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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 10 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:

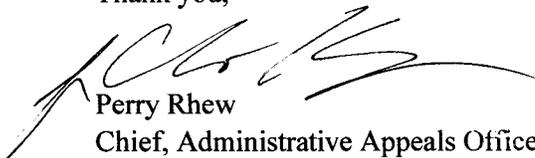


INSTRUCTIONS:

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 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 the \$630 fee. 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 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 and she resided with her husband.

On appeal, counsel provides a one-sentence statement and a letter from the petitioner.

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:

(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:

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Russia who was admitted to the United States on December 18, 2000, as a nonimmigrant visitor. The petitioner married W-P-, a U.S. citizen, on January 21, 2008 in [REDACTED]. The petitioner filed the instant Form I-360 on June 18, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage and her shared residence with her husband. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish 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). A full review of the record, including the petitioner's letter submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and 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 first affidavit submitted in response to the RFE, dated February 24, 2011, the petitioner briefly recounted that during her courtship with W-P-, they went to eat at restaurants, took

¹ Name withheld to protect the individual's identity.

scenic drives, went for long walks and went to the park together. The petitioner did not describe how she met her husband, their wedding, joint residence or any of their shared experiences, apart from the abuse.

In response to the RFE, the petitioner submitted letters from three friends, [REDACTED]. The petitioner's friends briefly discussed the petitioner's marriage, but spoke predominately of the abuse and did not provide detailed information establishing their personal knowledge of the relationship. The petitioner also submitted a psychiatric evaluation from [REDACTED] dated February 22, 2011, who briefly described the petitioner's courtship, as recounted to him by the petitioner. [REDACTED] did not discuss in probative detail the petitioner's good faith intentions when she entered the relationship.

The relevant documents submitted in response to the RFE are also not of significant probative value in establishing the petitioner's good-faith intentions in entering the marriage. The petitioner submitted the cover page of a joint checking account statement for her and her husband dated over one year after the petitioner stated that she separated from her husband in October 2008. The petitioner also submitted two undated photos of her and her husband that were taken at an unidentified location.

On appeal, the petitioner states that when W-P- asked her to marry him, they "did not know good each other." She states that when she told W-P- about her concerns, he replied that everything will be fine. The petitioner recalls that after their separation they met again and W-P- apologized to her. She states that they decided that their marital relationship was important and went to a bank to open a joint account. The petitioner recalls that they then went to dinner, but when W-P- answered his phone during dinner she realized that he was speaking with his mistress. She states that she then knew that they would not reconcile. The petitioner did not further describe how she met her husband, their wedding, joint residence or any of their shared experiences, apart from the abuse.

On appeal, counsel briefly asserts that "it is unreasonable for USCIS to expect the [petitioner] to be able to provide documentary evidence that is in the possession and control of the abusive spouse . . . from which she is separated and has no contact." Documentary evidence is not required and we find no unreasonable expectation of documentation expressed in the director's decision. In this case, apart from the relevant documentation, the statements of the petitioner and her friends are insufficient to establish her good-faith entry into the marriage. In her own statements, the petitioner does not discuss how she met her husband, their wedding, joint residence or any of their other shared experiences, apart from the abuse. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

We also find no error in the director's determination that the petitioner did not reside with her husband. On the Form I-360, the petitioner stated that she lived with her husband from January 2008 until October 2008 in [REDACTED] New York. Although counsel asserts that it is unreasonable for USCIS to expect the petitioner to provide documentary evidence of their residence, the petitioner in

her own statements does not describe her marital home or shared residential routines in any detail, apart from the abuse. The petitioner's friends do not describe any visit to the petitioner's residence with her husband and the two photographs are not identified by the petitioner as having been taken at any specific residence that the petitioner shared with her husband. While the cover page of the joint checking account statement contains the shared residential address listed on the Form I-360, it was issued over one year after the petitioner reported separating from her husband. Accordingly, the record does not establish that the petitioner resided with her 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 enter into the marriage in good faith and that she did not reside with her 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. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.