

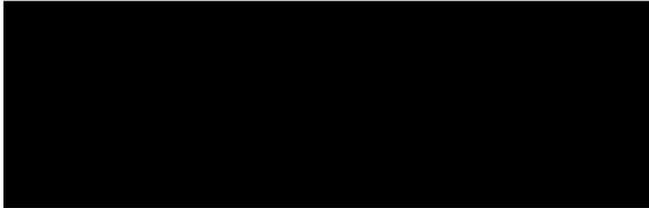
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



B9

Date:

MAY 10 2011

Office: VERMONT SERVICE CENTER



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:

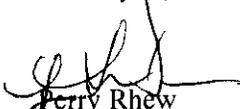


INSTRUCTIONS:

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 Vermont Service Center director (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 her United States citizen spouse.

The director denied the petition for failure to establish the requisite good-faith entry into the marriage. On appeal, counsel submits a statement.

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, 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 further 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 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 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.

Facts and Procedural History

The petitioner is a citizen of Jamaica who entered the United States as a J-1 nonimmigrant on June 8, 2008. On August 18, 2008, the petitioner married a U.S. citizen in Florida. The petitioner filed the instant Form I-360 self-petition on April 13, 2010. The director subsequently issued a request for additional evidence (RFE) that the petitioner resided with her husband and that she married her husband in good faith. The petitioner, through counsel, submitted additional evidence. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite good-faith entry into the marriage.

On appeal, counsel asserts that the petitioner has submitted adequate evidence, including her original statement and the statements from the petitioner's mother and friends, that the petitioner married her husband in good faith. Counsel also asserts that the petitioner's husband was controlling and "[kept] her away from things like rent receipts." The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and on appeal does not overcome the director's ground for denial.

Good Faith Entry into Marriage

In her March 26, 2010 statement submitted at the time of filing, the petitioner stated, in part, that: she met her cab-driver husband in June 2008, when she took a cab and she subsequently called him whenever she wanted to go to work or to the store; they started dating on July 4, 2008, and on her days off, they would go to movies and out to dinner or he would show her around; she and her husband watched movies together with his son from a prior marriage and, on her days off, she would get passes for them to go to Sea World where she worked; he introduced her to his family and friends and bought her roses; in mid-July she quit working at Sea World and her husband drove her to her uncle's house where she stayed until her husband took her to his sister's house where he was living; her husband found a job for her and on August 2, 2008, he proposed to her; on August 13, 2008, they "moved to a suite"; when the petitioner told her mother that she was getting married, her mother was angry at first but told her to do what her heart told her to do; she and her husband married on August 18, 2008 at the court house; their marriage was good for one and one-half months before the abuse began; and she ultimately left her husband in February 2009, taking a bus to Tampa to her family while her husband was at work.

In her September 20, 2008 diary entry, the petitioner stated, in part, that she was tired of living this way, that she wanted to die, and that she and her husband never saw "eye to eye." In her November 23, 2008 diary entry, she stated that she paid the rent, lights, water, and food.

In her September 1, 2010 statement submitted in response to the RFE, the petitioner stated, in part, that: her husband did not allow her to get a receipt for the rent payment; she and her husband would pay the utilities bills directly to the owner of the house and thus their names were not on the bill; they had no joint insurance policies or bank accounts; her husband owned his car prior to their marriage and thus was in his name only; her friend [REDACTED], and her mother visited her and her husband at their home and can attest that they had a "true marriage"; and she did not have medical records to show that she was pregnant and had a miscarriage because her husband refused to take her to the hospital.

In her October 5, 2009 statement submitted at the time of filing, the petitioner's friend, [REDACTED], stated, in part, that: she has known the petitioner for over 16 years and can attest to the petitioner's bonafide marriage with her husband; the petitioner was excited when she met her husband in 2008 and constantly talked about how nice he was; and the petitioner introduced her to her husband via phone and he was sweet, polite, and funny.

In a second statement, dated April 1, 2010, submitted at the time of filing, and in an amended April 1, 2010 statement, submitted in response to the [REDACTED] stated, in part, that: she visited the petitioner and her husband for ten days in September 2008, a month after they were married; and she felt at home and they made her feel welcome.

In her August 9, 2010 statement submitted in response to the [REDACTED] stated, in part, that: the petitioner married her husband in good faith and they were so much in love; the petitioner's husband proposed to her after a couple of weeks of dating; the petitioner called her and told her that she was expecting a baby and called her again to tell her that she had miscarried; and the petitioner called her again around February 9, to tell her that she had left her husband.

In his October 5, 2009 statement submitted at the time of filing, the petitioner's friend, [REDACTED], stated, in part, that: the petitioner and his wife were good friends and he could attest that the petitioner and her husband had a bonafide marriage; and the petitioner and his wife would engage in girl talk.

