



U.S. Citizenship
and Immigration
Services

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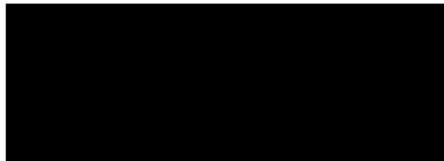
DATE: **APR 03 2012** Office: VERMONT SERVICE CENTER

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 a United States citizen.

The director determined that the petitioner had not established she had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, and one additional statement. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 Kenya who entered the United States on or about August 9, 2005 on a B-2 visa with temporary authorization to remain in the United States until February 8, 2006. She married J-M-¹ the claimed abusive United States Citizen (USC), on May 8, 2006. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on August 23, 2010. The petitioner stated on the Form I-360 that she resided with the claimed abusive USC from May 2006 until November 2009.² As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the totality of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established 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 one additional statement.

Good Faith Entry into Marriage

In the petitioner's statement appended to the petition, she indicated that she met her USC spouse at a Christmas party hosted by Kenyan friends. She stated that a relationship developed after five months of dating and they decided to get married. The petitioner noted that after six or seven months of marriage, J-M- told her he was going to prison for two years. The petitioner also submitted an affidavit from [REDACTED] second personal statement, and a copy of a Farmer's auto insurance policy. Upon review of the totality of the record, the director set out the deficiencies of the evidence submitted and determined that the petitioner had not provided evidence of her emotional ties with the USC spouse, or of her commingling of resources and shared financial

¹ Name withheld to protect the individual's identity.

² The petitioner also indicates in her personal statement that J-M- was incarcerated for two years during this time period.

responsibilities. The director found that the petitioner's assertion of a good faith marriage was insufficient to establish her intent when entering into the marriage.

On appeal, counsel provides an affidavit from J-M-'s aunt who declares that the couple met through a friend with whom they worked. She notes that she attended the marriage ceremony and that she has known the petitioner since she started dating J-M-. She indicates that the couple was happy when they started dating and for several months after they were married and that J-M- brought the petitioner to family functions. She adds that after J-M- was jailed the petitioner visited J-M- and took care of their house. Counsel asserts that great weight should be given to J-M-'s aunt's affidavit.

As observed above, the director discussed the deficiencies of the evidence previously submitted and we concur with his determination that the testimony and documentary evidence presented did not establish that the petitioner entered into the marriage in good faith. Upon review of the evidence submitted on appeal, the affiant speaks generally of attending the wedding and believing that the couple married for love and was happy together. The affiant, however, does not provide detailed, probative testimony of her observations of the couple or other evidence that assists in establishing the intent of the petitioner when entering into the marriage. The petitioner does not provide further testimony on appeal regarding her intent when entering into the marriage and her previous statement does not describe the couple's interactions during the courtship, their decision to marry, or the couple's shared experiences except as it relates to her claim of abuse. The petitioner's testimony in the record lacks probative detail that provides insight into her intentions when entering into the marriage. General statements by the petitioner and those who submit testimony on her behalf are insufficient to establish intent in this regard. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has not established that she entered into the marriage in good faith. 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.