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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:

FEB 15 2011

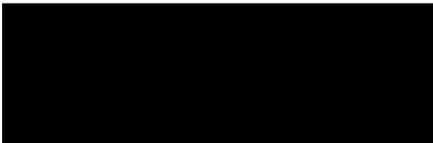
IN RE:

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 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 evidence establishes that the petitioner married her husband in good faith. In support of her contentions, counsel submits a statement and additional evidence, including: an undated statement from the petitioner; a statement from [REDACTED] dated August 6, 2010; a DD Form 1172, Application for Uniformed Services Identification Card; email messages between the petitioner and her husband; an International Family Booklet and translation; and photographs.

As set out below, the AAO concurs with the director's determination that the petitioner has not established that she married her husband 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.

Facts and Procedural History

The petitioner in this case is a native and citizen of Iraq who entered the United States as a K-1 fiancée of a U.S. citizen (D-B-¹) on November 13, 2008. On December 2, 2008, the petitioner married D-B- in Temple, Texas.

The petitioner filed the instant Form I-360 on September 1, 2009, and concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On September 10, 2009, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character. The petitioner, through counsel, responded with additional evidence. On January 27, 2010, the director issued a second RFE of, *inter alia*, the requisite abuse and good-faith entry into the marriage. The petitioner, through counsel, responded with additional evidence. On July 30, 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

¹ Name withheld to protect individual's identity.

husband in good faith:

- An undated statement from the petitioner submitted at the time of filing, a statement dated April 23, 2010, submitted in response to the RFE, and an undated statement submitted on appeal;
- A partial Apartment Lease Contract dated April 17, 2009, for the petitioner and D-B-, for Apartment [REDACTED] at Cabinet A, Slide 327A, in Temple, Texas, submitted at the time of filing;
- A Power of Attorney signed by D-B- on October 22, 2008, appointing the petitioner as his attorney-in-fact, submitted at the time of filing;
- A Statement of Security Deposit Accounts dated September 17, 2009, addressed to D-B- at [REDACTED] listing the petitioner and D-B- as residents, submitted in response to the RFE;
- A letter dated April 17, 2010, from [REDACTED] submitted in response to the RFE;
- A statement dated August 6, 2010, from [REDACTED], submitted on appeal;
- An unsigned a DD Form 1172, Application for Uniformed Services Identification Card, listing D-B- as the sponsor and the petitioner as the dependent, submitted on appeal;
- Email messages between the petitioner and D-B-, submitted on appeal;
- An International Family Booklet with translation, submitted on appeal; and
- Photographs.

In her undated statement from the petitioner submitted at the time of filing, the petitioner states, in part, that: she was working as a translator with the U.S. Army in Iraq in 2007 when she met D-B-, who was her commander; she and D-B- became good friends, started dating in secret, and grew closer after D-B- rescued her when she was kidnapped by insurgents; she and D-B- had talked about marriage prior to her kidnapping but discussed it more seriously after her kidnapping; when D-B- returned to Texas, he filed a fiancée petition for her and they corresponded by email; she loved D-B- and was excited to start her life with him; things “were very good” after she arrived in the United States, married D-B- and lived in an apartment that they shared with D-B-’s friend, [REDACTED] husband was in Iraq and she helped pay the rent and buy their food; and in April 2009, they rented their own apartment and did not live with [REDACTED] anymore.

In her April 23, 2010 statement submitted in response to the RFE, the petitioner states, in part, that she lived with D-B- in Temple, Texas, when she first arrived in the United States, she did not know many other people, and felt isolated. The petitioner also states that when she first started dating D-B- in Iraq, he seemed like “a great guy,” she fell in love with him, and wanted to marry him, but when she arrived in the United States, he was a different person.

