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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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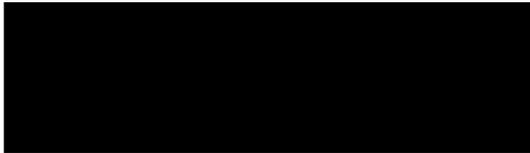
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DATE: **MAY 23 2011** Office: VERMONT SERVICE CENTER FILE: 

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 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 entered into the marriage in good faith. On appeal, counsel submits a brief and additional documentation.

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 the Philippines. She entered the United States on June 10, 2009 on a K-1 visa. She married D-W-,¹ the claimed abusive United States citizen on June 19, 2009. On October 27, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that she had resided with D-W- from June 11, 2009 to September 3, 2009. On March 8, 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, a brief, and additional documentation in support of the appeal.

Good Faith Entry Into Marriage

The petitioner initially did not provide a statement in support of the Form I-360. In response to the director's RFE, the petitioner provided a handwritten statement dated May 14, 2010. The petitioner declared that she married D-W- after a courtship of a little over two years and that during this time they communicated through letters. She noted that she did not have photographs of the wedding, health insurance, or a joint bank account as D-W- was never employed and did not have the financial resources to open a bank account. The petitioner stated that she and D-W- lived with his mother and his three children and so did not have evidence of their joint residence. The petitioner stated that through their letters and D-W-'s visit to the Philippines and spending time with her and her family, she believed that he was a good person and she was willing to give him the love she had in her heart. The petitioner enclosed copies of letters she had received from D-W-; an October 20, 2009 report from a Crisis Intervention Center, and a statement signed by [REDACTED] regarding the petitioner's claim that she was abused by D-W-.

¹ Name withheld to protect the individual's identity.

Based on the information in the record, the director determined that the petitioner had not provided evidence establishing her good faith intent in entering into the marriage.

On appeal, counsel for the petitioner asserts that under the circumstances the petitioner was unable to procure documentary indicia to assist in establishing her good faith in entering into the marriage. Counsel contends that the petitioner entered into her marriage with D-W- for the purpose of spending the rest of her life with him and that the couple voluntarily accepted their vows and did not enter the marriage for the purpose of evading immigration laws.

Counsel submits a November 2, 2010 statement signed by the petitioner, in which she declares that she met D-W- through an advertisement for meeting men from other countries. She notes that she sent her personal information to the advertised company and the company sent her information to the United States to match up with a prospective partner. The petitioner indicates that in April 2007, D-W- sent her a letter indicating that he was looking for a long-term relationship that would result in marriage. The petitioner states that they continued to get to know each other through letters, texts, and a few phone calls. In June 2008, D-W- visited the Philippines and spent nine days in her province where he met her, her friends and family. The petitioner notes that D-W- proposed, asked her parents if they agreed to the marriage, and gave her his ring. The petitioner states that she was admitted to the United States on June 10, 2009 and was introduced to D-W-'s family, the couple married in [REDACTED] and spent two nights together before returning to D-W-'s mother's house. The petitioner notes that she learned that D-W- had medical issues but she cared for him because they were both committed to having a lasting marriage. The remainder of the petitioner's statement regards her claims of abuse perpetrated by D-W-.

Counsel also submits statements from the petitioner's family and neighbors indicating that they had witnessed the couple's love while D-W- was in the Philippines and copies of letters from D-W- professing his love for the petitioner. The record also includes photocopies of photographs of the couple on unidentified occasions.

Upon review, the petitioner has provided a cursory description of her introduction to and meeting D-W- as well as her subsequent interactions with him. The petitioner does not provide probative testimony regarding her courtship with D-W- or her interactions with D-W- except as it relates to the claim of abuse. She does not describe the couple's mutual interests, she does not describe D-W-'s family in detail, she does not detail the couple's daily routines, and she fails to provide the necessary probative information that would assist 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 statement to U.S. Citizenship and Immigration Services (USCIS) and the record does not include sufficient probative credible evidence that the couple established a life together.

The affidavits of several family members and friends who indicated that the couple seemed happy in their relationship while together for the nine days while in the Philippines are

insufficient. The affiants do not provide any details of the petitioner's alleged good faith in marrying D-W- and do not describe any particular incidents where they witnessed the alleged bona fides of the marital relationship.

The information provided for the record is general and lacks detail of specific events that would assist in demonstrating the petitioner's intent when entering into the marriage. The photocopies of photographs do not include identifying information and are insufficient to establish the petitioner's intent when entering into the marriage. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with D-W- 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.