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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

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date:

FEB 24 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:

[Redacted]

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 Vermont Service Center director (“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 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 on the basis of his determination that the petitioner had failed to establish that she married her husband in good faith. On appeal, counsel submits a brief and additional evidence.

Applicable Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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 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 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.

Facts and Procedural History

The record in this case provides the following pertinent facts and procedural history. The petitioner is a citizen of Nigeria who entered the United States on June 14, 2000 as a nonimmigrant student. On July 13, 2005, the petitioner married a U.S. citizen in Virginia. The petitioner's husband subsequently filed a Form I-130 alien relative immigrant visa petition on her behalf, which was denied on April 25, 2007 along with the petitioner's concurrently filed application to adjust status. On that same date, the petitioner was served with a Notice to Appear in Immigration Court, charging her as removable from the United States for failing to comply with the conditions of her nonimmigrant status. On December 10, 2007, the petitioner's husband filed a second Form I-130 alien relative petition on the petitioner's behalf.¹ The petitioner remains in removal proceedings before the Baltimore Immigration Court and her next hearing is scheduled for March 15, 2011.

The petitioner filed the instant Form I-360 on June 23, 2008. The director subsequently issued a request for further evidence (RFE) that the petitioner married her husband in good faith. The petitioner, through counsel, responded with additional evidence. After considering the relevant evidence of record, the director denied the petition.

The Petitioner's Burden and Standard of Proof

On appeal, counsel asserts that the director's decision was arbitrary and capricious and that he abused his discretion by subjecting the petitioner to a heightened standard of proof. Counsel further contends that the director did not make an independent assessment of the record, but relied on the decision of the field office denying the first Form I-130 filed by the petitioner's husband.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, we find no error in the director's assessment of the relevant evidence.² In this case, as in most visa petition 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). The preponderance of the evidence standard requires a petitioner to demonstrate that his or her claims are "probably true" or "more likely than not." *Matter of Chawathe*, 25 I&N Dec. at 376. The determination of "truth" and its probability shall be

¹ Receipt Number EAC 08 120 15112. This petition remains pending.

² The director's decision contains a typographical error in its discussion of the joint cellular telephone bills where it refers to the year 2007 rather than 2006. This error is harmless and has not prejudiced the petitioner.

based on the factual circumstances of each individual case and an examination of all the evidence “for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence.” *Id.* Where U.S. Citizenship and Immigration Services (USCIS) can articulate a material doubt regarding the petitioner’s eligibility, the agency may either request additional evidence or deny the application if the material doubt indicates that the claim is probably not true. *Id.* See also 8 C.F.R. § 103.2(a)(8)(iii).

For self-petitioning abused spouses and children, the statute further prescribes an evidentiary standard, which mandates that USCIS “shall consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). See also 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). This evidentiary standard is not equivalent to the petitioner’s burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, “the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency’s] sole discretion.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner’s credibility or meet the petitioner’s burden of proof.

Given the barriers many abused aliens may face in trying to document their claims, the statute and regulations do not require a self-petitioner to submit primary evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). In regards to establishing the self-petitioner’s good-faith entry into the marriage, traditional forms of evidence may be lacking due, for example, to an abuser’s control of the family’s assets or failure to contribute to the family’s livelihood. Unlike proceedings on a Form I-130 alien relative immigrant visa petition where the U.S. citizen or lawful permanent resident spouse bears the burden of proof to establish the bonafides of the marriage, in these proceedings, the self-petitioner bears the burden of proof to establish only his or her own good-faith entry into the marriage. Compare section 204(a)(1)(A)(i) of the Act with section 204(a)(1)(A)(iii) of the Act.

Good-Faith Entry into the Marriage

In this case, the majority of the director’s decision discussed and found deficient the joint documentation initially submitted with the petitioner’s spouse’s Form I-130 petitions, copies of which the petitioner submitted with the instant Form I-360. On the Form I-360, the petitioner stated that she resided with her husband from January 2005 until April 2008. The record contains several documents indicating that the petitioner and her spouse held joint accounts during portions of this period, including: a joint 2007 federal income tax return transcript; six joint cellular telephone account statements; seven electricity bills; five water service bills; copies of money orders for six months of rent payments; and three joint bank account statements.