In her undated statement submitted on appeal, the petitioner states, in part, that: she and D-B- communicated by email when he returned to the United States; they met in Turkey and got married on February 16, 2008, after which D-B- returned to the United States to continue with her visa processing; she and D-B- married again after she arrived in the United States and she thought everything was going well, but D-B- changed; D-B- had money problems and “didn’t want to add [her] name to his bank account . . . because [she] didn’t have a social security number”; she and D-B- “both risked a lot by deciding to have a relationship with each other in Iraq” and had to keep it a secret in order to stay out of

trouble; and because of their secret relationship, the petitioner does not “have many letters from people that knew [them] in Iraq.”

In his April 17, 2010 letter, [REDACTED] states, in part, that he has known the petitioner since June 2007, when he hired her as an interpreter in Iraq. [REDACTED] goes on to write a “letter of recommendation” on behalf of the petitioner.

In her August 6, 2010 statement, [REDACTED] states, in part, that she is writing a “letter of recommendation” for the petitioner, who is her sister. [REDACTED] states that she was aware of the petitioner’s relationship with D-B- after the petitioner confided in her, that the petitioner and D-B- met in 2007, when she was an interpreter and D-B- was a soldier, and that they were together everyday and fell in love.

The director denied the petition, finding that the petitioner submitted insufficient evidence to show that she entered into the marriage in good faith.

As discussed above, counsel states that the petition was denied in error and submits additional evidence in support of her contention.

The petitioner’s testimony and the testimony submitted on her behalf provides minimal information pertinent to the circumstances of the petitioner’s courtship with D-B-, their decision to get married, and their shared experiences, apart from the alleged abuse. In addition, the record contains inconsistencies. For example, in her first statement, the petitioner claims that things “were very good” after she arrived in the United States, and that they shared an apartment with D-B-’s friend, [REDACTED] who helped pay the rent and buy their food. This is inconsistent with the petitioner’s second statement submitted in response to the RFE, in which she makes no mention of [REDACTED] and states that shortly after her arrival in the United States, D-B- would leave her alone in the apartment without any food or money to buy food. The petitioner also makes no mention of their roommate, [REDACTED] in her third statement submitted on appeal. It is also noted that while the petitioner asserts in her initial statement and in her statement submitted on appeal that she and D-B- were “dating in secret,” she provides no probative details of their courtship in any of her testimony. In addition, while the AAO acknowledges [REDACTED] April 17, 2010 letter, in which he states, in part, that he has known the petitioner since June 2007 when he hired her as an interpreter in Iraq, he provides no probative details regarding the petitioner’s relationship with D-B-. Thus, [REDACTED] “letter of recommendation” for the petitioner does not establish her good-faith entry into the marriage. Likewise, [REDACTED] “letter of recommendation” for the petitioner, who is her sister, also fails to establish the petitioner’s good-faith entry into the marriage. While [REDACTED] states generally that the petitioner and D-B- fell in love, she provides provide no probative details regarding the petitioner’s relationship with D-B-. In addition, [REDACTED] states that D-B- “expressed a desire to find a way to give [the petitioner] a better life,” which led the petitioner and D-B- “to research on ways to get married.” Such a statement by [REDACTED] does not lend support to a conclusion that the petitioner entered into her marriage in good faith with an intent to establish a life with D-B-. Moreover, [REDACTED] states that the petitioner confided in her about her relationship with D-B-, and does not indicate that she personally witnessed the interactions between the

petitioner and D-B- before and after their marriage.

The email messages between the petitioner and D-B- that were submitted on appeal are also insufficient evidence of the petitioner's good faith entry into her marriage. The majority of the messages are from D-B- to the petitioner, and the few email messages from the petitioner to D-B- do not establish a good faith intent to enter into marriage with D-B-. The DD Form 1172, Application for Uniformed Services Identification Card, listing the D-B- as the sponsor and the petitioner as the dependent, is unsigned, and the record contains no evidence that this application was ever filed and/or processed, and thus it does not establish the petitioner's good-faith entry into the marriage. The photographs and the International Family Booklet confirm that the petitioner and D-B- were married and pictured together, but in light of the inconsistencies and the evidence already discussed herein, these documents, along with the apartment lease and the power-of-attorney, do not establish the petitioner's good-faith entry into the marriage.

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 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. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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.