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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



U.S. Citizenship
and Immigration
Services



B9

FILE:



Office: VERMONT SERVICE CENTER

Date:

IN RE:

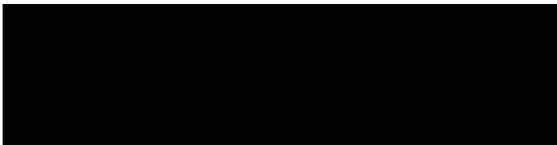
Petitioner:



FEB 15 2011

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 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 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 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.

The director denied the petition because the petitioner did not establish that she married her husband in good faith.

On appeal, counsel asserts that the petitioner has met her burden of proof in establishing that she married her husband in good faith. In support of her contentions, counsel submits a brief and additional evidence, including the petitioner's medical records from Planned Parenthood and statements from the petitioner's acquaintances.

As set out below, the AAO concurs with the director's determination that the petitioner has not established that she entered into the marriage in good faith.

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 national and citizen of Ethiopia, who entered the United States as a K-1 fiancée of a U.S. citizen (B-J-¹) on February 2, 2007. On April 11, 2007, the petitioner married B-J-.

The petitioner filed the instant Form I-360 on June 22, 2009. On December 11, 2009, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite abuse and good faith entry into the marriage. The petitioner, through counsel, responded with additional evidence. On August 9, 2010, the director denied the instant I-360 petition because the petitioner did not establish that she married her husband in good faith. The petitioner, through counsel, timely appealed the denial of the instant I-360 petition.

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:

- Statements from the petitioner, dated May 4, 1980 [sic], submitted at the time of filing, and February 17, 2010, submitted in response to the RFE;
- A statement from the petitioner's cousin, [REDACTED] dated June 9, 2009, submitted at the time of filing;
- Two statements from [REDACTED] dated September 14, 2010 and September 26, 2010, respectively, submitted on appeal;

¹ Name withheld to protect individual's identity.

- Two statements from [REDACTED] dated September 23, 2010 and September 25, 2010, respectively, submitted on appeal;
- A statement from [REDACTED] dated September 17, 2010, submitted on appeal;
- A statement from [REDACTED] dated September 4, 2010, submitted on appeal;
- A statement from [REDACTED] dated September 13, 2010, submitted on appeal;
- A Mental Health Assessment dated February 10, 2010, from [REDACTED] submitted in response to the RFE;
- Medical records for the petitioner from Planned Parenthood, dated March 12, 2007 and June 1, 2007;
- A vehicle registration printout from the State of Oregon dated April 22, 2009, listing the petitioner and B-J- as the registered owners;
- Correspondence addressed to the petitioner from B-J-; and
- Photographs.

In her statement submitted at the time of filing, the petitioner states, in part, that: she was introduced to B-J- in 2005 through her cousin, as B-J- was one of her cousin's customers; her cousin, who usually talked to B-J- about social issues such as marriage, showed B-J- the petitioner's photograph whereupon he asked her cousin to introduce him to her; her cousin introduced the petitioner to B-J- by phone, and they continued to communicate by phone and email; B-J- told the petitioner he wanted to marry her and went to Ethiopia to visit her in September 2005, and stayed with her for one week; their relationship bonded and B-J- returned home and began the process for obtaining a K-1 fiancée visa on her behalf; the petitioner entered the United States as a K-1 nonimmigrant, married B-J-, and after a few weeks he started behaving strangely.

In her February 17, 2010 statement submitted in response to the RFE, the petitioner reiterates her testimony from her initial statement.

In a June 9, 2009 statement, [REDACTED] states, in part, that the petitioner and B-J- lived together "on Portland MLK and Going probably for four months."

In a September 14, 2010 statement, [REDACTED] states, in part, that he has known the petitioner for ten years and B-J- for three years and that, based on his personal knowledge, he "believe[s] that [their] marriage . . . was in good faith." In his September 26, 2010 statement, [REDACTED] states, in part, that he saw the petitioner "face to face with [B-J-]" and that they went to his/her house for dinner. [REDACTED] also states that the petitioner and B-J- lived together at that time as a married couple.

