating to that policy; copies of utility statements and a credit card; and two pictures of the couple. In his October 11, 2007 denial, the director stated that the tax return and IRS correspondence were not evidence of a good faith marriage because there was no evidence that the tax return had actually been filed, and the IRS correspondence was dated after the couple had ceased living together; that the credit card and health insurance identification card was not evidence of a good faith marriage because it was issued in the petitioner's name only; and that the utility statements were not evidence of a good faith marriage because they were issued in B-H-'s name

¹ Name withheld to protect individual's identity.

only. In addition, the director noted that the petitioner's mere assertion of good faith was insufficient to establish that she had entered into the marriage in good faith.

On appeal, both current and former counsel contend that the petitioner has established that she married [REDACTED] in good faith, and that the petition should have been approved.

In her August 15, 2006 self-affidavit, the petitioner stated that she entered into the marriage in good faith "after the long relationships between our parents and the two families." She stated that she thought her marriage would be perfect, but that after she arrived in the United States and married him, she realized that [REDACTED] was not the person she thought he was.

In his January 31, 2006 affidavit, [REDACTED] stated that the petitioner told him that she met [REDACTED] for the first time when they were ten years old and that they saw each other often because their families visited one another frequently. [REDACTED] stated that, according to the petitioner, the parents of [REDACTED] and the petitioner intended for the two to eventually marry. [REDACTED] stated that although the petitioner was not aware of such intentions, she voiced no objections when the marriage was arranged because it was still a very common practice in that part of China at that time.

In her February 1, 2006 affidavit, [REDACTED] one of the petitioner's co-workers, stated that the petitioner told her that the two sets of parents were friends with one another.

In his November 6, 2007 affidavit submitted on appeal, [REDACTED] a friend of the petitioner, stated that the petitioner told her that she and [REDACTED] had been friends since childhood, and that the two were engaged to be married from an early age.

The record also contains a letter from [REDACTED] who interviewed the petitioner on November 8, 2005. In his letter, [REDACTED] stated that the petitioner told him that her parents, and B-H's parents, have been friends for many years and that she has known [REDACTED] since they were children. He stated further that the petitioner reported that although [REDACTED] immigrated to the United States in 1994 at the age of fifteen, when he returned to China in 1997 for a vacation the two began dating, and became engaged in 1999. According to [REDACTED] the petitioner told him that her parents had trust and confidence in [REDACTED] as a potential husband due to the longstanding friendship between the two families.

In his April 3, 2006 letter of support, previous counsel stated that the petitioner met [REDACTED] in 1990, at the age of eleven, while they were still living in China. Their families were close friends, and visited one another often. Previous counsel stated further that both sets of parents wanted the two to marry when they became adults. He stated that although [REDACTED] immigrated to the United States at the age of fifteen, he later returned to China and proposed marriage.

In the attachment to the Form I-290B, previous counsel stated that the petitioner lacks documentation of a good faith marriage because B-H controls all legal documents, and that the preponderance of the evidence establishes that the petitioner married [REDACTED] in good faith.

In his April 17, 2009 brief, current counsel cites to the testimonial evidence of record as establishing that the petitioner married ██████████ in good faith. Counsel also references the “any credible evidence” standard contained at section 204(a)(1)(J) of the Act, and argues that this standard ██████████ to all elements of petitions submitted by spouses and children subject to battery or extreme cruelty.”

The AAO has reviewed the entire record and finds that, in sum, the relevant evidence fails to establish that the petitioner married ██████████ in good faith. The petitioner’s August 15, 2006 self-affidavit lacks sufficient probative detail providing any insight into her intentions upon entering into the marriage. As noted, she stated only she entered into the marriage in good faith “after the long relationships between our parents and the two families,” and that she thought her marriage would be perfect. The petitioner provided no probative details about her initial relationship with ██████████, their subsequent interactions, their courtship, wedding ceremony, shared residence, and experiences. The testimony of ██████████ is of little probative value toward an evaluation of the petitioner’s intentions upon entering the marriage, as they fail to describe in detail any occasions on which they observed the couple together, and offer no other detailed and probative information regarding the petitioner’s feelings for ██████████ - prior to and during their marriage.

In regards to the relevant documentary evidence, the tax return and correspondence are not evidence of a good faith marriage: both sets of documents were prepared after the two had stopped living together as a married couple. The health insurance identification card names the petitioner only; the EOB was dated after the two stopped living together as a married couple; the utility statements were issued in ██████████ name only, and were also issued after the two stopped living together as a married couple; and the credit card was issued in the petitioner’s name only. None of this evidence, therefore, establishes the petitioner’s good faith entry into the marriage or any shared financial obligations. Nor do the two photographs, which were neither dated nor captioned, establish the petitioner’s good faith entry into the marriage. Rather, they establish only that the two individuals were together on two separate occasions.

On appeal, counsel asserts that the director incorrectly applied the “any credible evidence” standard and denied the petition for lack of corroborative documentation. To the extent that the director indicated that documentary evidence is required to establish a self-petitioner’s entry into the marriage in good faith, that portion of his decision is hereby withdrawn. Self-petitioners may, but are not required to submit primary evidence. 8 C.F.R. §§ 204.2(c)(2)(i), (vii).

Nonetheless, counsel has conflated the evidentiary standard set forth by section 204(a)(1)(J) of the Act with the petitioner’s burden of proof. Section 204(a)(1)(J) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to “consider any credible evidence relevant to the petition.” *Id.* 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 [agency’s] sole discretion.” 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 establishing the petitioner’s claim list examples of the types of documents that may be submitted and reiterates, “All forms of relevant credible evidence

will be considered.” 8 ██████████ However, in this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish 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.

The petitioner has failed to establish by a preponderance of the relevant evidence that she entered into marriage with ██████ in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proving eligibility for the benefit sought 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.