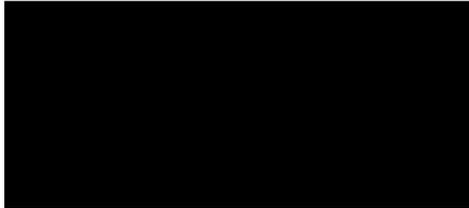


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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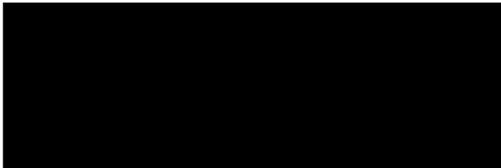
IN RE:

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:

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 the \$630 fee. 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 petition will be denied.

The petitioner seeks immigrant classification pursuant to 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.

On May 26, 2010, the director denied the petition, determining that the petitioner had not established that she had entered into the marriage in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief and documents in support of the appeal.

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 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 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 under section 204(a)(1)(A)(iii) of the Act are further explained 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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Jamaica. She claims she entered the United States in September 2002 without inspection. She married V-M-,¹ the United States citizen spouse on January 9, 2007 in the State of New York. On or about July 10, 2007, V-M- filed a Form I-130, Petition for Alien Relative on the petitioner's behalf. United States Citizenship and Immigration Services' (USCIS) approved the Form I-130 on September 20, 2007. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on July 17, 2008. The petitioner indicated on the Form I-360 that she had resided with V-M- from August 2006 to January 2008.

¹ Name withheld to protect the individual's identity.

Good Faith Entry into Marriage

The petitioner provided the following documentation to establish that she had entered into her marriage in good faith:

- The petitioner's personal statements dated June 30, 2008, October 3, 2008, and June 6, 2009;
- An August 29, 2008 affidavit signed by [REDACTED]
- An October 4, 2008 affidavit signed by [REDACTED] and [REDACTED]
- An October 9, 2008 affidavit signed by [REDACTED] on October 16, 2008.

In the petitioner's June 30, 2008 statement, she stated generally that: she met V-M- in July 2006 as both resided in the same neighborhood; she and V-M- struck up a friendship after running into each other on several occasions and they became lovers; she and V-M- spent time on the telephone, in each other's company, and went on several dates; and about one week after a physical altercation, V-M- moved into her home in approximately August 2006. The petitioner declared that V-M- proposed to her but she initially refused but later agreed and that the couple discussed plans for the future like the number of children they intended to raise, their employment prospects and that V-M- would petition for her after their marriage. The petitioner noted that she paid all the bills and took care of V-M- because of her love for him. The petitioner also noted that: the couple married January 9, 2007; at some point she moved to a new residence and V-M- moved back in with his parents; in June 2007, the couple reconciled and V-M- moved in with her again; and in December 2007, after V-M- learned that she had lodged a complaint with the police regarding his behavior, he moved out of their marital home.

In the petitioner's October 3, 2008 personal statement, the petitioner repeated the previous information provided, and added that: she entered into her marriage with V-M- in good faith and not to evade immigration laws; V-M- depended on her support and room and board from August 2006 until their marriage because he was unemployed; on August 12, 2006 she asked V-M- to move out and he filed a police report against her that was dismissed on October 31, 2006; and after the dismissal he moved back into her house.

In the petitioner's June 6, 2009 personal statement, she reiterated that she had entered into her marriage with V-M- in good faith and not to evade immigration laws and stated that the couple cohabitated as husband and wife from January 9, 2007 until December 29, 2007 and that the couple held themselves out as husband and wife and loved each other dearly. The petitioner indicated that she did not maintain documentary evidence of their cohabitation mostly because she was an undocumented alien and did not have a social security number that was required of financial institutions and service providers. The petitioner noted that V-M- maintained a bank account that the couple operated jointly, but that did not include her name and that V-M- had taken all the documentation when the couple separated. The petitioner also indicated that V-M- destroyed their wedding pictures. The petitioner referenced the Form I-130 filed by V-M- on her behalf, the temporary restraining order she filed against V-M-, and the fact that she was the sole breadwinner for

the couple for part of the time, as indicia of a good faith marriage.