In her undated statement submitted at the time of filing, the petitioner's mother, [REDACTED], stated, in part, that: a couple of weeks after the petitioner told her that she had met and was dating her husband, the petitioner called her and told her that he had proposed marriage; she did not think it was a good idea for the petitioner to get married to a man whom she had known for only a short while and was twice her age; for the first time the petitioner went against her will and married him; and she was angry with the petitioner because her instinct told her that the petitioner's husband was a user and up to no good.

In her August 19, 2010 statement submitted in response to the [REDACTED] stated, in part, that: even though at first she was opposed to her daughter's marriage, she supported her and helped pay the bills when they were living together; and she visited them for a couple of days in Orlando.

In her September 24, 2009 statement submitted at the time of filing, the petitioner's "aunt-in-law," [REDACTED], stated, in part, that: before they were married, the petitioner and her husband went to see her and her husband in Tampa; she told the petitioner that she did not agree with her decision to marry her husband because they had known each other for only a short while and he was too old for her; and in late December the petitioner mustered the courage to leave her husband who drove the petitioner to her house because he thought that it was for only a weekend visit.

In her August 13, 2010 statement submitted in response to the RFE, the petitioner's acquaintance, [REDACTED] stated, in part, that: the petitioner married her husband in good faith and loved him deeply, cared for him a lot, and tried to please him; and the petitioner's husband invited her to visit him and the petitioner but she was unable to do so because of her work schedule.

The record also contains: photocopies of two photographs of the petitioner with her husband; a room receipt, reflecting the names of the petitioner and her husband and an arrival date of August 13, 2008 and a departure date of September 24, 2008; photocopies of two greeting cards; one piece of undated correspondence addressed to the petitioner's husband and another piece of undated correspondence addressed to the petitioner at the same address in Saint Cloud, Florida.

The director found the petitioner's evidence insufficient to establish a good-faith entry into the marriage. The director also found that the petitioner did not submit any evidence in support of her claim that she paid the rent, bought the groceries, paid her husband's monthly child support, paid her husband's court fine for driving without a valid license, and paid the utilities bills to the owner of the house. The director also found that, although the petitioner indicated that she and her husband had no joint bank accounts, it was unclear as to whether the petitioner had any bank accounts in her own name and whether the petitioner's cell phone was under her own name or under both her and her husband's names. The director also found that the statements submitted on the petitioner's behalf lacked detail and were insufficient to establish the petitioner's good-faith entry into her marriage.

The AAO acknowledges counsel's assertions on appeal that the petitioner has submitted adequate evidence, including her original statement and statements from the petitioner's mother and friends, that the petitioner married her husband in good faith, and that the petitioner's husband was controlling and "[kept] her away from things like rent receipts." The record, however, contains numerous inconsistencies and deficiencies. In her initial statement submitted at the time of filing, the petitioner stated that she married her husband on August 18, 2008, and her marriage "was good for the first month and a half," which conflicts with her September 20, 2008 diary entry, which was allegedly written barely a month after her marriage, in which she stated that she was tired of living this way, that she wanted to die, and that she and her husband never saw "eye to eye."

The September 24, 2009 statement from the petitioner's "aunt-in-law," [REDACTED] is also inconsistent with the petitioner's statement. For example, [REDACTED] stated that the petitioner left her husband in late December, which conflicts with the petitioner's claim that she left her husband in February 2009. [REDACTED] also stated that, on the day the petitioner left her husband, the petitioner's husband drove her to [REDACTED] house in Tampa, as he was told that she was going for the weekend only, which conflicts with the petitioner's claim that she took the bus to their house in Tampa. It is also noted that although the petitioner claimed in her statement submitted in response to the RFE that she had no medical records of her pregnancy and miscarriage due to her husband's

refusal to take her to the hospital, it is unclear as to why she did not mention her pregnancy and miscarriage in any of her diary entries. It is also unclear as to why the petitioner's friend, [REDACTED], did not mention the petitioner's pregnancy and miscarriage until her fourth statement, dated August 9, 2010, submitted in response to the [REDACTED]. Also unclear is the reason why neither [REDACTED] nor the petitioner's mother, [REDACTED], claimed in their initial, detailed statements that they personally visited the petitioner and her husband after their marriage, when they both claimed having done so in their subsequent statements. The record contains no explanation for these inconsistencies and deficiencies. It is also noted that the statements from [REDACTED] are general and vague and provide minimal information pertinent to the circumstances of the petitioner's courtship with her husband, their decision to get married, their wedding, and their shared experiences, apart from the alleged abuse.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The petitioner, however, has submitted insufficient evidence to support a finding that she entered into her marriage in good faith. The photographs confirm that the petitioner and her husband were pictured together, but these documents, along with the room receipt and photocopies of two greeting cards and undated correspondence, do not establish the petitioner's good-faith entry into the marriage. Moreover, the inconsistencies and deficiencies discussed above significantly detract from the credibility of her claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. The petitioner has failed to establish the requisite good-faith entry into the marriage. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.