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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**

B9



DATE: FEB 03 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:

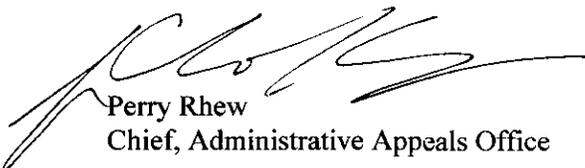
SELF-REPRESENTED

**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 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 service center director denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted. The petition will remain denied.

The petitioner seeks immigrant classification under 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 denied the petition on the basis of his determination that the petitioner failed to establish that she married her ex-husband in good faith, and we dismissed previous counsel's subsequent appeal. On motion to reopen and reconsider, the petitioner submits a letter reasserting her eligibility and requests an extension of time during which to obtain new legal counsel and submit additional evidence.<sup>1</sup> The petitioner's submission meets the requirements for a motion to reopen, but not the requirements for a motion to reconsider.

*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, 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.

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<sup>1</sup> To date, more than seven months later, we have received no further correspondence from the petitioner. Accordingly, we deem the record complete and ready for adjudication.

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:

(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 the Philippines who entered the United States on June 10, 2009. She married D-W-,<sup>2</sup> a citizen of the United States, on June 19, 2009 and they divorced on December 2, 2009. The petitioner filed the instant Form I-360 on October 27, 2009. The director issued a subsequent request for additional evidence (RFE) and the petitioner, through prior counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to his RFE, the director denied the petition on October 5, 2010. We dismissed the petitioner's subsequent appeal on May 23, 2011, and the petitioner filed the instant motion on June 23, 2011.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As we fully evaluated the relevant evidence submitted below in our previous decision, on motion to reopen we will only consider the evidence submitted after we issued that decision. Upon reopening and review of the new evidence, we find that the petitioner has failed to establish any error in our prior decision.

#### *Good Faith Marriage*

In our May 23, 2011 decision dismissing the appeal, we stated that the petitioner's description of the couple's introductions and subsequent interactions was cursory in nature. In her June 18, 2011 letter submitted on motion to reopen, the petitioner claims she did not marry [REDACTED] for immigration purposes and provides examples of several shared activities after they married. However, the petitioner's testimony does not establish that she married [REDACTED] in good faith. It does not include a probative account of her intentions prior to the marriage: for example, although she claims she had

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<sup>2</sup> Name withheld to protect individual's identity.

other prospects for marriage but married [REDACTED] because she loved him, she does not expand upon her generalized assertions submitted below regarding her reasons for marrying [REDACTED]. The petitioner's letter also lacks a detailed account of their courtship and wedding ceremony. Although she briefly describes meeting members of [REDACTED] family, a few of their shared activities and a short outline of their daily routines, the petitioner's brief statements do not describe any of these shared experiences and routines in probative detail.

The petitioner also makes several allegations impugning prior counsel's representation. However, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved party setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the individual in this regard; (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond; and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). The record contains no evidence that the petitioner has complied with these requirements.

The additional letter submitted by the petitioner on motion to reopen does not establish any error in our previous decision and does not establish that she married D-W- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### *Conclusion*

The petitioner has failed to establish any error in our prior decision that she did not marry D-W- in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and the appeal must remain dismissed.

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). The petitioner has not met that burden.

**ORDER:** The motion is dismissed. The May 23, 2011 decision of the Administrative Appeals Office is affirmed and the appeal remains dismissed.