

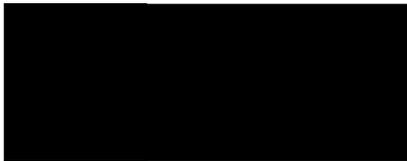
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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U.S. Citizenship
and Immigration
Services



B9

Date: DEC 19 2011

Office: VERMONT SERVICE CENTER File:



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:

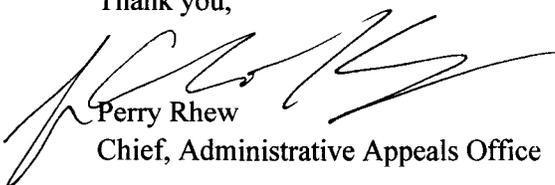


INSTRUCTIONS:

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, (“the 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 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, resided with her U.S. citizen husband and entered into marriage with her husband in good faith.

On appeal, counsel submits a supplemental brief and an additional statement from the petitioner.

Relevant Law and Regulations

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 further 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 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:

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Trinidad and Tobago who entered the United States on October 9, 2004, as a nonimmigrant visitor for business (B-1). The petitioner married a U.S. citizen on August 18, 2005 in Detroit, Michigan. The petitioner filed the instant Form I-360 on April 10, 2009. The director subsequently issued a Request for Evidence (RFE) of the petitioner's qualifying relationship as the spouse of a U.S. citizen, good-faith entry into the marriage and her husband's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to fully establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not fully overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director denied the petition for failure to establish a qualifying relationship with a U.S. citizen and corresponding eligibility for immediate relative classification because in the petitioner's initial

declaration she stated that she married her boyfriend, R-W-, after her separation from M-J-. Remarriage during the pendency of the Form I-360 precludes its approval. 8 C.F.R. § 204.2(c)(1)(ii).

On appeal, counsel asserts that the director's conclusion is "clearly erroneous" because the petitioner later submitted a supplemental affidavit explaining that she was never married to R-W-. Counsel notes that the director's "mistaken impression" that the petitioner wed R-W- was "due to a typographical error in the initial statement." Upon a review of the record, we find counsel's assertion to be persuasive. The petitioner stated in her initial declaration, "I ended up in another abusive relationship with a man named [R-W-], *though I married him*" (emphasis added). In response to the RFE, the petitioner submitted an affidavit where she explained that her attorney made a typographical mistake and her declaration should have read "though I never married him." She asserted that she was never married to R-W- and has not divorced M-J-. The petitioner's explanation is reasonable and is not contradicted by any other evidence of record.

The petitioner submitted a copy of a marriage certificate from Michigan showing that she and M-J- wed in Detroit on August 18, 2005. She also provided a copy of M-J-'s Michigan birth certificate as evidence of his U.S. citizenship. The petitioner has thus established a qualifying relationship with a U.S. citizen and corresponding eligibility for immediate relative classification as required by subsections 204(a)(1)(A)(iii)(II)(aa),(cc) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below fails to demonstrate the petitioner's entry into her marriage in good faith. In her initial declaration, the petitioner stated that she met M-J- in October 2004 through her friend, [REDACTED]. She stated that they "had a lot in common" and she "fell in love with him." She recalled that she drove from New York to Michigan to visit him. The petitioner noted that after they wed, she moved into M-J-'s residence in [REDACTED] Michigan. The petitioner's declaration does not describe her courtship with her husband, their wedding ceremony, joint residence or any of their shared experiences, apart from the abuse. In response to the RFE, the petitioner stated that she does not have joint documents with M-J- because "he was a money launderer and a criminal, and he wanted to avoid detection by the IRS." She noted that she never received any mail at their apartment because M-J- had the mailbox keys and would not let her check the mail. Although the petitioner offered a reasonable explanation of her failure to present joint documents, she did not further describe her relationship with her husband and good-faith intentions in entering the marriage.

In response to the RFE, the petitioner submitted a letter from [REDACTED] who briefly discussed the petitioner's marriage, but spoke predominately of the abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. [REDACTED] stated that she introduced M-J- to the petitioner in 2005 and "believed they would be compatible." She indicated that she "thought they were happy because at the wedding ceremony they seemed genuinely satisfied with one another." [REDACTED] letter is vague and provides no specific information demonstrating that the petitioner married her husband in good faith.

In denying the petition, the director noted that on the petitioner's initial statement, she claimed that M-J- only married her to receive a tax credit. The petitioner had stated, "[m]y husband would also tell me that he only married me because he thought I would get money to pay off his taxes." On appeal, counsel asserts, "[i]t is inappropriate and erroneous for USCIS, in a case based on domestic violence, to seize upon a hurtful comment of the abuser, a comment which was part of the narrative of abuse, in order to discredit the victim." While counsel has made a persuasive argument on this specific point, he has not otherwise addressed the petitioner's failure to demonstrate her good-faith intentions when entering her marriage.

The relevant evidence of the petitioner's good-faith marriage consists of four photographs of her wedding ceremony, her declaration and the letter from her friend, [REDACTED]. In the petitioner's declaration, she failed to describe her courtship with her husband, their wedding ceremony, joint residence or any of their shared experiences, apart from the abuse. The letter from [REDACTED] fails to discuss in probative detail her observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate by a preponderance of the evidence that she 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

On the Form I-360, the petitioner stated that she lived with her husband from August 2005 until April 2006 and that their last joint address was in [REDACTED]. The director noted that the petitioner's affidavit states that she separated from M-J- three months after their marriage, which is inconsistent with the dates listed on her Form I-360. On appeal, the petitioner asserts in an affidavit that she gave her attorney incorrect dates by mistake. She states that she now remembers that she separated from her husband in early December 2005.

As discussed, the petitioner has offered a reasonable explanation of her failure to provide joint documentary evidence. However, in her declaration she failed to describe her joint residence with her husband or their shared residential routines in any detail, apart from the abuse. In the denial notice, the director notified the petitioner that on appeal she could submit affidavits from friends and family who can verify that she resided with her spouse. The petitioner failed to submit such evidence. [REDACTED] letter, which was submitted in response to the RFE, does not describe any visits to the petitioner's residence with M-J-. The petitioner has not offered any other evidence of her joint residence with her husband. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has established a qualifying relationship with a U.S. citizen and corresponding eligibility for immediate relative classification. However, she has failed to overcome the director's determinations that she did not reside with her husband and did not enter into their marriage in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.