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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

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FILE:



Office: VERMONT SERVICE CENTER

Date: MAR 31 2011

EAC 09 221 50322

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

www.uscis.gov

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 entered into the marriage in good faith. On appeal, counsel submits a letter and three additional statements

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 petitioner is a native and citizen of Panama. She entered the United States in December 2006 on a B-2 visa. She married P-G-, the claimed abusive United States citizen on April 30, 2008. On or about November 5, 2008, P-G- filed a Form I-130 on the petitioner's behalf and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On September 11, 2009, the Form I-130 was denied. On August 7, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner notes on the Form I-360 that she resided with P-G- from April 2008 to July 2009. On January 21, 2010, 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 had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides a letter and additional statements in support of the appeal.

Good Faith Entry Into Marriage

The petitioner initially provided a cursory description of her initial meeting and subsequent interactions with P-G- except her description of the claimed abuse. She failed to provide probative information regarding her specific intent when entering into the marriage. The record lacks information regarding the couple's joint life for the year the petitioner claims the couple was married. The petitioner stated generally that she met P-G- while looking for work, they hit it off right away, he asked her to dinner in February, they went to the mall shopping, she met his children, and in February 2008 he proposed.

The initial record also included statements signed by [REDACTED]. However, neither declarant provided detailed information regarding the petitioner's intent when entering into the marriage. The initial record also included the petitioner's banking statements and her automobile insurance cards listing her address as 6730 Arbor Drive, Apt. 102 and

statements from Direct TV and T Mobile addressed to P-G- at the same address. The petitioner's automobile insurance statements list both the petitioner and P-G- and their address as [REDACTED]. The record further included photocopies of photographs.

In response to the director's RFE, the petitioner provided a second personal statement that included additional information primarily regarding the claimed abuse. The petitioner stated that she truly loved P-G- and he loved her but she did not provide further probative evidence of her intent when entering into the marriage. The petitioner also submitted additional statements signed by [REDACTED]. Neither declarant provided probative information regarding their observations of the couple's interactions except as it related to the claimed abuse. As the director noted, the record also included a statement from an unknown party indicating that the person was a witness to the petitioner and P-G-'s wedding and that the marriage was truthful and solid.

Upon review of the evidence, the director determined that the petitioner had not submitted sufficient evidence demonstrating her intent in entering into the marriage.

On appeal, counsel for the petitioner asserts that the director did not give adequate credibility to the documents submitted to prove that the petitioner entered into the marriage in good faith. Counsel submits three additional statements in support of the appeal. In the statement of [REDACTED] declares that he introduced the couple and he understood it was a good marriage. The remaining portion of his statement relates to abuse he claimed to have witnessed. In a statement signed by two individuals, whose signatures cannot be deciphered, the individuals indicate they were witnesses to the marriage and that the couple had a good relationship before they got married. These same individuals indicate that they visited the couple, had lunch, and played cards and that in December 2008, they noticed a change in the marriage and no longer visited the couple. In a statement signed by [REDACTED] declares that she heard and observed the couple arguing when she would visit her aunt.

Upon review of the record, we find no error in the director's assessment of the relevant evidence. The petitioner's statements fail to provide substantive information regarding her courtship with and marriage to P-G-, except as it relates to the claim of abuse. The petitioner does not describe the couple's mutual interests, she does not describe the family circumstances in detail, and she does not provide any probative information for the record that assists in determining her intent when entering into the marriage. 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 probative detail in her statements to United States Citizenship and Immigration Services (USCIS).

Although the record includes two statements that show P-G- received mail at the [REDACTED] and that the petitioner's automobile invoices included P-G-'s name in the address, these documents do not establish the petitioner's intent when entering into the marriage. Moreover, the documents do not assist in ascertaining that the couple commingled assets or otherwise entered into a good faith marriage. The declarants who submitted statements

on the petitioner's behalf, show only that the declarants knew the couple and visited the couple or attended their wedding, but provide no probative details regarding their observations of the petitioner's allegedly good faith entry into marriage with her husband. The photographs submitted show that the petitioner and her former husband were together on one or two unidentified occasions, but this evidence alone fails to establish the requisite good faith.

Upon review of the totality of the record, the record does not include sufficient evidence to establish that petitioner intended to establish a life together with P-G- when entering into her marriage. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with P-G- 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 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 petition remains denied.