

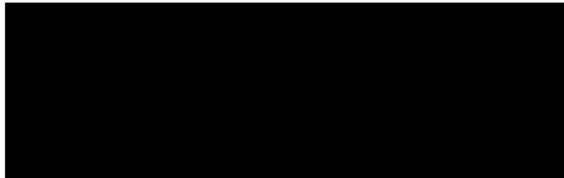
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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



B9

Date: **MAY 02 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 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 service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. A subsequent motion to reopen and reconsider was granted by the AAO, which affirmed its previous decision. A second motion to reopen was dismissed by the AAO, as untimely filed. The matter is now before the AAO on a third motion to reopen. The motion will be granted. The previous decisions of the AAO will be affirmed, and the petition will remain denied.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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.

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, 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 further explicated 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 filed under section 204(a)(1)(A)(iii) of the Act are further explicated 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.

As the facts and procedural history have been adequately documented in the previous decisions of the AAO, only certain facts will be repeated as necessary here. In this case, the petitioner is a native and citizen of the Dominican Republic who entered the United States without inspection on May 10, 1998. On June 9, 2001, the petitioner married a U.S. citizen in New Hampshire. The petitioner filed the instant Form I-360 on June 12, 2006. The director denied the petition on July 10, 2007, finding that the petitioner failed to establish that she entered into the marriage in good faith. In its subsequent decisions on appeal and on motion, the AAO concurred with the director's determination.

On third motion, counsel states that the delayed filing of the petitioner's previous motion was reasonable and thus the petitioner's case should be reopened. As supporting documentation, counsel submits: a statement; a letter from [REDACTED] of The Psychological Center in Lawrence, Massachusetts; and copies of documentation already in the record.

Good Faith Entry into Marriage

In its previous decisions, the AAO found the evidence submitted by the petitioner and on the petitioner's behalf insufficient to establish that the petitioner entered into the marriage in good faith. The AAO found that the petitioner's affidavits did not contain any discussion regarding how she met her spouse, their courtship, her reasons for marrying him, and their life together, unrelated to the claimed abuse. The AAO also found that the affidavits submitted on the petitioner's behalf contained only general statements and provided no probative details regarding the petitioner's relationship with her spouse and their relationship with each other. The AAO also found that the petitioner's claim in her March 27, 2007 affidavit that she moved out of the apartment prior to her husband, conflicted with the landlord's March 1, 2006 letter, in which he implied that the petitioner's spouse moved out of the apartment and left the petitioner. The AAO found that the relevant evidence failed to demonstrate that she entered into her marriage in good faith.

On first motion, counsel stated that the petitioner provided a detailed, sworn affidavit that contained "details only someone who was intimate with her abusing husband would know." Counsel also stated that the petitioner was submitting an additional affidavit along with medical information concerning a lost pregnancy. Counsel stated that the new information "should more than compensate as probative evidence regarding the petitioner's relationship with her spouse and interactions with

each other.”

In her March 27, 2007 affidavit, the petitioner stated that she met her spouse in the spring of 2000, and that they “exchanged telephone numbers and started to build a relationship.” The petitioner stated that after dating for a year, her spouse asked her to marry him, and that they “married in June 2001 and prepare[d] a get together in the house with family and close friends.”

In her August 10, 2007 affidavit, the petitioner stated that she married her spouse in a civil ceremony held at his mother’s house in Nashua, New Hampshire, and that two of her friends, [REDACTED] and [REDACTED], attended. The petitioner also stated that she and her spouse lived with his mother for three or four months before they moved to [REDACTED] where they lived for about one year, before moving to [REDACTED] where they lived for about two to three years.

On first motion, the petitioner submitted her medical records dated July 30, 2002, which listed her marital status as “single.” The petitioner’s medical records also listed the petitioner’s address as: [REDACTED] and the “Person to Notify” and “Next of Kin” as: [REDACTED] at: [REDACTED]. Although the petitioner stated in her March 2, 2009 affidavit that she and her spouse “were not getting along at the time” of her hospitalization, nowhere in her testimony did she state that she lived at the [REDACTED] address. The record contained no explanation for these inconsistencies.

In addition to the inconsistencies contained in the petitioner’s medical records, the petitioner’s March 2, 2009 affidavit submitted on motion also contained inconsistencies. For example, the petitioner stated that her spouse “has a wraparound barbed wire tattoo in his *left* arm.” which conflicted with the information that she provided in her August 10, 2007 affidavit, that her spouse has “a wraparound barbed wire” tattoo “on his *right* bicep.” (Emphasis added.) The petitioner also stated in her March 2, 2009 affidavit that she met her spouse in the summer of 2000, which conflicted with the information that she provided in her March 27, 2007 affidavit, namely, that she met her spouse in the spring of 2000. The petitioner also stated in her March 2, 2009 affidavit that she found her spouse’s “other woman” at the house of her mother-in-law in 2003, while in her August 10, 2007 affidavit, she stated that she made this same encounter in 2004.

It was also noted that the affidavits from [REDACTED] and [REDACTED] all contained identical/and or similar language. Thus, the AAO questioned whether the statements expressed by these individuals were their own. As the authorship of these affidavits was unclear, the credibility of the testimony of these individuals was diminished.

In addition, as discussed by the AAO in its February 2, 2009 decision, the record contained inconsistencies regarding the petitioner’s claimed joint residence with her spouse at the [REDACTED] address. For example, the petitioner implied that she left her spouse, while the landlord implied that the petitioner’s spouse left her. In her March 2, 2009 affidavit submitted on first motion, the petitioner asserted that she moved out of the [REDACTED] apartment due to her spouse’s

“abusive conduct.” Her assertion, however, did not explain why her landlord implied the opposite in his March 1, 2006 letter.

