

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



U.S. Citizenship
and Immigration
Services

Bq

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

FEB 08 2011

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:

SELF-REPRESENTED

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 \$630. 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 citizen of the United States.

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. On appeal, the petitioner submits an argument made on the Form I-290B, Notice of Appeal, and copies of previously-submitted documents.

Applicable Law

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, the following:

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 standard and 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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Ecuador, married M-R-¹ a citizen of the United States, on April 12, 1996. She filed the instant Form I-360 on September 27, 2004. The director issued two subsequent requests for additional evidence, to which the petitioner filed timely responses. After considering the evidence of record, including the petitioner's responses to the requests for additional evidence, the director denied the petition on August 4, 2005.

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, we find that the petitioner has failed to overcome the director's ground for denying this petition.

Good Faith Entry into Marriage

The sole issue before the AAO on appeal is whether the petitioner has established that she married M-R- in good faith. The petitioner argues on appeal that the couple's year-long courtship and intimacy "cannot be ignored," and that she in fact married M-R- in good faith.

The record also contains a letter from [REDACTED] stated that the petitioner told her that after marrying M-R-, she had an extramarital affair with her first husband which resulted in the birth of a child.

¹ Name withheld to protect individual's identity.

The record also contains letters from friends and family members regarding the relationship. In her May 17, 2005 letter, [REDACTED] stated that she and the petitioner confided their problems to one another. In his May 9, 2005 letter, [REDACTED] the petitioner's uncle, stated that he "did not have a good feeling about" M-R-, and advised the petitioner not to marry him. Although the petitioner also submitted letters from [REDACTED] neither individual discussed the couple's relationship, apart from the abuse.

As further evidence of her good faith entry into the marriage, the petitioner also submitted telephone bills and correspondence from [REDACTED]; information regarding two bank accounts; tax information; and a copy of a lease extension.

When considered in the aggregate, the relevant testimonial and documentary evidence fails to establish that the petitioner married M-R- in good faith. The testimony of the petitioner lacks probative details regarding the relationship providing insight into her intentions upon entering into the marriage, and provides very little information regarding any shared experiences, apart from the abuse. For example, the petitioner fails to describe in probative detail the couple's first introductions, their courtship, their engagement, or their wedding ceremony. In short, the petitioner failed to offer any meaningful insight into the couple's courtship and decision to marry. Nor does the petitioner describe in probative detail any of their shared experiences or joint obligations. Nor does she describe the impact of her extramarital affair and subsequent pregnancy on the marriage. Her statement on appeal that she believed M-R- was the father of the child is not credible, as the child's contemporaneously-issued birth certificate named the petitioner's first husband as the father of the child. The statements from the petitioner's affiants also fail to describe the couple's relationship in probative detail.

Nor does the documentary evidence of record establish that the petitioner married M-R- in good faith. The bank statements from First Federal are not evidence of shared financial obligations, as the account was held by M-R- "in trust for" the petitioner and, as such, it is not clear that the petitioner actually had access to it. Although both the petitioner and M-R- are named as owners of [REDACTED] the single statement submitted by the petitioner showed a balance of \$29.47 with no transactions and, as such, it is not evident that the petitioner and M-R- drew from this account to pay for their joint expenses. Nor are the four income tax records evidence that she entered into the marriage in good faith. First, there is no evidence that the 2002 and 2003 returns submitted by the petitioner were actually filed. With regard to the couple's 1998 and 1999 tax filings, we note that these returns were not initially filed in the married, filing jointly category: they were amended to reflect that filing status in May 2002, one month prior to the filing of the petitioner's permanent residency petition. Nor is the "Agreement Extending Term of Sublease" evidence that the petitioner married M-R- in good faith, as the sublease it extended, and which is referenced in the document, was not submitted.

The petitioner has failed to establish that she entered into marriage with M-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to demonstrate that she married M-R- in good faith. Accordingly, she is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and her petition must remain 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.