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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

PUBLIC COPY



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Date: SEP 29 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:

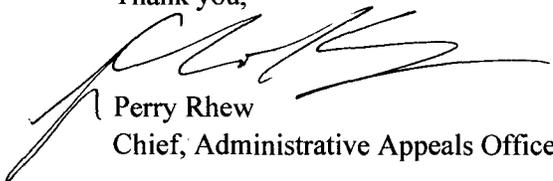


INSTRUCTIONS:

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 Director, Vermont Service Center, (“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 pursuant to 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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her husband in good faith.

On appeal, counsel submits a supplemental brief and additional evidence.

Relevant 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 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 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Peru who entered the United States on December 27, 2005, as a nonimmigrant visitor. The petitioner married M-A-, a U.S. citizen, on April 24, 2006 in Santa Ana, California.¹ After U.S. Citizenship and Immigration Services (USCIS) denied the petition for alien relative (Form I-130), filed by the petitioner's husband on her behalf and the petitioner's corresponding application to adjust status (Form I-485), the petitioner was charged with remaining in the United States beyond her period of authorized stay and placed in removal proceedings.²

The petitioner filed the instant Form I-360 on April 8, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's qualifying relationship with a U.S. citizen, shared residence with her spouse and good-faith entry into the marriage. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition because the petitioner failed to establish her good-faith entry into the marriage. Counsel filed a timely appeal.

On appeal, counsel submits a supplemental brief, a statement from the petitioner, a letter from the petitioner's former landlord and a 2006 tax return.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

¹ Name withheld to protect the individual's identity.

² The petitioner remains in removal proceedings before the Los Angeles Immigration Court and her next hearing is scheduled for March 6, 2012.

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her first statement dated March 18, 2010, the petitioner recalled that she met M-A- through her sister's landlord in January 2006. She stated that M-A- asked her to marry him in mid-March and they wed in April. The petitioner noted that M-A- was "very loving" and they initially had a good relationship. She stated that when she learned that M-A- had drug problems, he started to change and became abusive. The petitioner did not describe her courtship with her husband, their wedding ceremony, joint residence or any of their shared experiences, apart from the abuse.

In response to the RFE, the petitioner submitted letters from her sister, [REDACTED] and her cousin, [REDACTED] who briefly discussed the petitioner's marriage, but spoke predominately of the abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. [REDACTED] stated that the petitioner met M-A- through her landlord. She recalled that after their marriage, "[t]hey were happy through the summer and through the rest of 2006." [REDACTED] stated that after she and the petitioner learned of M-A-'s drug addiction, he began to change and did not want to be around the family. [REDACTED] stated that she met M-A- after his marriage to the petitioner. She recalled that they were happy and seemed to be in love. [REDACTED] noted that towards the end of 2006 she learned from the petitioner that M-A- had drug problems and was becoming abusive. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married her husband in good faith.

The director also accurately assessed the relevant documents submitted below. The petitioner initially submitted: a letter from [REDACTED] stating that the petitioner and M-A- opened a joint bank account in February 2007; a copy of a residential lease dated December 1, 2007 and a corresponding letter of residence from the landlord; a notice of toll evasion violation, dated April 7, 2007, issued to the petitioner and M-A; and undated photographs of the petitioner and M-A- taken at unspecified locations. In response to the RFE, the petitioner submitted: a vehicle registration card issued to the petitioner and M-A- dated March 5, 2007; a copy of a residential lease dated December 1, 2006; another letter from [REDACTED] stating that the petitioner and M-A- opened a joint account in February 2007; bank statements related to the joint account; and additional undated photographs of the petitioner and M-A- taken at unspecified locations. The director noted that most of the supporting documentation is dated almost one year after the marriage, and therefore does not reflect the petitioner's good faith intentions in entering the marriage.

On appeal, the petitioner, through counsel, submitted a letter from her former landlord, [REDACTED] stating that the petitioner and M-A- resided at the petitioner's sister's residence after their marriage in April 2006. She further stated that the petitioner and M-A- signed a residential lease in December 2006. The petitioner also submitted a copy of her 2006 tax return reflecting that it was filed jointly with M-A-. The petitioner, however, has not submitted evidence that the tax return was actually filed with the [REDACTED]

The petitioner also submitted another statement, dated March 18, 2011. The petitioner reiterated that she first met M-A- in January 2006 through her landlord. She stated that M-A- would visit her frequently because she could not drive and she cooked for him. She noted that they also went to restaurants and parks. The petitioner recalled that in mid-March, M-A- asked her to marry him and they had a simple court ceremony. The petitioner's additional statement on her relationship with M-A- is

brief and fails to provide probative details on her courtship with her husband, their joint residence or any of their shared experiences.

On appeal, counsel cites to all of the evidence submitted by the petitioner and states that it satisfies the “any credible evidence standard,” which counsel asserts “places a lower burden that [sic] typically required.” While the AAO recognizes that section 204(a)(1)(J) of the Act mandates that USCIS “shall consider any credible evidence relevant to the petition,” this evidentiary standard is not equivalent to the petitioner’s burden of proof. In this case, as in most immigrant petition 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; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). When determining whether or not the petitioner has met her burden of proof, USCIS shall consider any relevant, credible evidence. However, “the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency’s] sole discretion.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner’s credibility or meet the petitioner’s burden of proof.

On appeal, the petitioner explains that she and M-A- did not open a joint bank account until she received her employment authorization in 2007, began working and had income to contribute. The petitioner further explains that she and M-A- did not frequently use their bank account because they paid cash for their rent and food and she usually cashed her paycheck at work rather than depositing it at the bank. The petitioner also states that utilities were include in their rent and they did not jointly purchase a car until early 2007 after she began working. While the petitioner’s statements on appeal explain her lack of earlier joint documentation from the first year of her marriage, her declaration fails to provide further, detailed and probative information regarding her intentions in marrying M-A- and any of their shared experiences.

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director’s determination. The relevant documents show that the petitioner and her husband resided together, held a joint bank account together and were photographed together at unspecified locations. However, the petitioner has not offered probative details of their courtship, joint residence or any of their other shared experiences, apart from the abuse. The petitioner’s sister and cousin also do not discuss in probative detail their observations of the petitioner’s interactions with or feelings for her husband during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director’s determination that she did not enter into the marriage in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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; *Matter of Chawathe*, 25 I&N

[REDACTED]

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Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.