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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
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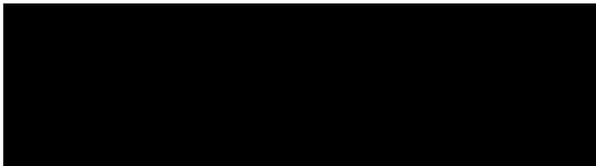
DATE: MAY 06 2011 OFFICE: VERMONT SERVICE CENTER

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:

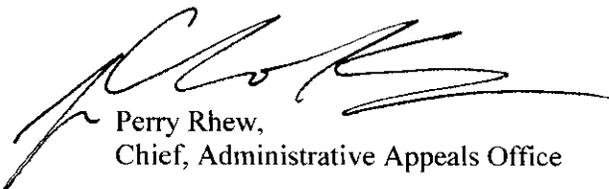


INSTRUCTIONS:

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 Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed.

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 citizen of the United States.

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, 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, 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:

- (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.

* * *

- (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 director denied the petition on August 14, 2008 on the basis of his determination that the petitioner had failed to demonstrate that she married her husband in good faith. The petitioner appealed the director's decision to the AAO and, in our June 9, 2009 decision, we agreed with the director's decision, but nonetheless remanded the petition to the director on technical grounds for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).¹

The director issued the requisite NOID on February 26, 2010, and the petitioner submitted a letter in response. The director found the petitioner's response insufficient to establish that she had married her husband in good faith, and denied the petition on December 16, 2010 on that ground. The director notified the petitioner that his decision would be certified to the AAO for review and that she had 30 days during which to submit a brief or other written statement to be considered during our review. As no further documentation has been received from counsel or the petitioner, we deem the record complete as it now stands.

The AAO reviews these matters on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the petitioner has failed to establish that she married her husband in good faith. We agreed with the analysis of the director's earlier decision in our June 9, 2009 decision, and the contents of our prior decision, as well as the evidence of record upon which we based that decision, are part of the record and their contents need not be repeated in full.

¹ On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (April 17, 2007). The rule became effective on June 18, 2007, after the filing of this petition on January 8, 2007.

Good Faith Entry into Marriage

The sole issue on certification is whether the petitioner married her husband in good faith. As noted, because we determined in our June 9, 2009 decision that the petitioner had failed to make that demonstration based upon the evidence of record, on certification we will only consider the evidence submitted after that decision. The only evidence that has been submitted since that decision is an undated letter from the petitioner submitted in response to the director's NOID.

In our prior decision, we found the testimonial evidence of record vague and lacking in probative details regarding the couple's relationship. We also identified several inconsistencies in the petitioner's testimony regarding her intentions upon entering into the marriage, and found that those inconsistencies diminished the probative value of her testimony regarding her alleged good faith in entering the marriage.

In her undated letter submitted in response to the director's NOID, the petitioner stated that she met her husband in 1999; and that although they spent a great deal of time together between 1999 and 2003 she did not feel real love for him until 2003; that she became pregnant with his child in 2002 and had a miscarriage; and that during their courtship they went to the beach, saw movies, ate out at restaurants, spent time with friends, and listened to music together. This letter, however, does not resolve the issues identified in our June 9, 2009 decision. For example, although the petitioner offers additional information regarding the relationship, her testimony still lacks probative detail. She lists the activities of the former couple during their courtship, but does not describe any of their shared experiences in probative detail. Nor does the petitioner's letter resolve the inconsistencies contained in her earlier testimony regarding the dates and chronology of her relationship with her husband, as noted in our prior decision. Upon review, we affirm the director's decision denying this petition, as the new evidence of record fails to overcome the previous decisions of the director and the AAO. The petitioner has failed to establish that she married her husband in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to establish that she married her husband in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Consequently, 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 we will affirm the director's decision denying the petition.

ORDER: The director's December 16, 2010 decision is affirmed. The petition remains denied.