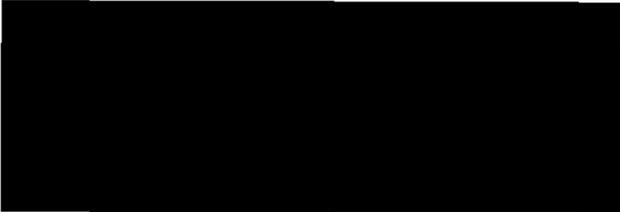




U.S. Citizenship
and Immigration
Services



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:



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 Director, Vermont Service Center, (“the director”) denied the immigrant visa petition 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 for failure to establish that the petitioner entered into marriage with her husband in good faith.

On appeal, counsel submits a brief and additional evidence. Counsel asserts that the director erred in finding that the evidence provided was insufficient to show that the petitioner married her husband in good faith.

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:

(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 citizen of Romania who entered the United States as a visitor in June of 2007. The petitioner married [REDACTED], a U.S. citizen, in Wilkes Barre, Pennsylvania on March 5, 2008. The petitioner filed the instant Form I-360 on January 4, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's entry into marriage with her husband in good faith. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to demonstrate the petitioner's eligibility. The director denied the petition and counsel timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has 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 director determined that the evidence submitted by the petitioner was insufficient to support a finding of her good faith entry into the marriage. In her first affidavit dated December 2, 2010, the petitioner stated that she met [REDACTED] at a restaurant in Queens, New York in October of 2007. She stated that they became a couple and were later married in Wilkes Barre, Pennsylvania. In response to the RFE, the petitioner submitted a second statement dated November 11, 2011, in which she stated that she married [REDACTED] with the intentions of living together as husband and wife. She explained the lack of evidence documenting her marriage to [REDACTED] but did not further describe their courtship, engagement, wedding, joint residence or shared marital experiences.

In addition to her affidavits, the petitioner submitted the following documents as evidence of her good faith marriage: photographs of her wedding ceremony and of three other occasions; a letter from the petitioner's former neighbor, [REDACTED] a letter from [REDACTED] former employer, [REDACTED]

¹ Name withheld to protect individual's identity.

██████████ and a copy of an electronic mail message from ██████████ cousin expressing remorse over ██████████'s treatment of the petitioner. ██████████ stated that she lived on the first floor of their Wilkes Barre address while the petitioner and ██████████ lived upstairs. She described spending time with them as a couple in their shared backyard and how they seemed happy. ██████████ briefly stated that he was a witness at their wedding, spent the holidays with them and that the petitioner "truly cared" for ██████████. The letters of the petitioner's friends submitted below did not contain probative information regarding the petitioner's intentions in marrying ██████████. The petitioner's friends all attested to knowing the petitioner and her husband as a married couple, but they did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

The director correctly determined that the evidence submitted by the petitioner was insufficient to establish her good faith intentions upon marrying ██████████. To the extent the director indicated that documentary evidence was required, that portion of his decision is hereby withdrawn. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's affidavits do not provide sufficient detail to adequately address her good faith intent upon marrying ██████████. While the petitioner gave sufficient explanations for her lack of documentation in her second affidavit, she failed to provide probative testimony regarding her intentions upon marrying ██████████. Further, the letters from friends also failed to provide relevant, substantive information and did not show that the authors had any personal knowledge of the relationship and the petitioner's intent upon marrying ██████████. On appeal, the petitioner submits a letter from ██████████ aunt, ██████████ and a copy of a lease agreement. ██████████ states that she visited the petitioner and ██████████ and they "seemed to have a happy marriage," but she does not describe any particular visit in detail or otherwise explain the basis for her knowledge of the relationship. The lease shows that the petitioner resided with ██████████ but does not demonstrate her good faith in entering the marriage. *De novo* review of the record does not establish that the petitioner married her spouse in good faith. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's ground for denial and she is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.

ORDER: The appeal is dismissed.