

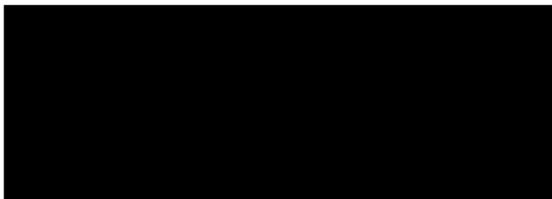
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B9



FILE:



Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:



FEB 22 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, revoked approval of the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains 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 her United States citizen spouse.

The director initially approved the petition. Upon subsequent review of the record, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition and ultimately revoked approval for the petitioner's failure to establish that she had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a brief, the petitioner's statement, and other documentation in support of the appeal.

#### *Applicable 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 based on his or her relationship to the abusive spouse, 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:

(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 set forth 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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Uganda. She entered the United States on or about September 10, 2004 as a B-2 visitor. On January 26, 2005, the petitioner married [REDACTED], the claimed abusive United States citizen. On March 15, 2005, [REDACTED] filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The couple was interviewed on December 12, 2005 for the Form I-130 petition. The Form I-130 was denied on September 15, 2006 and the Board of Immigration Appeals affirmed the decision on January 17, 2008. On July 2, 2007, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On May 12, 2008 the director approved the Form I-360. On June 30, 2008, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status and on March 24, 2009, the applicant was interviewed regarding her Form I-485. On April 20, 2010, the director issued a Notice of Intent to Revoke approval of the Form I-360 petition. Upon review of the record, including the petitioner's rebuttal to the NOIR, the director determined that the petitioner had not established that she had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and brief in support of the appeal. The record on appeal does not overcome the director's ground for revoking approval of the petition and the appeal will be dismissed.

*Good Faith*

As evidence of her good faith in entering into the marriage, the petitioner provided her statement, copies of leases, photocopies of life insurance policies, furniture receipts, and statements from [REDACTED]

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<sup>1</sup> Name withheld to protect the individual's identity.

The petitioner initially did not submit a statement describing her courtship, marriage, and subsequent life with [REDACTED]. The record, however, included a March 22, 2008 statement signed by the petitioner, in which she explains why another man's name, [REDACTED] is on her first son's birth certificate.<sup>2</sup> The petitioner stated that when she became pregnant, [REDACTED] did not want the child but she convinced [REDACTED] that she was being paid as a surrogate and although her name would have to be on the birth certificate, the agency would choose the father's name for the birth certificate. The petitioner stated that she did not have "any alternative but to come up with a different name on our child's birth certificate . . . ."

The record also included the petitioner's May 17, 2010 statement, in which she noted that she met [REDACTED] when he rented out the lower level of the house she was living in with her cousin. The petitioner noted that [REDACTED] treated her well, cooked for her, they watched movies together, and he was romantic so she did not object when he said he was going to marry her. The petitioner did not provide further detail regarding her courtship or subsequent marriage to [REDACTED] except as it related to the claimed abuse.

In the NOIR, the director noted that at the petitioner's March 24, 2009 interview with USCIS, she acknowledged that she had a second child on November 4, 2008 and that the father of the second child was [REDACTED] who was her friend and a real person. The director questioned why the petitioner would include the same name on both her children's birth certificates, in light of her prior indication that [REDACTED] was a fictitious name. In an August 18, 2010 rebuttal statement, the petitioner claimed that she made up the surrogacy story she told to [REDACTED] and used the name of a friend she had met online. She noted that she did not meet [REDACTED] in person until she attended a Ugandan American convention where she had a one-time encounter with [REDACTED] and became pregnant with her second child. In the director's decision, he noted that Ohio law required that both parties complete an Acknowledgment of Paternity form prior to the parents leaving the hospital or at a Child Support Enforcement Agency and, thus, requiring the parents to appear in person. On appeal, the petitioner claims that she filled out the paperwork placing [REDACTED] name on her children's birth certificates and that the law was not followed as the father was not required to acknowledge paternity in order to be placed on the birth certificate.

The petitioner's statements regarding the placement of [REDACTED] name on her children's birth certificates are inconsistent and not credible. The petitioner does not provide the requisite probative consistent detail to establish that [REDACTED] is the father of her first child. The petitioner's statements fail to establish that she entered into her marriage with [REDACTED] in good faith, as she had two children by another man while allegedly in a good faith relationship with [REDACTED]. Although the record includes a number of photographs, the petitioner's marriage certificate, and other documentation, the petitioner does not provide the requisite probative detail of her courtship, marriage, or subsequent interactions with [REDACTED], except as the interactions related to

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<sup>2</sup> The petitioner's first child was born on February 5, 2007 and the father's name on the birth certificate is [REDACTED].

the claimed abuse. The petitioner's statements fail to establish her good faith intent when entering into the marriage.

