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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

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **AUG 11 2010**

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iv) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iv)

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 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 Director, Vermont Service Center, denied the immigrant visa petition. 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 because the petitioner did not establish that she married her spouse in good faith.

On appeal, counsel submits a brief.

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.

\* \* \*

(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 in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of China who entered the United States on November 6, 2005, as a B-1 nonimmigrant visitor for business. On June 20, 2008, the petitioner married [REDACTED]<sup>1</sup>, a U.S. citizen, in Cobb County, Georgia.

The petitioner filed the instant Form I-360 on February 25, 2009. On March 30, 2009, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On September 23, 2009, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite qualifying relationship, good moral character, and good-faith entry into the marriage. On December 18, 2009, the petitioner, through counsel, responded with additional evidence. On January 13, 2010, the director denied the instant I-360 petition because the petitioner did not establish that she married her spouse in good faith. On February 12, 2010, the petitioner, through counsel, timely appealed the denial of the instant I-360 petition. On March 2, 2010, the director denied the I-485 application.

On appeal, the petitioner's counsel asserts that the petition should be approved, as the director's decision conflicts with congressional intent, court decisions, and administrative practices.

#### *Good Faith Entry into Marriage*

The record contains the following evidence relevant to the petitioner's claim that she married her husband in good faith:

- The petitioner's personal affidavit dated February 10, 2009;
- An affidavit from the beneficiary's sister, [REDACTED] dated October 30, 2009;
- An affidavit from the petitioner's friend, [REDACTED] dated October 20, 2009;
- An affidavit from the petitioner's friend, [REDACTED] dated November 10, 2009;
- Photographs of the petitioner and [REDACTED];
- Greeting cards;

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<sup>1</sup> Name withheld to protect individual's identity.

- A hotel invoice; and
- Telephone and credit card records.

In her February 10, 2009 affidavit, the petitioner states, in part, that she met [REDACTED] in September 2007, at the Chinese restaurant where she worked, when [REDACTED] and his Chinese friend were having dinner. The petitioner states that [REDACTED]'s Chinese friend introduced her to [REDACTED], and that soon after, they began dating. The petitioner states that [REDACTED] proposed to her on Valentine's Day in 2008, but she did not accept the ring right away because "it was [her] profound conviction that marriage was nothing to be taken lightly" and because "the traumatic and embittered experience of [her] divorce . . . still rankles in [her] mind." The petitioner states that her courtship with [REDACTED] continued through May, and that she and [REDACTED] were married on June 20, 2008.

In her October 30, 2009 affidavit, Ms. [REDACTED] states, in relevant part, that she attended the marriage ceremony of her brother, [REDACTED], and the petitioner.

In her October 20, 2009 affidavit, Ms. [REDACTED] states, in relevant part, that, before and after they were married, the petitioner and [REDACTED] were invited to parties held at her house.

In an affidavit dated November 10, 2009, [REDACTED] states, in relevant part, that the petitioner was included on his/her cellular phone account when the petitioner came to the United States because she did not have a social security number, and that, upon her marriage to [REDACTED], the petitioner cancelled her number.

On appeal, the petitioner's counsel asserts that the petition should be approved, as the director's decision conflicts with congressional intent because the director failed to "properly consider 'all credible evidence.'" Counsel conflates the evidentiary standard prescribed by section 204(a)(1)(J) of the Act with the petitioner's burden of proof. The statute mandates that U.S. Citizenship and Immigration Services (USCIS) "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This provision prescribes an evidentiary standard. See 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). This evidentiary standard is not equivalent to the petitioner's burden of proof in this case, which, as in all visa petition proceedings, is the preponderance of the evidence. *In re Cabrera*, 21 I&N Dec. 589 (BIA 1996); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the 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. §§ 103.2(b)(2)(iii); 204.2(c)(2)(1). In his decision, the director addressed the relevant evidence and explained the insufficiency of that evidence to establish the petitioner's eligibility. We find no error in the director's assessment of the relevant evidence.

Counsel further contends that the director's decision is inconsistent with a decision of the Ninth Circuit Court of Appeals and a legacy Immigration and Naturalization Service memorandum

indicating that the mandate to consider “any credible evidence” was meant to provide “a less restrictive, more flexible, and more liberal evidence standard.” Counsel fails, however, to articulate how the relevant affidavits and documents establish, under the applicable standard of a preponderance of the evidence, that the petitioner entered into her marriage in good faith. Counsel asserts that the photos “showed [the petitioner] and [redacted] . . . together in a variety of settings at the moments of love and intimacy,” and that the affidavit from [redacted]’s sister “was particularly relevant and convincing. . . . The mere fact that she testified to the [petitioner’s] marriage to [redacted] and her attendance at their wedding ceremony in spite of the tension in the marital relationship speaks volumes for the bona fides of the marriage.” The record, which has not been supplemented on appeal, does not support counsel’s claims.

The AAO acknowledges the testimony and documentation listed above. As stated by the director, the cell phone records are in [redacted]’s name only and are dated prior to his marriage to the petitioner, and the affidavits submitted on the petitioner’s behalf are brief and provide no probative details regarding the petitioner’s relationship with her spouse. In addition, the credit card statement is incomplete and does not reflect either the name of the petitioner or [redacted]. The hotel invoice, wedding cards, and wedding photos show that the petitioner and [redacted] were married, but these documents, along with the remaining greeting cards and photographs, do not establish that the petitioner married her husband in good faith.

Apart from the documentation discussed herein, the record also contains unexplained inconsistencies regarding the petitioner’s residence with [redacted]. For example, on the petition the petitioner lists the last address at which she lived with [redacted] as: [redacted] and the last date that she lived together with [redacted] at this address as: December 10, 2008. In her February 10, 2009 affidavit, however, the petitioner describes an incident that had occurred “[a] couple of days back,” when she found [redacted] in the bathroom around midnight searching through her handbag. Thus, it appears that the petitioner was still living with [redacted] in February 2009, which is inconsistent with the December 10, 2008 date that she indicated on the petition. In addition, the petitioner’s Georgia driver’s license, which was issued on May 12, 2009, also reflects the [redacted] address. Thus, it appears that the petitioner was still living at the [redacted] address in May of 2009, which, again, is inconsistent with the December 10, 2008 date that she indicated on the petition. The record contains no explanation for these inconsistencies.

The noted deficiencies in the relevant documents, the lack of probative detail in the affidavits and the unexplained inconsistencies, discussed above, significantly detract from the credibility of the petitioner’s claim. Accordingly, the petitioner has not established that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has not demonstrated that she married [redacted] 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.

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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.