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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 28 2012** Office: VERMONT SERVICE CENTER File: 

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)

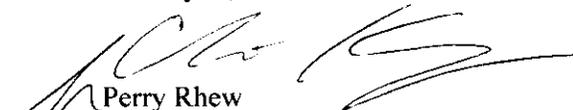
ON BEHALF OF PETITIONER: Self-represented

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 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, denied the immigrant visa petition (Form I-360) 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 spouse in good faith. On appeal, the petitioner submits a letter and affidavits.¹

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 –

¹ The petitioner was represented by counsel below; however counsel failed to file a Form G-28, Notice of Entry of Appearance as Attorney or Representative on appeal as required by 8 C.F.R. § 292.4(a).

(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 Russia who entered the United States as a nonimmigrant visitor on September 27, 1998. The petitioner married a U.S. citizen on October 24, 2007 in Brooklyn, New York. The petitioner divorced her spouse on June 10, 2009. The petitioner filed the instant Form I-360 on March 2, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good faith in marrying her spouse. 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 the petitioner 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 evidence submitted on appeal, fails to establish the petitioner's eligibility. The petitioner's claims on appeal 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 and the affidavits submitted on appeal fail to demonstrate the petitioner's entry into her marriage in good faith. The director properly reviewed and addressed the deficiencies of the relevant evidence of record below, including the prior affidavits of the petitioner and her friends.

On appeal, the petitioner asserts that there existed "a genuine bond and true love connection" between the petitioner and her spouse. While the petitioner contends that the director failed to consider a joint lease which was submitted below, the record does not contain such a document. The petitioner asserts that she and her husband had reached the age of retirement, did not have the required documentation to open a bank account, did not have any assets and that there was "nothing to be co-mingled about except their souls." The petitioner asserts, without citation, that "the courts have often opined that where a spouse is abused within a marriage, the validity of good faith marriage is unquestionable."

On appeal, the petitioner submits two affidavits, one from a friend and one from a family member, in which they state that they took active part in the marriage of the petitioner and her spouse. They state that the petitioner loved her husband and that they “saw [the petitioner] as very happy married woman.” They state that the petitioner helped her spouse during his treatment for prostate cancer and that the two planned to buy a house in Pennsylvania. The petitioner’s cousin added that she cultivated good relations with the petitioner’s spouse’s family after he expressed interest in the petitioner and that the petitioner sold her jewelry in order to collect funds for her husband’s recovery from prostate cancer. The petitioner’s friend added that he had invited the families of the petitioner and her spouse to his house for dinner on no less than three occasions and that he had attended dinner at the petitioner’s house on two occasions.

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director’s determination. In her affidavit, the petitioner fails to provide a detailed, probative account of her and her former husband’s courtship, marriage, joint residence or any of their other shared experiences. The affidavits from friends and family appear to be almost identical in nature and also fail to discuss in probative detail their observations of the petitioner’s interactions with or feelings for her spouse during their courtship or marriage or otherwise demonstrate their personal knowledge of the relationship. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her spouse 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.

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 and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.