On first motion, the AAO affirmed its February 2, 2009 decision that the petitioner did not provide probative details of how she met her spouse, their courtship, her reasons for marrying him, and their life together after their marriage, unrelated to the claimed abuse. Nor did the affidavits submitted on the petitioner’s behalf provide any probative details regarding the petitioner’s relationship with her spouse and their interactions with each other. Moreover, the record contained numerous unexplained inconsistencies.

On second motion, counsel submitted a statement, the cover letter of which was dated July 16, 2010, in which he addressed the deficiencies and inconsistencies discussed by the AAO in its previous decisions. In order to explain the inconsistencies in the medical records dated July 30, 2002, which listed the petitioner’s marital status as “single” and her address as [REDACTED] and the “Person to Notify” and “Next of Kin” as [REDACTED] at that same address, counsel states that the information was provided by [REDACTED] while the petitioner was in the emergency room. Counsel also states that the petitioner attributes the conflicting information that she provided concerning the location of her husband’s tattoo to “a scrivener’s error,” and that the petitioner stands by her original statement that she met her husband in the spring of 2000 and that she saw the “other woman” at her mother-in-law’s house in 2004. Regarding the affidavits from friends containing identical/and or similar language, counsel states that the notarized confirmation is evidence that the authorship was clearly theirs. Counsel also states that the petitioner stands by her assertion that she left their apartment prior to her husband’s leaving, despite the landlord’s assertion that the petitioner’s husband moved out first. In order to provide probative details concerning the petitioner’s relationship with her husband, counsel states, in part, as follows: the petitioner met her husband at a playground park in Nashua, New Hampshire, while she was with some girlfriends and he with his family members, including his mother whom the petitioner recognized; their courtship started with phone calls; and during their courtship, which lasted over a year, they went to movies, clubs, dinners, washed their clothing at a local self-service laundry, and attended family events at her husband’s mother’s house. Counsel also stated that the petitioner’s husband liked to ride motorcycles, he would gather with his friends, [REDACTED], and the petitioner would accompany him on occasion.

On third motion, counsel submits a letter dated November 9, 2010, from [REDACTED] of The Psychological Center, who states, in part, that the petitioner is the victim of domestic violence and that her former husband abused her emotionally and physically. [REDACTED] also states that the petitioner reported that she was in love with her former husband and that she lied to the doctors when she told them that she had fallen and hit the corner of the closet. [REDACTED] states that the petitioner was diagnosed with Major Depressive Disorder, Posttraumatic Stress Disorder, and Panic Disorder with Agoraphobia.

The AAO acknowledges counsel’s statement submitted on second motion and [REDACTED] letter submitted by counsel on third motion, which were submitted to establish the petitioner’s good-faith entry into the marriage. The record, however, still contains deficiencies and/or inconsistencies. In

order to explain the inconsistencies in the medical records dated July 30, 2002, counsel asserts that the petitioner's friend, [REDACTED] provided the basic information while the petitioner was in the emergency room. Nowhere in the medical records, however, is counsel's assertion corroborated. The records indicate that the petitioner walked into the facility accompanied by a friend, and an interpreter was called. The "triage index" was "urgent," not "emergent." Again, a review of the medical records does not find that the petitioner's friend provided the petitioner's personal information while the petitioner was being tended to in the emergency room. Thus, the inconsistencies in the medical records, discussed in detail above, remain unresolved. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In order to add probative details describing the petitioner's relationship with her husband, counsel claims that the petitioner's husband would gather with his friends, [REDACTED] and the petitioner would accompany him on occasion. Again, this information is not corroborated by the petitioner in any of her statements. Specifically, in her August 10, 2007 statement, the petitioner stated that her husband had "few if any friends" and in her March 2, 2009 statement, the petitioner stated that her husband did not have any close friends because he was isolated and very reserved. It is also noted that the petitioner's claim that her inconsistent testimony in regards to the location of her husband's tattoo was due to "a scrivener's error" is equivocal and does not fully resolve the inconsistency. While the AAO also acknowledges counsel's additional explanation that the authorship of the petitioner's friends' affidavits is clearly their own, as evidenced by the notarized confirmation, such affidavits still provide no probative details regarding the petitioner's relationship with her husband and their interactions with each other. While the AAO also acknowledges the November 9, 2010 letter from [REDACTED] of The Psychological Center, who states, in part, that the petitioner is the victim of domestic violence and that her former husband abused her emotionally and physically, the issue here is not the alleged abuse. [REDACTED] also states that the petitioner reported that she was in love with her former husband and that she lied to the doctors when she told them that she had fallen and hit the corner of the closet. This information, however, also fails to establish the petitioner's good-faith entry into her marriage, as [REDACTED] does not provide details of her sessions with the petitioner, such as the dates and length of such visits. Nor does she provide any probative details regarding the petitioner's relationship with her husband and their interactions with each other. Again, the record contains few probative details regarding the petitioner's relationship with her spouse and their interactions with each other. Moreover, as discussed above, the record contains unexplained deficiencies and/or inconsistencies. Accordingly, the petitioner has not established that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Upon review of totality of the evidence, the petitioner has not demonstrated that she entered into marriage with her husband in good faith. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

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Accordingly, the previous decisions of the AAO will be affirmed and the petition will remain denied.

ORDER: The previous decisions of the AAO will be affirmed, and the petition will remain denied.