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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**



Bej

Date: **APR 02 2012**

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 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, denied the immigrant visa petition (Form I-360) 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 because the petitioner failed to establish that she had entered into marriage with her spouse in good faith.

On appeal, counsel submits a statement.

#### *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 native and citizen of Armenia who entered the United States on April 29, 2001 as a nonimmigrant visitor. The petitioner married her second husband, a U.S. citizen on October 17, 2006 in Mount Clemens, Michigan. On May 11, 2009, the petitioner and her spouse were divorced. The petitioner filed the instant Form I-360 on August 6, 2009. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good faith in marrying her spouse. 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 and the petitioner filed a motion to reopen. The director granted the motion to reopen and found the evidence insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely filed an appeal.

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. The petitioner's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

#### *Entry into the Marriage in Good Faith*

The relevant evidence submitted below and the statement submitted on appeal fail to demonstrate the petitioner's entry into her marriage in good faith. The director properly reviewed and addressed the deficiencies of the relevant evidence of record below, including the affidavit of the petitioner.

On appeal, counsel submits a statement in which she contends that the director erred in ignoring the affidavit of [REDACTED] a friend of the petitioner's, because it speaks to the petitioner's unwillingness to enter into a marriage purely for immigration purposes; however, the affidavit does not provide any information in regard to the affiant's observations of the petitioner's interactions with

or feelings for her former spouse during their courtship or marriage or otherwise demonstrate the affiant's personal knowledge of the relationship as required of affidavits supporting a petitioner's claim of entry into the marriage in good faith by the regulation at 8 C.F.R. § 204.2(c)(2)(vii).

Counsel contends that the director arbitrarily denied the petition and ignored all the relevant evidence and immigration law and failed to cite to any relevant case law. Counsel contends that the envelopes, court documents and medical forms establish that the petitioner shared a life with her former spouse; however, (1) the envelopes reflect that the petitioner sent mail and listed the address on [REDACTED] as her address in 2005 and that someone received mail from Armenia at the same address on an unknown date (the date stamps are illegible); (2) the court documents to which counsel refers reflect that the petitioner obtained a divorce from her spouse and that the petitioner's spouse previously filed for and withdrew a request for divorce in 2006, but the documents do not provide probative evidence of the petitioner's intent in entering the former marriage; and (3) the medical forms to which counsel refers do not reflect any information in regard to the petitioner's relationship with her former spouse, but relate to problems she experienced with her first husband. While the envelopes pertain to whether the petitioner resided with her former spouse at a particular point in time, none of the documents provide evidence of her entry into the marriage in good faith.

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 former spouse were photographed together on unspecified occasions and the petitioner may have received and sent mail from an address at which she claims to have resided with her former spouse. In her affidavit, the petitioner fails to provide a detailed, probative account of her and her husband's courtship, marriage, joint residence or any of their other shared experiences. The petitioner's friend admits that he did not observe any of the petitioner's interactions with her former spouse, or was otherwise aware of the petitioner's feelings for her former spouse during their courtship or marriage, or otherwise had personal knowledge of the relationship. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her former spouse 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; *Matter of Chawathe*, 25 I&N 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.