

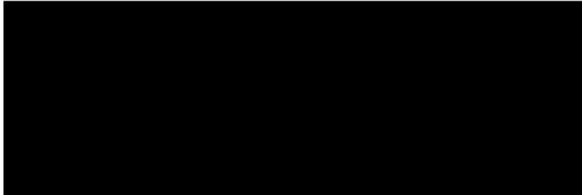
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



B9

DATE: **APR 05 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:

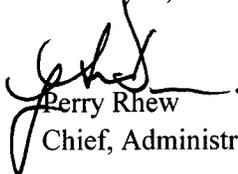


INSTRUCTIONS:

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 and 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 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 (USC).

The director determined that the petitioner had not established that he 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 additional documentation. 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 USC may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the USC 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 petitioner'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 pursuant to Section 204(a)(1)(A)(iii) of the Act are further set out 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 citizen and native of China. He entered the United States on August 4, 2008 on an F-1 student visa. He married A-K-,¹ the claimed abusive USC on December 19, 2009. On March 8, 2011, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for further 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 he 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 on appeal.

Good Faith Entry into Marriage

In the petitioner's March 2, 2011 personal statement, he declared that he married A-K- in good faith. The petitioner stated that he met A-K- in June 2009 at the Taste of Chicago Park when he was walking with his friend. The petitioner indicated A-K- introduced herself and gave him her phone number. The petitioner noted that they talked and texted every day, that they hung out and dated almost every day, and they dated for about six months prior to getting married on December 19, 2009. The remainder of the petitioner's personal statement relates to A-K-'s claimed abuse. The petitioner also noted that in October 2010 A-K- disappeared and he learned that she was in prison under a different name and he initially paid her attorney's fee and gave A-K- money while she was incarcerated.

The record also included photographs of the couple's wedding and on one other occasion. The petitioner also provided copies of three bank statements dated for time periods from July 6, 2010 through October 3, 2010 for a joint account.

¹ Name withheld to protect the individual's identity.

In response to the director's RFE, the petitioner provided a second personal statement in which he declared he loved A-K- and the good days with A-K- were the dating days and the first three weeks of marriage. The petitioner also included five affidavits from friends and family. In the June 12, 2011 affidavit of [REDACTED] she declared that she had known A-K- for eight years and that she knew of the marriage between the petitioner and A-K-, that she had been invited to attend the wedding ceremony in Chicago City Hall, and that the couple came to her house to hang out with her daughter. In the June 20, 2011 affidavit of [REDACTED] declared that she is a friend of the petitioner's mother and knew that the petitioner and A-K- entered into the marriage in good faith. In the June 20, 2011 affidavit of the petitioner's mother, his mother declared that she knew the petitioner loved A-K- and entered into the marriage in good faith and that the couple lived with her in the same residence. In the June 20, 2011 affidavit of [REDACTED] declared that he was the petitioner's friend and knew that the petitioner loved A-K- and entered into the marriage in good faith. In the June 17, 2011 affidavit signed by [REDACTED] the affiant declared that he was the petitioner's mother's friend and had met the couple at the petitioner's mother's residence and knew that the couple entered into the marriage in good faith. In a psychological evaluation prepared by [REDACTED] repeated the information in the petitioner's initial statement regarding how he met A-K-.

The petitioner also provided a copy of debit cards issued to both A-K- and himself, a copy of A-K-'s phone statements solely in her name, three additional photographs of the couple on their wedding day, and a copy of a receipt from the Office of the Sheriff of [REDACTED] acknowledging receipt of \$50 paid for the account of J-R-²

The director discussed the insufficiency of the petitioner's testimony and the deficiencies of the testimony of the individuals who submitted statements on his behalf in regards to the petitioner's intent when entering into the marriage. The director also discussed the deficiency in the documentary evidence submitted.

On appeal, counsel asserts that the petitioner submitted sufficient evidence to demonstrate that the couple entered into the marriage in good faith. Counsel contends that the affidavits submitted on the petitioner's behalf show that the affiants knew the couple as husband and wife and to require more would be an invasion of the petitioner and the couple's privacy. Counsel avers that the director's statement that United States Citizenship and Immigration Services (USCIS) must consider any credible evidence but that the mere submission of such evidence does not establish eligibility has no basis in law. Counsel asserts, to the contrary, that a petitioner must establish eligibility only by a preponderance of the evidence. Counsel submits a copy of a January 11, 2006 AAO published decision, *Matter of Chawathe*,³ in support of her assertion.

Preliminarily, counsel's assertion that the mere submission of credible evidence is sufficient to

² The petitioner claims that his spouse used an assumed name and had done so since she was in high school. Name withheld to protect the individual's identity.

³ *Matter of Chawathe* held that if the petitioner submits relevant, probative and credible evidence that leads the director to believe the claim is "probably true" or "more likely than not," the petitioner has satisfied the standard of proof.

establish eligibility is unpersuasive. Section 204(a)(1)(J) of the Act requires USCIS to “consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act. This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS].” Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating good faith list examples of the types of documents that may be submitted and states, “All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(vii). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner’s burden of proof. While USCIS must consider all credible evidence relevant to a petitioner’s claim of having married in good faith, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner’s burden of proof. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

The director in this matter properly considered the petitioner’s testimony, the testimony submitted on his behalf, as well as the documentary evidence submitted. The director applied the proper standard of review and found that the petitioner had not submitted sufficient probative testimony or other evidence to establish he had entered into the marriage in good faith by a preponderance of the evidence. We concur with the director’s decision.

Upon review of the record, the petitioner has not provided probative testimony describing when he met A-K-, their courtship, their wedding ceremony, their shared residence, or their shared experiences, except as it relates to the claim of abuse. The petitioner provided a general statement indicating how he met A-K- by chance and then stated generally that they talked, texted, and dated. He does not describe in detail their shared interactions during the courtship, their decision to marry, or the circumstances of the marriage. Upon review, the petitioner’s testimony does not include the probative detail necessary to obtain insight into his intent when he entered into the marriage. Moreover, the petitioner’s testimony includes inconsistencies with other information in the record. The petitioner initially stated that his wife disappeared in October 2010 and he later discovered that she was incarcerated and he gave her some money while she was in jail. The receipt from the ██████████ Sheriff’s Office, provided by the petitioner to establish that he provided his spouse with money while she was in jail is dated August 24, 2010, more than a month prior to the petitioner’s testimony that his wife disappeared in October 2010 and he learned she was incarcerated. This inconsistency detracts from the credibility of the petitioner’s testimony.

Similarly, the affiants who submitted statements on the petitioner’s behalf provide no probative detail of their observations of the couple, except general statements that the petitioner loved A-K- and that the couple entered into the marriage in good faith. The petitioner’s mother’s statement and the statement of her friend, ██████████ that the couple lived with the petitioner’s mother does not provide any probative information that assists in ascertaining the petitioner’s intent when entering into the marriage. Likewise, attending a wedding ceremony does not offer insight into the petitioner’s intent when entering into the marriage. The testimony of the affiants does not include

sufficient detailed information to conclude they had personal knowledge of the relationship and the intent of the petitioner when entering into the marriage. Upon review of the documentary evidence submitted, the bank statements for three months, phone bills issued solely to A-K-, and photographs of the couple on their wedding day and on one other occasion do not establish an individual's intent when entering into a marriage.

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with A-K- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition remains denied.