In the affidavit dated August 29, 2008 signed by [REDACTED] declared that she had known the petitioner for one year as a neighbor, that she also knew V-M- for about one year having first met him when he moved in with the petitioner in June 2007, and that she learned that the couple had married in January 2007. [REDACTED] furthered declared that she visited the couple's apartment, that they exhibited open affection for each other from the time of their civil wedding on January 9, 2007 until they separated in January 2008 and from her conversations and extensive interactions with the couple, she believed that theirs was a bona fide marriage. In the October 4, 2008 affidavit of [REDACTED] attested to the petitioner's good moral character but did not offer any information regarding the petitioner's good faith in entering into her marriage. In the October 9, 2008 affidavit of the petitioner's landlord, [REDACTED] signed on October 16, 2008, [REDACTED] indicated that the petitioner had occupied the apartment for a long time, that she would come to the store to buy things, that after V-M- moved in with her she always had a smile on her face, and that she always paid the rent on time.

The director determined that the statements submitted by the petitioner were vague and lacked sufficient probative detail of the petitioner's relationship with V-M- prior to and during her marriage. The director found that the petitioner had not established that she had entered into the marriage in good faith.

On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient evidence to meet the "any credible evidence" standard. Counsel references the petitioner's statements, the affidavit of [REDACTED] the affidavit of [REDACTED] and the approved Form I-130 petition as sufficient evidence that the petitioner had entered into the marriage in good faith.

The AAO acknowledges that section 204(a)(1)(J) of the Act requires USCIS to "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 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 sole discretion of" USCIS. 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 demonstrating the requisite good faith lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). In this matter, however, 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. While USCIS must consider all credible evidence relevant to a petitioner's claim, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. 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). To require otherwise would render the adjudicatory process meaningless.

Upon review of the information in the record, the petitioner has not provided detailed information that demonstrates that she entered into the marriage in good faith. As the director determined, the petitioner's statements do not provide the requisite detail that would establish that she entered into the marriage in good faith. The petitioner states generally that she met V-M-, they went out on a few dates, he moved into her apartment because his parents kicked him out of their home, that he proposed several times and she finally accepted, and that she did not enter into the marriage to evade immigration laws. The petitioner does not provide any of the detail regarding the couple's plans upon marrying or their interactions subsequent to the marriage except as it related to the claimed abuse. A finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage to determine if this was a marriage of two people intending to share a life together. In this matter, the petitioner provided only a cursory description of her introduction to and interactions with her spouse prior to the marriage and during the marriage, except as her interactions related to the claimed abuse.

The affidavits submitted on the petitioner's behalf also fail to include information regarding the shared experiences of the couple. For example, although [REDACTED] claims that she had extensive interactions with the couple, she does not detail those extensive interactions. Moreover, [REDACTED] indication that the couple exhibited open affection for each other from the time of their civil wedding on January 9, 2007 until they separated in January 2008, does not correspond with her statement that she met the petitioner a year prior to her affidavit dated in August 2008 when the petitioner became her neighbor or with her statement that she met V-M- only when he moved into the petitioner's apartment in June 2007. Neither the affidavit of [REDACTED] nor [REDACTED] provides the requisite detailed information that would assist in establishing the petitioner's intent in entering into the marriage. The affiants do not describe in detail any particular incidents wherein they witnessed the alleged bona fides of the couple's marital relationship. The general statements submitted do not substantiate that the petitioner's intent upon marrying V-M- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the intent of the petitioner upon entering into the marriage.

The Form I-130 filed on behalf of the petitioner that was initially approved, although relevant, is not prima facie evidence of the petitioner's good faith in entering into the marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The fact that a 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."). Again, in this matter the petitioner provided only a cursory description of her interactions with V-M- prior to and during their marriage, a description that falls far short of meeting her burden of proof. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf is not probative in supporting a finding that she entered into the marriage in good faith. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with V-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Residence

Beyond the decision of the director, the petitioner has also failed to provide sufficient probative information establishing that she and V-M- established a joint residence. Again, the petitioner's statements and the affidavits submitted on her behalf fail to provide the requisite detail that would establish that she and V-M- resided together. The term "residence" means the place of general abode; the place of general abode of a person means his or her principal, actual dwelling place in fact, without regard to intent. Section 101(a)(33) of the Act. Although the petitioner has provided information of her residence, she has failed to provide sufficient probative testimony that V-M- resided at her same addresses. The petitioner has failed to establish that she resided with V-M- as required to establish eligibility for this benefit.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed.