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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

DATE: **JUN 03 2011** OFFICE: VERMONT SERVICE CENTER

FILE:

IN RE:

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 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 United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) her eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States and her corresponding eligibility for immediate relative classification on the basis of such a relationship; (2) that she jointly with her husband; and (3) that she married her husband in good faith. On appeal, counsel submits an argument made on the Form I-290B and additional testimonial evidence.

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.

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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(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.

(ii) *Relationship*. A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any. . . of the self-petitioner

(iii) *Residence*. One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 Peru, married J-P- ,¹ a citizen of the United States, on July 12, 2005. She filed the instant Form I-360 on September 17, 2008. The director issued a subsequent request for

¹ Name withheld to protect individual's identity.

additional evidence to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including counsel's response to the request for additional evidence, the director denied the petition on July 6, 2010.

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 established her qualifying relationship with a citizen of the United States and her corresponding eligibility for immediate relative classification on the basis of such a relationship. However, the petitioner has failed to overcome the other two grounds for denial of the petition.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

In his July 6, 2010 decision denying the petition, the director found that because the record lacked documentary proof of the legal termination of the petitioner's first marriage and her resultant eligibility to legally marry J-P- pursuant to 8 C.F.R. § 204.2(c)(2)(ii), the petitioner had failed to establish her eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States, as well as her corresponding eligibility for immediate relative classification on the basis of such a relationship.

On appeal, the petitioner submits a copy of the divorce judgment which legally terminated her prior marriage, which was issued by the Superior Court of California, Alameda County, on January 3, 2005. Accordingly, the petitioner has satisfied 8 C.F.R. § 204.2(c)(2)(ii) in that she has submitted proof of the legal termination her prior marriage and her resultant eligibility to legally marry J-P-. The petitioner, therefore, has demonstrated the existence of a qualifying relationship with a citizen of the United States and her corresponding eligibility for immediate relative classification on the basis of such a relationship, and the director's contrary determination is hereby withdrawn.

Joint Residence

The petitioner stated on the Form I-360 that she lived with J-P- from October 2005 until December 2006 and, on the Form G-325A, Biographic Information she signed on March 14, 2008, the petitioner stated that she lived at [REDACTED] California from June 2005 until July 2007. Taken together, these statements indicate that the couple resided together at the [REDACTED] address in Newark throughout the period of allegedly joint residence. However, other evidence of record contradicts this claim.

The bank statements submitted by the petitioner, which collectively cover the periods from June 28, 2005 through July 27, 2005 and November 29, 2005 through January 27, 2006, were all addressed to the couple at [REDACTED] in Newark, California. However, on the Form G-325A that she signed on May 4, 2006, the petitioner stated that she had ceased living at the [REDACTED] address in Newark in September 2005 and, on the Form G-325A she signed on March 14, 2008, stated that she had ceased living at that address in May 2005.

The director took note of these discrepancies in his March 3, 2010 request for additional evidence. In her May 26, 2010 letter submitted in response, the petitioner stated that she and J-P- moved to the

address in Newark in October 2005 and that the dates were mistaken on her 2008 Form G-325A because she was suffering psychologically. Although the director repeated these inconsistencies in his July 6, 2010 decision denying the petition, the petitioner does not further address them on appeal.

However, even if these inconsistencies had been sufficiently addressed, the relevant evidence would still not establish the petitioner's allegedly joint residence with J-P-. Although the record contains two letters from the petitioner, she did not discuss her joint residence with J-P- in any probative detail apart from the abuse in either one. For example, she failed to describe their home, any of their shared possessions, or their shared, residential routine. Nor do any of the numerous letters from acquaintances submitted by the petitioner below and on appeal contain such information. Even if the bank statements naming both J-P- and the petitioner had not been mailed to a questionably joint address they would still not establish the alleged joint residence, as they show very little activity on the account.

Considered in the aggregate, the relevant evidence fails to establish that the petitioner resided with J-P- as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The relevant evidence does not establish that the petitioner married J-P- in good faith. The petitioner stated in her August 12, 2008 letter that she met J-P- in April 2004 while they were both working for a newspaper. She stated that they became friends and, over the following twelve months, fell in love with one another. During that time, they attended parties and other social gatherings, and the petitioner stated that when J-P- expressed his desire that she attend school and find another job, she informed him that she lacked legal presence in the United States. According to the petitioner, J-P- responded to her admission by proposing marriage.

In her May 26, 2010 letter, the petitioner repeated her earlier assertions and added that prior to their marriage J-P- offered to open a joint banking account with her so that they could save money together and buy furniture for their future home.

The record also contains an affidavit and psychosocial assessment from a psychotherapist and licensed clinical social worker who interviewed the petitioner on June 9, 2008. stated that the petitioner told her that although she was impressed by J-P-'s devotion to his children, she resisted dating him because she had not yet recovered from her divorce. However, she eventually agreed to become his girlfriend, and they eventually married.

The petitioner's testimonial evidence does not establish that she married J-P- in good faith, as she has failed to provide detailed, probative information about her relationship with J-P- beyond the brief statements that they met at their mutual place of employment, fell in love over a period of twelve months and, despite her initial misgivings, eventually married. For example, the record lacks probative details regarding the circumstances surrounding their initial introductions; their courtship; their wedding and any of their shared experiences, apart from the abuse. Although the petitioner also submitted letters from several acquaintances who stated, in very general terms, that the couple's relationship was genuine and that the petitioner entered into the marriage in good faith,

none of them offered any probative details about the relationship to support their generalized assertions of a good faith marriage.

Nor does the documentary evidence of record establish that the petitioner married J-P- in good faith. The evidence that the couple shared a joint checking account is not evidence of shared financial obligations as there is no evidence that both individuals had access to, and used, the account. Furthermore, the account statements reflect very little activity.

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

Conclusion

The petitioner has established her eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States and her corresponding eligibility for immediate relative classification on the basis of such a relationship, and the director's contrary determination is withdrawn. However, the petitioner has failed to overcome the remaining grounds of the director's denial in that she has failed to demonstrate that she resided with her husband and married him in good faith. Accordingly, the petitioner 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.