

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 19 2012**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-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:

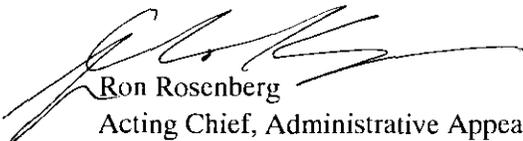
SELF-REPRESENTED

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 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 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 request 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 that any motion must 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 former spouse, a U.S. citizen.

The director denied the petition for failure to establish that the petitioner resided with her former husband or entered into marriage with her former husband in good faith.

On appeal, the petitioner submits a brief and copies of previously submitted 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 an abusive 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 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:

(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.

* * *

(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:

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 of the Philippines who entered the United States on February 8, 2005, as a nonimmigrant visitor. The petitioner married a U.S. citizen on January 6, 2008, in Nevada. The petitioner and her former husband divorced on June 15, 2009.

The petitioner filed the instant Form I-360 on September 16, 2010. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and shared residence. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on March 21, 2012, and the petitioner timely appealed.

On appeal, the petitioner submits a brief and copies of previously submitted evidence. In her brief, the petitioner claims that although she confessed during her immigration interview that she fraudulently married her former husband in an attempt to circumvent immigration law, she did so

only because she did not have an attorney present and was intimidated by the immigration officer. The petitioner also asserts that United States Citizenship and Immigration Services (USCIS) failed to consider the joint documents she had previously submitted.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The petitioner's claims and the evidence submitted on appeal do not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her affidavit, dated August 24, 2011, the petitioner stated that she met her former husband at a networking seminar, and decided to join the company shortly after the seminar. The petitioner reported that because she and her ex-husband worked together, they became close friends. She noticed that her ex-husband showed a special interest in her and he began courting her. The petitioner stated that after various dinner dates and meetings, her former husband proposed to her and, after discussing the proposal with mutual friends, she agreed to marry him. The petitioner reported that she and her ex-husband were married on January 6, 2008 in Nevada. The petitioner did not further describe their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the abuse.

The petitioner submitted letters from a relative and two acquaintances who mentioned that the petitioner was married, but spoke predominately of the abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. These letters provided no specific information demonstrating that the petitioner married her former husband in good faith. Similarly, the petitioner submitted a psychological evaluation written by [REDACTED] a clinical psychologist, in which the psychologist repeated, often verbatim, the petitioner's affidavit. In the evaluation, the psychologist recounted that the petitioner met her former husband at a networking event and after he courted her and proposed, the two were married. The psychologist provided no details or probative information regarding the petitioner's intentions in entering into her marriage.

The director also accurately assessed the other relevant documents submitted below. The petitioner submitted copies of joint bank statements addressed to her and her ex-husband at their address on [REDACTED], dated from May, 2008 through October, 2008. The petitioner, however, also submitted a Form G-325, Biographic Information form, with her Form I-485, Application to Register Permanent Residence or Adjust Status, in which she stated that she no longer lived at the [REDACTED] address as of July, 2008. The petitioner submitted insurance forms addressed to herself dated November, 2008, that list her address as [REDACTED] and which do not name her former husband. The petitioner also submitted a letter and insurance forms addressed to her former husband dated February, March and April of 2008, but these do not list the petitioner by name, and again they were sent to her former husband at an address on [REDACTED]. The photographs of the petitioner with her ex-husband on their wedding day and a few other unspecified occasions were not accompanied by any explanation of their significance.

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(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(c)(2)(vii). In this case, however, the testimonial evidence submitted does not demonstrate the petitioner's entry into her marriage in good faith. In her affidavits, the petitioner does not describe her intentions in marrying her former husband or their courtship, wedding, joint residence or any of their other shared experiences, apart from the abuse, in probative detail. The affidavits from the petitioner's relative and acquaintances and the psychological evaluation do not discuss in probative detail the authors' observations of the petitioner's interactions with or feelings for her former husband during their courtship or marriage or otherwise establish their personal knowledge of the relationship. The relevant documents submitted are insufficient to show that the petitioner entered into the marriage in good faith.

Furthermore, where USCIS can articulate a material doubt regarding the petitioner's eligibility, the agency may either request additional evidence or deny the application if the material doubt indicates that the claim is probably not true. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). USCIS records show that on November 19, 2008, during an interview with a USCIS officer, the petitioner admitted that she entered into a sham marriage and that she paid her ex-husband \$25,000 for him to marry her and sponsor her for U.S. residence. The petitioner admitted that she had given her former husband a down payment of \$12,400, and \$6,250 when she received her employment authorization. The petitioner stated that she owed her ex-husband the balance of \$6,250. The petitioner told the officer that she worked for two years to save the money, and referred to it as "blood money" because she worked seven days a week to earn it.

The petitioner's confession that she paid her former husband to marry her in order to receive an immigration benefit detracts greatly from the credibility of her claim that she entered the marriage in good faith. The petitioner's claim on appeal that she only made the confession because she was intimidated by the immigration officer is not convincing, particularly given that she did not mention the "false" confession until confronted with the information by the director in his decision. Given the confession of fraud and the petitioner's failure to describe in probative detail her and her ex-husband's courtship, wedding, joint residence or any of their other shared experiences, apart from the abuse, the petitioner has failed to demonstrate that she entered into marriage with her ex-husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record also fails to demonstrate that the petitioner resided with her ex-husband. On the Form I-360, the petitioner stated that she lived with her former husband beginning in January 2008, and that their last joint address was on [REDACTED] in California. In her statement, the petitioner does not describe their home or shared residential routines in any detail, apart from the abuse. The petitioner's friends do not describe any visit to her and her former husband's residence. The other relevant documents submitted were insufficient to show joint residence, as discussed in the preceding section. In addition, in the psychological evaluation, the psychologist stated that after the petitioner and her former husband were married, the petitioner continued to live at the facility where she was a

caretaker. The psychologist reported that the petitioner did not “[move] in fully” with her former husband until June, 2008. However, as stated in the preceding section, the petitioner reported on her Form G-325 that she only lived at the [REDACTED] address until June, 2008. There is no explanation offered for these discrepancies. Accordingly, the record does not establish that the petitioner resided with her ex-husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director’s determinations that she did not establish the requisite entry into the marriage in good faith or joint residence with her ex-husband. 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. at 375. Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.