The record indicates that most of the former couple’s joint documentation was obtained shortly before or after their interviews regarding the petitioner’s application for adjustment of status based on her husband’s first Form I-130 alien relative petition on August 30 and December 12, 2006. In addition, the record contains a Form 1040X amended federal income tax return signed by the petitioner and her husband on June 12, 2006. The amended return states that the petitioner’s husband was changing his filing status from single to married filing jointly. The tax transcripts do not include records for 2005, but show that the petitioner’s 2006 and 2008 filing status was married

filing separately and the former couple filed a joint return only for 2007. The joint bank account statements cover only three, non-consecutive one-month periods; show balances between -\$228 to \$1,224; and do not reflect deposits or withdrawals for major living expenses such as rent.

The record also contains six photographs of the petitioner and her husband taken on what appear to be three, unspecified occasions. The photographs contain no dates or captions and the petitioner does not explain the circumstances in which they were taken.

On appeal, counsel provides several explanations for some of these deficiencies, as well as other issues regarding the joint documentation discussed by the director in his decision. Counsel's explanations, however, are not supported by any further statements by the petitioner herself or other, relevant evidence. The unsupported assertions of counsel do not constitute evidence and cannot satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner herself provides only one statement in these proceedings. In her August 26, 2009 statement, the petitioner briefly recounted that she met her husband in late 2004 at a bar, that they were attracted to each other and "soon became an item." She stated that he proposed marriage over dinner in July 2005 and in September 2005, they celebrated their first birthdays together. After they began living together, the petitioner stated that their "finances were getting extremely tight" because her husband's job at a grocery store was not enough to support them and she could not work until she obtained employment authorization. The remainder of the petitioner's statement recounts her husband's abuse, which she describes as beginning in early 2008. The petitioner does not discuss in any probative detail the former couple's courtship, her decision to marry, their marriage ceremony, or their shared residences and experiences, apart from the abuse.

██████████ the petitioner's friend, stated that she was surprised when the petitioner told her she was getting married because ██████████ "had not seen much" of the petitioner's husband prior to their marriage. ██████████ recounted that the former couple looked happy together and they came to church regularly. The petitioner also submitted a letter attributed to her supervisor and dated January 5, 2007, which stated the petitioner named her husband as her beneficiary on her life and health insurance policies and brought him to two events sponsored by their company. The letter is of little weight, however, because it is not signed.

On appeal, the petitioner submits short letters from three friends. ██████████ states that she met the petitioner's future husband in November 2004 when the petitioner introduced him as her fiancé and that the petitioner invited her to "her fiancé's mother's annual New Year party" in January 2005. ██████████ states that the petitioner visited her in April 2005 with her future husband who she introduced as her fiancé. ██████████ states that he learned of the petitioner's engagement and went to visit her in May 2005 in preparation for the marriage. These letters are all inconsistent with the petitioner's statement that she and her husband were not engaged until July 2005. In addition, although ██████████ all state that they visited the former couple, they do not describe any of their visits in probative detail or provide any other substantive information regarding their observations of the petitioner's interactions and relationship with her spouse prior to and during their marriage.

On appeal, the petitioner also submits a receipt for carpet installation dated March 16, 2005 which is signed by the petitioner and her husband, but her husband's signature is distinctly different from that contained on several other documents he signed, such as the Form 1040X amended tax return jointly signed by the petitioner and her husband.

In addition to her failure to address the deficiencies of the joint documentation raised by the director, the petitioner has submitted no probative, detailed account of her intentions in marrying her husband and their relationship, apart from the abuse. The petitioner has had three opportunities to supplement the record and provide additional information regarding her intentions in marrying her husband. When viewed in the aggregate, the relevant evidence submitted below and on appeal fails to sustain the petitioner's burden and overcome the director's ground for denial of the petition. The petitioner has not demonstrated, 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.

On appeal, counsel asserts that it is a contradiction for the director to find that the petitioner demonstrated the requisite qualifying relationship, joint residence and battery or extreme cruelty, but that she did not establish her good-faith entry into the marriage. Counsel claims that an alien cannot establish the requisite qualifying relationship, joint residence and abuse without having entered into the relationship in good faith. Counsel misinterprets the statutory requirements as redundant. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Although the same or similar evidence may be submitted to demonstrate, for example, joint residence and good-faith entry into the marriage, meeting one eligibility requirement will not necessarily demonstrate the other.

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 at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.