In her September 23, 2010 statement, [REDACTED] states, in part, that she has known the petitioner for 20 years and B-J- for four years and that, based on her personal knowledge, she "believe[s] that [their] marriage . . . was in good faith." In her September 25, 2010 statement, [REDACTED] states, in part, that the petitioner and B-J- lived together for three months and she "used to go to their apartment to visit and they had a happy life [with] each other."

In a statement dated September 17, 2010, [REDACTED] states, in part, that she has known the

petitioner for ten years and B-J- for three and one half years and that, based on her personal knowledge, she “believe[s] that [their] marriage . . . was in good faith.”

In a statement dated September 4, 2010, [REDACTED] states, in part, that he has known the petitioner for 15 years and B-J- for four years and that, based on his personal knowledge, he “believe[s] that [their] marriage . . . was in good faith.”

In a statement dated September 13, 2010 [REDACTED] states, in part, that he has known the petitioner for 12 years and B-J- for four years and that, based on his personal knowledge, he “believe[s] that [their] marriage . . . was in good faith.”

In a Mental Health Assessment dated February 10, 2010, [REDACTED] reiterates the petitioner’s testimony, as discussed above, and states further that the petitioner reported that: she and B-J- “enjoyed their time together” for the first few months after their marriage, and the petitioner “spent her days organizing their home together and starting her new life in the United States”; at first B-J- “was very kind to her and gave her whatever she wanted” though she soon realized that he did not have as much money as he had indicated and they were struggling financially within a few months after the wedding.

The petitioner’s testimony and the affidavits submitted on her behalf fail to support a finding that she entered into her marriage in good faith. The petitioner’s testimony is general and vague and provides minimal information pertinent to the circumstances of her courtship with her husband, their decision to get married, their wedding, and their shared experiences, apart from the alleged abuse. In addition, the record contains inconsistencies and/or deficiencies. For example, in her Mental Health Assessment dated February 10, 2010, [REDACTED] states that the petitioner reported that she and B-J- enjoyed their time together “[f]or the first few months after marriage,” which is inconsistent with the petitioner’s February 17, 2010 statement, in which she asserts that B-J- began to rape her one month after her February 2, 2007 entry into the United States. In addition, the statements submitted on the petitioner’s behalf are general and vague and provide minimal information pertinent to the circumstances of the courtship, marriage, and shared experiences of the petitioner and B-J-. For example, [REDACTED] states that the petitioner and B-J- lived together “probably for four months.” [REDACTED] states that he saw the petitioner and B-J- face-to-face and they went to his house for dinner. [REDACTED] states that the petitioner and B-J- lived together for three months and she “used to go to their apartment to visit and they had a happy life together.” [REDACTED]

[REDACTED] all state that based on their personal knowledge, they “believe that [their] marriage . . . was in good faith.” Again, these statements are general and vague and provide minimal information as evidence of a good-faith marriage. In addition, while the record contains a vehicle registration printout from the State of Oregon dated April 22, 2009, listing the petitioner and B-J- as the registered owners, the registration is dated almost two years after the last date that the petitioner claimed she lived with B-J-. The record contains no explanation for this inconsistency. The photographs confirm that the petitioner and P-K- were pictured together, but these documents, along with the other evidence in the record, do not establish the petitioner’s good-faith entry into the marriage.

On appeal, counsel implies that the issuance of a K-1 visa to the petitioner at a U.S. Consulate abroad is evidence of her good faith entry into her marriage. We note that the petitioner of an I-129F Fiancée Petition bears the burden establishing eligibility for the K-1 visa, not the intended fiancée. Even if a petitioner has entered the United States as a K-1 fiancée, she must still establish that she entered into her marriage in good faith when seeking classification as a battered spouse under section 204(a)(1)(A)(iii) of the Act.

In this case, we do not find the petitioner's evidence sufficient to meet her burden of proof. The relevant evidence fails to demonstrate that the petitioner married her husband in good faith, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(ix). The petitioner also has not resolved the inconsistencies and/or deficiencies discussed herein that diminish the evidentiary value of her testimony and the testimony on her behalf. Accordingly, the AAO concurs with the findings of the director that the petitioner failed to establish 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.

The petition will be denied and the appeal dismissed for the above stated reasons. 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.