

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: **DEC 17 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:

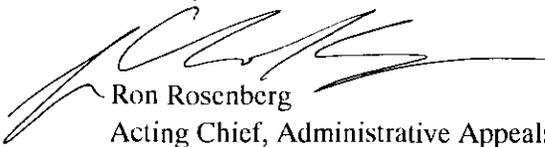
SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center, (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The appeal will remain dismissed and 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.

Applicable Law

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 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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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 was born in Guyana and entered the United States as a B-2 visitor on July 31, 2005. She married [REDACTED] a U.S. citizen, on January 16, 2007. The petitioner filed the instant Form I-360 on September 28, 2010. The director denied the petition for failure to establish that she entered into her marriage in good faith. The AAO concurred with the director's decision and dismissed the petitioner's appeal. The petitioner timely filed a motion to reopen.

The petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner asserts that she entered into marriage with [REDACTED] in good faith. The petitioner's assertions are supported by her letter, a copy of a previously submitted lease, copies of three photographs not previously submitted and a second letter from the petitioner's friend, [REDACTED]. Accordingly, the motion to reopen is granted.

Good-Faith Entry into Marriage

In its prior decision, the AAO determined that the petitioner had not established that she entered into marriage with [REDACTED] in good faith for the following reasons: 1) the petitioner's testimony was insufficient to establish her intent upon entering into marriage with [REDACTED] 2) the statements submitted on the petitioner's behalf were insufficient to show that the affiants had personal knowledge of the relationship and the petitioner's intent when entering into marriage with [REDACTED] and 3) the documentary evidence provided was insufficient to establish the petitioner's intent when entering into her marriage with [REDACTED].

On motion to reopen, the petitioner submits a third declaration stating that she entered into marriage with [REDACTED] in good faith because she loved him and not because she wanted something from him. Again, the petitioner fails to substantively discuss her intentions. While she repeatedly professes that she married for love, the petitioner fails to give a probative account of her courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the abuse. The petitioner also submits a second letter from her friend [REDACTED] which is nearly identical to the first letter that [REDACTED] submitted on the petitioner's behalf. In her second letter, [REDACTED] adds a paragraph stating that the petitioner entered into her marriage in good faith because the petitioner

¹ Name withheld to protect the individual's identity.

² The letter, dated July 31, 2011, shows it was notarized on June 4, 2012.

was committed to [REDACTED] and that the petitioner is loyal, dedicated, and honest. The letter from [REDACTED] fails to provide relevant, substantive information and does not show that she has sufficient personal knowledge of the petitioner's relationship with [REDACTED]. The remaining evidence submitted on motion, the copy of the petitioner's lease and pictures of the petitioner and [REDACTED] in their apartment, indicate a shared residence but fail to establish that the petitioner's intentions upon entering the marriage. Accordingly, the evidence submitted on motion fails to establish that she entered into marriage with [REDACTED] 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. Upon reopening, the prior decision of the AAO is affirmed. The appeal will remain dismissed and the petition will remain denied.

ORDER: The appeal remains dismissed and the petition remains denied.