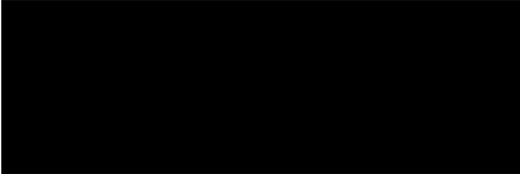


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



B9

Date: DEC 18 2012

Office: VERMONT SERVICE CENTER



IN RE:



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:

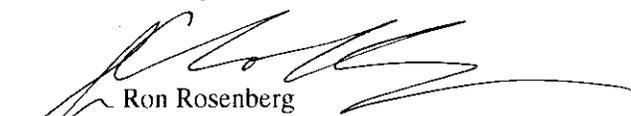


INSTRUCTIONS:

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 Vermont Service Center director (“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 on the basis of his determination that the petitioner failed to establish that she married her husband in good faith.

On appeal, counsel submits a brief and additional evidence.

#### *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).

An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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, the following:

*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.

*Pertinent Facts and Procedural History*

The petitioner, a citizen of Uzbekistan, married K-G-<sup>1</sup>, a citizen of the United States, on February 14, 2006 in Hamilton County, Ohio. The petitioner filed the instant Form I-360 on August 2, 2010. The director subsequently issued a request for additional evidence (RFE) of, *inter alia*, the petitioner's good faith entry into marriage with K-G-. The petitioner timely responded with additional evidence which the director found insufficient to establish her good-faith entry into the marriage. The director denied the petition and the petitioner, through counsel, timely appealed.

The AAO conducts appellate review on a *de novo* basis. *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. The appeal will be dismissed for the following reasons.

*Entry into the Marriage in Good Faith*

The record fails to demonstrate that the petitioner married K-G- in good faith. Counsel asserts that the director disregarded the petitioner's initial evidence "without any meaningful explanation" and failed to apply the preponderance of the evidence standard. The relevant evidence in the record contains the following: a personal affidavit; a joint bank statement; a voided check; a joint income tax return for 2006; a joint lease; joint electric bills; two affidavits from friends; and photographs of the petitioner and K-G- on three unidentified occasions. In response to the RFE, the petitioner submitted a second personal affidavit and affidavits from two additional friends. The director properly reviewed the record and addressed its deficiencies. The bank statement shows minimal activity and does not demonstrate an

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<sup>1</sup> Name withheld to protect the individual's identity.

intent to commingle finances or indicate that the petitioner and K-G- used it for shared financial interests. The joint tax return is signed but there is no indication that it was filed with the Internal Revenue Service (IRS). The voided check, lease, and utility bills may show joint residence but do not sufficiently demonstrate the petitioner's marital intentions. Likewise, the unidentified photographs show that the petitioner and K-G- were photographed together on three occasions but are also insufficient to establish that the petitioner married K-G- in good faith.

Regardless of these deficiencies, 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." 8 C.F.R. § 204.2(c)(2)(vii). In this case, however, the affidavits do not demonstrate the petitioner's entry into her marriage in good faith. In the petitioner's first affidavit, she stated that she met K-G- on May 5, 2005 at the birthday party of a friend. Her friend invited K-G- because they worked together. The petitioner stated that she performed songs and dances at the party and that K-G- was impressed by her performances. She stated that she then invited him to another party and they began dating. She stated they dated for nine months before getting married on February 14, 2006. The petitioner described that for a year and a half, they lived out their "fairy tale lives" but that over time K-G- became obsessed with her and possessive. In her second affidavit in response to the RFE, the petitioner only described incidents of abuse and did not give any further detail regarding their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the abuse.

The statements from the petitioner's friends also did not provide specific, detailed information demonstrating that the petitioner married K-G- in good faith. The petitioner submitted affidavits from

stated only that he is the petitioner's brother-in-law and was aware that the petitioner was in an abusive relationship with K-G-. stated that she attended the petitioner's and K-G-'s wedding. did not comment on petitioner's good faith in marrying K-G-. stated that every time he saw the petitioner with K-G-, they appeared to be happy together. None of the affiants discussed in probative details their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. On appeal, the petitioner submits a third personal affidavit explaining why she failed to disclose her previous marriage on her Form G-325A Biographic Information sheet that was submitted with the Form I-130 Petition for Alien Relative filed on her behalf. She did not probatively describe her courtship with K-G-, wedding, joint residence or any of their other shared experiences, apart from the abuse. 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 failed to overcome the director's determination that she did not establish the requisite entry into the marriage in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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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 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.