

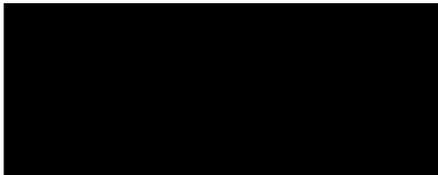
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



B9

DATE: Office: VERMONT SERVICE CENTER FILE: 

JUN 22 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:

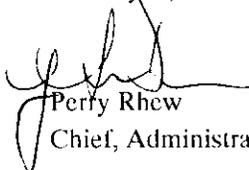


INSTRUCTIONS:

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 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 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 jointly resided with the claimed abusive United States citizen or 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.

Preliminarily, counsel for the petitioner asserts that the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition as required in the regulations. The issuance of a NOID prior to denying a Form I 360 battered spouse petition is not a regulatory requirement for petitions filed on or after June 18, 2007.

Facts and Procedural History

The petitioner is a native and citizen of Ghana. She entered the United States on July 10, 2003 as a nonimmigrant J-1 exchange visitor with temporary authorization to remain in the United States. On [REDACTED], she married J-D-¹, the claimed abusive United States citizen. On October 13, 2006, J-D- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On July 26, 2008, the Form I-130 was denied. On July 13, 2009, the petitioner was placed in removal proceedings. On January 25, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On March 23, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the

¹ Name withheld to protect the individual's identity.

RFE, the director determined that the petitioner had not established that she had jointly resided with J-D- or that she had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, and a supplemental brief.

Residence

The petitioner in this matter indicated on the Form I-360 that she jointly resided with J-D- from August 2006 until December 2008 and that their last joint residence was on [REDACTED] in [REDACTED]. In the petitioner's initial October 15, 2009 statement, she does not address the couple's joint residence. The petitioner provides a copy of a lease dated May 2, 2007 for a one-year term for the [REDACTED] address. The lease does not include J-D-'s signature. The initial record further included a life insurance certificate effective March 28, 2007 that listed J-D-'s address as on [REDACTED]. The initial record included a psychiatric clinic medical record dated August 25, 2009 which listed the petitioner's address on [REDACTED]. The psychiatric record indicated that the petitioner had been admitted to the [REDACTED] Medical Center six times: (1) September 30, 2006 for four days; (2) October 31, 2006 for 31 days; (3) June 26, 2007 for 22 days; (4) July 21, 2008 for eight days; (5) April 14, 2009 for eight days; and (6) July 4, 2009 for 45 days. The psychiatric record also indicated that the petitioner had been hospitalized in [REDACTED] in June 2009. The psychiatric record further indicated that the petitioner lived with the father of her children in [REDACTED] until they broke up in December 2005 and since December 2005 she had been living with her mother and her sister.

The petitioner also provided a November 4, 2009 affidavit from her sister and a November 31, [sic] 2009 affidavit from her mother. Both individuals indicated that they had visited the petitioner at her house and had observed J-D- in the house.

In response to the director's RFE, the petitioner provided a second undated personal statement. The petitioner stated that she occasionally used her mother's address because it is a permanent address and that her mother filled out the psychiatric intake form and that she was not aware of the information given at that time. The petitioner indicated that she had asked her therapist on two occasions to change her mailing address and marital status. The petitioner noted that she and J-D- had briefly reconciled at some point and that they signed up for utility bills and other things but that after they filed their taxes he left with their refund check. The petitioner also indicated that as her mental condition worsened and J-D- did not have income, they were unable to get bills and other things jointly as a couple.

The petitioner also provided additional affidavits submitted on her behalf. [REDACTED]

[REDACTED] noted that she had visited the couple at their apartment. [REDACTED]

declared that he helped settle several disputes and had visited their house. [REDACTED]

[REDACTED] noted that he and his wife and the petitioner and J-D- visited each other.

