

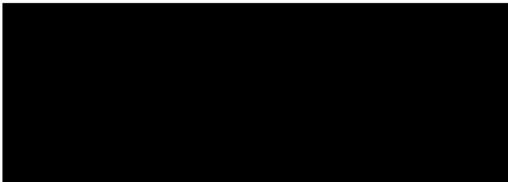
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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Office: VERMONT SERVICE CENTER

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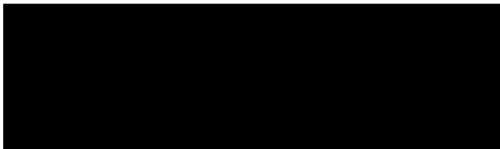
IN RE:

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 jointly resided with the United States Citizen (USC) spouse or 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, and additional documents. 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:

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

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(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 Belize who entered the United States on May 5, 2002 as a B-2 visitor. She married A-H-¹ the claimed abusive USC, on March 31, 2007. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on September 29, 2008. 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 jointly resided with the USC spouse or that she had entered into the marriage in good faith. The petitioner submitted a late filed appeal which the director treated as a motion to reopen. On review, the director determined that the petitioner had failed to provide evidence sufficient to overcome the prior decision and dismissed the motion. On appeal, counsel for the petitioner

¹ Name withheld to protect the individual's identity.

submits a brief, an October 17, 2011 letter, and previously submitted documentation. Counsel asserts that the “any credible evidence” is required and that a broad and flexible evidence standard should be utilized.

Preliminarily, the director applied the proper evidentiary standard when reviewing this matter. Section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to “consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) and 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. The evidentiary guidelines for demonstrating residence and good faith lists 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)(ii) and (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 abuse, 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 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless. The director considered the petitioner’s statements and the affidavits submitted on her behalf. As the director determined, the statements and affidavits do not provide probative detail sufficient to establish the petitioner’s joint residence or her intent when entering into the marriage.

Joint Residence

The petitioner states on the Form I-360 that she resided with her spouse from March 2007 until April 2008. In the petitioner’s July 11, 2008 personal statement she reiterated that she lived with A-H- from March 2007 until April 6, 2008. In a January 17, 2010 statement she indicated that she and A-H- resided at the house of a mutual friend. The petitioner provided two statements signed by [REDACTED] who declared that the couple lived in his apartment and paid rent to him. The declaration of [REDACTED] the statement of [REDACTED] the declaration of [REDACTED] and the statement of [REDACTED] provide no information regarding the couple’s claimed joint residence.

On appeal, counsel asserts that the declarations signed by [REDACTED] indicating the couple resided with him are uncontroverted and thus establish that the petitioner and A-H- resided together. Counsel avers that the police report provided shows the couple’s joint residence and the lack of other documentation is due to the frequent unemployment of A-H- and his poor credit history.

Upon review of the petitioner’s statements, the statements submitted on her behalf, and the documentary evidence submitted, the petitioner has not provided probative testimony or evidence establishing that she jointly resided with her USC spouse. The petitioner does not describe the

claimed joint residence with A-H-, she does not describe their daily routines within the residence, and she does not provide any detail regarding the home furnishings, the house/apartment, or any other evidence to establish the couple jointly resided together. Similarly, [REDACTED], other than making a statement that the couple lived with him and paid him rent, does not provide any information regarding the circumstances of the couple's joint residence. His statements are insufficient to establish that the couple actually established a joint residence in his apartment. Contrary to counsel's claim, the police report while listing an address for the petitioner does not identify the address as the couple's joint residence or indicate that it is the residence of a third party. The record does not include the necessary detailed information to conclude that the couple jointly resided together. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and the petition must be denied.

Good Faith Entry into Marriage

The petitioner indicated initially that she met A-H- through friends and dated for four years and then he asked her to marry him. [REDACTED] noted that he was the best man at the couple's wedding and that he hosted a reception for them. The petitioner's niece stated that she would see A-H- when she would take the couple to the supermarket. The other individuals who submitted statements on behalf of the petitioner noted that they knew of the marriage and some indicated they attended the wedding. [REDACTED] indicated that the petitioner had complained to him incessantly about the physical, mental, and verbal abuse of A-H-. The record also included a few photographs of the wedding party.

The director determined that the evidence submitted in support of the petition was insufficient to demonstrate that the petitioner had entered into the marriage in good faith.

On appeal counsel for the petitioner asserts that the petitioner was sixty years old when she married A-H- and that her intentions were to create a life together with A-H-. Counsel contends that the director "has failed to diminish the bona fides of this marriage."

The director set out the deficiencies in the evidence submitted and counsel does not provide additional probative evidence on appeal. Counsel's contention that the director failed to "diminish the bona fides of this marriage" is misguided. The director does not bear the burden of proof in this matter. Upon review of the petitioner's statements, she has not provided a probative account of her claimed four-year courtship, her decision to marry, the couple's shared residence(s) or shared experiences, except as it relates to the general claim of abuse. The petitioner's testimony lacks the necessary detail that would provide insight into her intentions when entering into the marriage. The statements of the petitioner's friends and family do not include probative detail of their observations of the interactions of the couple and thus are also insufficient evidence of the petitioner's intent when entering into the marriage. General statements are insufficient to establish the petitioner's intent in this regard. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her USC 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 jointly resided with the claimed abusive spouse or 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.