The statements signed by [REDACTED] and [REDACTED] so fail to provide probative information regarding the petitioner's intent when entering into the marriage. Their statements, although referencing their attendance at the petitioner's wedding or visiting the former couple on a few occasions, fail to provide the probative details regarding their observations of the petitioner's allegedly good faith when entering into the marriage.

A review of the documents submitted to establish the petitioner's intent when entering into the relationship fail to meet her burden of proof. Documentary evidence is not required to establish that the petitioner's intent in entering into the marriage was to establish a life together. In this matter, however, not only do the documents fail to assist in establishing the marriage was entered into in good faith, but the documents also further undermine the petitioner's credibility.

The director observed that a lease dated January 1, 2005, signed by both the petitioner and [REDACTED] included a form revision date of March 2005, reflecting that the lease form was not in existence when it was signed. The record includes an October 8, 2006 letter signed by the petitioner's landlord and cousin who stated that she had backdated a lease to reflect the time the couple had already spent in the house when the petitioner requested a copy of a lease to submit for her immigration interview. On appeal, the petitioner references her cousin's letter and states that she signed the lease knowing everything was valid. The lease has little probative value in establishing the petitioner's intent when entering into the marriage as the lease was prepared for the purpose of presenting the document to United States Citizenship and Immigration Services (USCIS) to assist in establishing the petitioner and [REDACTED] joint residency, and is of little probative value in demonstrating that the petitioner's intent when entering into the marriage was to establish a life with [REDACTED]. The second lease in the record is an exact copy of the 2005 lease, including the very same signature page, but reflecting the beginning date of the lease as January 1, 2006. A review of the lease document clearly shows that only the year was altered. On appeal, the petitioner states that the lease was not altered but that the date was changed to reflect that the couple continued to reside at the residence in 2006. A lease that has a date altered but does not reflect new signatures or other acknowledgment by both parties that the lease has been changed has little probative value. In this matter, the second lease is not probative in establishing that the petitioner's intent when entering into the marriage was in good faith and to establish a life together, as there is no evidence that [REDACTED] signed the second lease. Similarly, a third lease submitted for a different residence with a beginning date in January of 2007 that listed both the petitioner and [REDACTED] but that does not include [REDACTED] signature, does not demonstrate that the couple established a life together.<sup>3</sup>

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<sup>3</sup> At the petitioner's March 24, 2009 interview, she told USCIS that she was divorced in 2007 but the record does not include copies of her divorce decree and the month and day of her divorce are not recorded.

The petitioner also provided photocopies of an October 21, 2005 life insurance policy with [REDACTED] and an April 18, 2006 life insurance policy with [REDACTED]

The director noted, and we concur, that there is no evidence that [REDACTED] was aware of the policies and no indication that the policies remained in effect while the couple was married. In addition, the [REDACTED] policy was prepared a month and a half prior to the petitioner and [REDACTED] initial December 12, 2005 Form I-130 interview and was one of three documents<sup>4</sup> submitted to establish their joint residence and good faith marriage. On appeal, the petitioner asserts that the insurance policies were valid and that she let the policies lapse when she and [REDACTED] were no longer together. Upon review of the life insurance policies, the policies are of little probative value in establishing that the petitioner's intent when entering into the marriage was to establish a life together with [REDACTED].

On appeal, the petitioner provides a November 4, 2010 letter from her parish church in which [REDACTED] notes that he met the petitioner and [REDACTED] when they registered as parishioners in January 2007. Accompanying the letter is the church registration form which shows the date the couple registered as January 21, 2010. This documentation, therefore, is inconsistent with the pastor's claim that the petitioner and [REDACTED] had been parishioners since January 2007.

Counsel asserts that the director's revocation of the approved Form I-360 petition is based on flimsy reasons and is easily overcome by the evidence and case law. We, however, find no error in the director's assessment of the relevant evidence. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter the petitioner has not set forth her intent in consistent and probative detail in her statements to USCIS. In addition, the affiants' statements, submitted on behalf of the petitioner, do not disclose detailed information regarding the circumstances or specific events witnessed that would assist in establishing the petitioner's intent in entering into the marriage. Neither has the petitioner provided other evidence that would demonstrate that her intent in entering into the marriage was in good faith. The documents that the petitioner has submitted, which contain inadequately explained alterations, reflect poorly on her credibility, and her submission of yet another document on appeal that includes inconsistent dates regarding the couple's church registration, only further undermines the petitioner's credibility. Upon review of the totality of the record, the record is bare of the essential detail necessary to demonstrate that the petitioner's intent to enter into the marriage was in good faith. The petitioner's marriage certificate confirms the marital relationship, but does not establish the petitioner's own good faith in entering into the marriage. The record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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<sup>4</sup> The record reflects that a marriage certificate and the January 1, 2005 lease were the other two documents submitted as indicia of the couple's joint residence and life together.

*Conclusion*

The petition will be denied and the appeal dismissed for the above stated reason. 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. The approval of the petition remains revoked.