The record also included: an amended tax return for the 2009 calendar year identifying the couple as married filing jointly and showing their address as the petitioner's mother's address; and an amended tax return for the 2008 calendar year listing the 50 Woodland Street address indicating that the original return had been improperly filed showing the status as head of household and amending

the status to married filing jointly.

The director observed that the petitioner's personal statements conflicted with the information that had been provided to [REDACTED] Medical Center regarding her living arrangements. The director also observed that the documentation provided, including the amended tax returns, a bill, and a cashier's check, were all dated after the petitioner and J-D- separated. The director also noted that the lease did not include J-D-'s signature and that the affidavits submitted on the petitioner's behalf did not provide probative information regarding her claimed joint residence with J-D-. Based on the evidence, the director determined that the record did not include sufficient probative evidence establishing the petitioner's joint residence with the claimed abusive spouse.

On appeal, counsel for the petitioner asserts that when the petitioner began to have severe mental issues and could no longer care for herself, she sometimes had to live with her mother as J-D- could not care for her. Counsel contends that the director did not accord proper weight to the affidavits submitted on the petitioner's behalf. Counsel claims that the affiants declared that they had witnessed events that took place at the couple's home and if the couple did not live together, the affiants would not have been able to make those claims. Counsel avers that it was normal for J-D- to disappear and return around tax season to jointly file taxes in order to obtain the refund and then he would leave again.

Upon review of the information in the record, we concur with the director's assessment of the evidence. The petitioner does not provide detailed information regarding the claimed joint residence. She does not indicate when the couple began living together, she does not indicate when they found their apartment(s), and she does not describe where her children lived and with whom. She does not provide the necessary probative, consistent detail to establish that the couple resided together during the marriage. The lease provided is for a time period beginning a year subsequent to the marriage and is not signed by J-D-. The record does not include any joint documentation of the couple that coincides with the time period the petitioner initially stated that the couple resided together. Counsel's explanation that the petitioner's husband was in and out of the house and that he only returned at tax time is insufficient to establish that the couple ever established a joint residence together.

The declarants who submitted testimony on the petitioner's behalf also fail to include detailed information regarding the petitioner and J-D-'s claimed joint residence. The declarants' statements when reviewed in total do not describe the joint residence and refer only briefly to seeing J-D- at the claimed joint residence on one or two occasions. Their statements lack the probative detail necessary to establish that the couple jointly resided together at any time during their marriage.

Although the lack of documentary evidence is not necessarily disqualifying, the petitioner must still provide probative credible testimony in support of her claim of joint residence. Upon review of the totality of the information in the record, the record fails to establish that the petitioner resided with the claimed abuser.

Good Faith Entry Into Marriage

In the petitioner's initial October 15, 2009 personal statement, she provides a cursory description of meeting J-D- in December 2005, dating for eight months, and being surprised at his proposal. She does not provide probative testimony regarding her courtship with J-D-, the types of activities they enjoyed together in detail, or her interactions with J-D- except as it relates to the claim of abuse. 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 J-D- for love is insufficient to establish her good faith intent in entering into the marriage. The record does not include sufficient probative testimony that assists in understanding her intent when entering into the marriage.

The statements of the petitioner's friends and relatives also fail to provide the necessary detail regarding their observations of the bona fide nature of the petitioner's marriage. Although the declarants note generally that the petitioner initially looked happy with J-D- and that they were jealous of their interactions together, the declarants do not provide further details of the petitioner's intent when marrying J-D-. The declarants do not describe any particular and specific incidents where they witnessed the alleged bona fides of the couple's marital relationship.

The documentary evidence submitted likewise does not assist in establishing the petitioner's intent when entering into the marriage. The tax returns provided, as well as the other documentary evidence, post dates the time the couple allegedly resided together. The petitioner does not provide a credible clarifying statement indicating how or why the only documents available are subsequent to the date of filing the Form I-360. Moreover, the documents provided fail to convey the petitioner's 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 J-D- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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.