

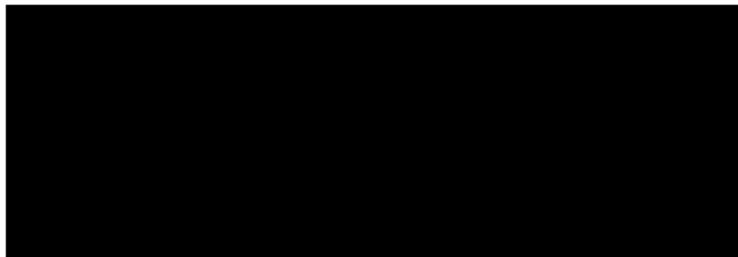
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



Bq.

DATE:

JUN 22 2011

Office: VERMONT SERVICE CENTER FILE:



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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 determined that the petitioner had not established that she had entered into the marriage in good faith. On appeal, counsel submits a Form I-290B, Notice of Appeal or Motion, and a supplemental brief.

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:

(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 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.

* * *

(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.

Facts and Procedural History

The petitioner is a native and citizen of Jamaica. She entered the United States on January 22, 1991 as a nonimmigrant visitor. On March 27, 1997, she married K-N-¹ the claimed abusive United States citizen. On July 13, 2007, the petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, which was denied on January 9, 2009 for failure to establish that she had resided with the claimed abusive spouse and for failure to establish that she had entered into the marriage in good faith. On March 17, 2009, the petitioner filed the instant Form I-360. The petitioner noted on the Form I-360 that she had resided with K-N- from March 1997 until September 1999. On December 18, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, and a supplemental brief.

Good Faith Entry Into Marriage

¹ Name withheld to protect the individual's identity.

In the petitioner's March 5, 2009 personal statement, she declared that she did not marry K-N- for immigration benefits and after the couple broke up in September 1999, she did not keep track of documents that showed that the couple lived together, and that ten years is a long time to keep such documents. The petitioner acknowledged that she continued to use the last name of her first husband and father of her children so that her children would not have a different last name than her last name. She stated that she had no contact with her first husband during the two-year period she was married to K-N-, as she was in love again and was trying to make it work. The petitioner also noted that after K-N- left, her children's father co-signed a loan so that the children could keep a roof over their heads. She further noted that the children's father (her first husband) continued to be involved in his children's lives.

In a second statement, dated April 9, 2009, the petitioner added that she met K-N- through church people in 1996 and that "[h]e caught [her] at a time when [she] was truly looking for companionship." The petitioner added further that K-N-'s inability to hold a steady job is the reason that they do not have many documents. She noted that it would have been unrealistic to commingle assets and liabilities with a man who had proven to be irresponsible and abusive.

The record also included a [REDACTED] affidavit signed by [REDACTED] who declared that the petitioner and K-N- were married in good faith and that she "used to hang out with the couple at their [REDACTED] home and also at many social functions." In a February 23, 2010 affidavit signed by [REDACTED] declared that the petitioner and K-N- married in good faith in 1997 and that he attended the wedding as best man. [REDACTED] noted that he was aware that the couple married and lived together because they were in love and planned to spend the rest of their lives together.

The director determined that while the petitioner had provided explanations for the lack of documentation to support her claim that she had entered into the marriage in good faith, her statements and the statements of [REDACTED] were general in nature, failed to provide probative details or historical information about the petitioner's initial meeting with K-N-, their courtship and early relationship. The director found the testimony insufficient to demonstrate that she had entered into the marriage in good faith. The director also noted that the petitioner had provided documentation to show that she had continued to commingle funds with the father of her children, her first husband, and that her first husband continued to receive mail at their house and that immigration officials found her first husband at her home on January 31, 2008 and he acknowledged that he resided at the [REDACTED] address. The director denied the petition determining that the petitioner had not established that she had entered into the marriage with K-N- in good faith.

On appeal, counsel asserts that the petitioner's first husband was still involved in his children's lives and that the petitioner and her first husband's youngest daughter was going through a crisis involving statutory rape with a resulting pregnancy and grandchild born on February 15, 2009. Counsel contends that the petitioner's first husband's arrest by immigration officials in January 2008 at the [REDACTED] address coincided with the crisis and should not be used to negate the petitioner's good faith in entering into the marriage with K-N-.

Upon review of the totality of the record, we concur with the director's assessment of the relevant evidence. The director determined that the petitioner had not provided the requisite detailed probative testimony regarding her initial meeting with K-N- and their courtship and early relationship. Even when considering the petitioner's previous testimony submitted in support of her first petition, the petitioner has not described the circumstances in detail of her initial meeting with K-N-, detail of their activities together, or her interactions with K-N-. Her statements regarding K-N- are cursory at best. 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). Simply stating that she married K-N- for love is insufficient to establish good faith intent in entering into the marriage. The petitioner fails to provide the requisite underlying detail necessary to ascertain her actual intent when entering into the marriage.

The statements of the petitioner's friends also fail to provide the necessary detail regarding their observations of the bona fide nature of the petitioner's marriage. Although the declarants state generally that the couple were in love and married in good faith, the declarants do not provide further details of the petitioner's intent when marrying K-N-. The declarants do not describe any particular and specific incidents where they witnessed the alleged bona fides of the couple's marital relationship. Similarly, photographs of the couple together at their wedding and on a few other occasions do not demonstrate the petitioner's intent when entering into the marriage.

The circumstances of her first husband's arrest at her home and involvement with his children although raising questions about her current relationships is not relevant to her two-year relationship with K-N- from 1997 to 1999. Upon review of the totality of the record, however, the petitioner has not provided any probative testimony regarding her initial meeting and courtship with K-N-, her subsequent interactions with K-N-, the couple's plans, their involvement in social activities, or any detail that would demonstrate her intent when entering into the marriage. While the lack of documentary evidence is not necessarily disqualifying, the record does not include sufficient probative and credible testimony regarding the petitioner's initial interaction and subsequent two-year involvement with the claimed abusive United States citizen spouse to establish her good faith intent when entering into the marriage. Upon review, the record in this matter does not include sufficient probative evidence establishing that the petitioner entered into marriage with K-N- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Residence

Beyond the decision of the director, the petitioner in this matter indicated on the Form I-360 that she jointly resided with K-N- from March 1997 until September 1999. The only documentary evidence in the record listing K-N-'s name at the [REDACTED] address is an uncertified Internal Revenue Service (IRS) Form for the 1998 tax year. However, there is no evidence that this document was filed with the IRS. The petitioner also provided the affidavits of [REDACTED] and [REDACTED] as noted above. Upon review, the affiants do not provide detail regarding their visits to the [REDACTED]. Their statements lack the probative detail necessary to

demonstrate their actual knowledge of the couple jointly residing at the claimed marital residence.

Regarding the petitioner's testimony, she indicates that K-N- moved into the residence upon their marriage. She however, does not provide any probative testimony regarding the claimed joint residence. She does not describe their jointly-owned belongings if any, she does not describe the daily routines of the couple in the home. She does not provide the necessary probative, consistent detail to establish that the couple resided together during the marriage. Again, although the lack of documentary evidence is not necessarily disqualifying, the failure to produce some evidence that the couple jointly resided together at the claimed marital residence does not eliminate the necessity of providing probative credible testimony in support of her claim. Upon review of the totality of the information in the record, the record fails to establish that the petitioner resided with the claimed abuser.

Conclusion

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