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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



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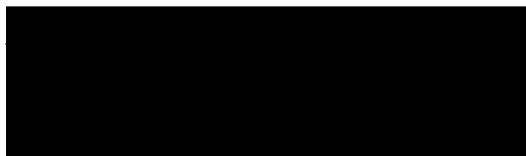
Date: **FEB 10 2012**

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:

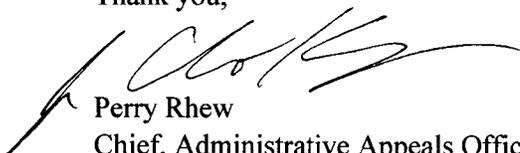


INSTRUCTIONS:

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.

On appeal, counsel submits a brief reasserting the petitioner’s eligibility.

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:

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 is a citizen of Belarus who was admitted to the United States on August 30, 2006 as the K-1 fiancée of D-S-, a U.S. citizen.¹ The petitioner married D-S- on December 26, 2006 in Illinois. The petitioner filed the instant Form I-360 on February 5, 2008. The director subsequently issued a Request for Evidence (RFE) of the petitioner's qualifying relationship with a U.S. citizen, good-faith entry into the marriage and good moral character. The petitioner, through former counsel, responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition for failure to establish that the petitioner had a qualifying relationship with a U.S. citizen, is eligible for immigrant classification based upon that relationship, and entered into the marriage in good faith. The petitioner, through current counsel, subsequently filed a motion to reopen the decision. The director granted the motion and determined that the petitioner established that she had a qualifying relationship with a U.S. citizen and is eligible for immigrant classification based upon that relationship, but denied the petition for failure to establish the petitioner's good-faith entry into the marriage. Counsel filed a timely appeal.

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 fails to establish the petitioner's eligibility. Counsel's claims do 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 relevant evidence submitted below fails to demonstrate the petitioner's entry into her marriage in good faith. In her affidavit, dated October 7, 2010, the petitioner stated that she met D-S- online in April 2005. She explained that they communicated for one year and then decided to meet for the first time in June 2006 in Warsaw, Poland. The petitioner recounted that they were in Poland for three days and during that time they went sight-seeing, had Polish food and once met her friend for dinner. She

¹ Name withheld to protect the individual's identity.

recalled that they became engaged at the end of their vacation in Poland. The petitioner stated that when she arrived in the United States on August 30, 2006, she was happy to see D-S-, but surprised to see that his apartment was very dirty. The petitioner submitted ten photographs of herself and D-S- during their visit to Warsaw in June 2006. Although the petitioner discussed her courtship with D-S-, she did not describe her wedding ceremony, joint residence or any of their shared experiences, apart from the abuse.

In addition, the petitioner's account of her courtship with D-S- differs from documentation in the record. The petitioner stated that she first met D-S- in June 2006 after they had communicated long-distance for over one year. She stated that they became engaged during their trip to Warsaw, Poland in June 2006. However, the record reflects that the petitioner and D-S- were engaged prior to their June 2006 meeting in Warsaw, Poland. A Petition for Alien Fiancé(e) (Form I-129F) was filed by D-S- on behalf of the petitioner with U.S. Citizenship and Immigration Services (USCIS) on December 27, 2005 and it was approved on February 21, 2006. The record shows that the petitioner had her medical examination for her fiancée visa on May 31, 2006 and she filed her nonimmigrant fiancée visa application (Form DS-156K) with the U.S. Consulate in Warsaw, Poland on June 7, 2006, the same month she stated she first met D-S-.² These differences detract from the credibility of the petitioner's claims.

The petitioner submitted a psychological evaluation, dated November 30, 2006, from [REDACTED] who diagnosed the petitioner with adjustment disorder with mixed anxiety and chronic depressed mood. [REDACTED] reiterated many of the statements the petitioner made in her affidavit regarding her courtship with D-S- and their subsequent engagement. The psychological evaluation does not provide any additional probative information regarding the petitioner's good faith in entering the relationship.

The petitioner submitted letters from her friends, [REDACTED] and [REDACTED]. The director properly reviewed and addressed the deficiencies of the letters. The letters briefly discuss the petitioner's marriage, but speak predominately of the abuse and do not provide detailed information establishing their personal knowledge of the relationship. The petitioner also submitted a letter from [REDACTED], with the Polish American Association. [REDACTED] letter is of little probative value because it primarily discusses the abuse in the marriage and offers only a very brief description of their courtship.

On appeal, counsel asserts that the director failed to apply the "any credible evidence" standard when adjudicating the petition. Counsel contends that "[a]lthough most immigrant visa petitions are governed by a preponderance of evidence standard, the VAWA self-petition is an exception . . . [and] is governed by a lesser evidentiary standard, and a self-petitioner may establish by any credible evidence that he or she . . . entered into the qualifying marriage in good faith." Counsel mistakenly conflates the applicable evidentiary standard with the petitioner's burden of proof. In this case, as in most visa petition 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). For self-petitioning abused spouses and children, the statute further prescribes an

² The issuance of a K-1 fiancé(e) visa is dependent upon the underlying approval of a Petition for Alien Fiancé(e) (Form I-129F).

evidentiary standard, which mandates that USCIS “shall consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). *See also* 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). This evidentiary standard is not equivalent to the petitioner’s burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, “the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency’s] sole discretion.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner’s credibility or meet the petitioner’s burden of proof.

A full review of the relevant evidence submitted below fails to reveal any error in the director’s determination. In her affidavit, the petitioner does not describe their wedding ceremony, joint residence or any of their other shared experiences, apart from the abuse. Moreover, the differences in the petitioner’s account of their courtship and the date she filed her application for a fiancée visa detract from the credibility of her claims. The psychological evaluation from [REDACTED] mainly reiterates the statements the petitioner made in her affidavit and does not provide any additional information regarding the petitioner’s good faith entry into the marriage. 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 marriage. The petitioner submits no additional evidence on appeal. 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.

Conclusion

On appeal, the petitioner has failed to overcome the director’s determination that she did not enter into the marriage in good faith. 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.

ORDER: The appeal is dismissed.