

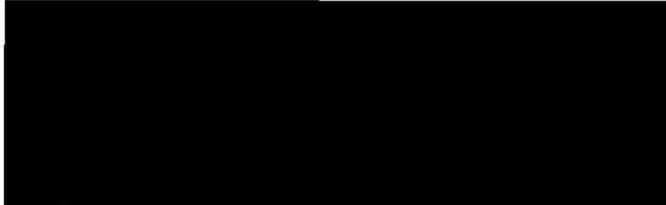
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

DATE: **FEB 28 2012**

Office: VERMONT SERVICE CENTER

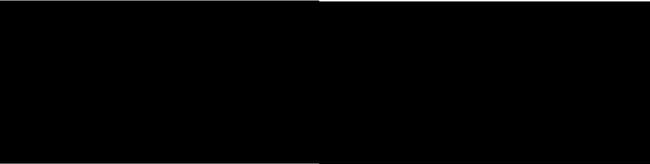
FILE: 

IN RE:

Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

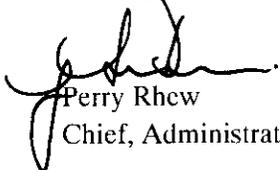


INSTRUCTIONS:

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 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 Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a United States lawful permanent resident.

The director determined that the petitioner had not established that she had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a brief. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Applicable Law and Regulations

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful permanent resident 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 petitioner's spouse. In addition, the petitioner must show that he or she is eligible to be classified as a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act 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 pursuant to Section 204(a)(1)(B)(ii) of the Act are further set out 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)(B)(ii) of the Act are set forth 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.

Facts and Procedural History

The petitioner is a native and citizen of Mexico. She last entered the United States in 2007 without inspection. She married [REDACTED] the claimed abusive United States lawful permanent resident on [REDACTED]. On March 8, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the totality of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established she had entered into the marriage in good faith. Counsel timely submitted a motion to reopen and reconsider the decision. Upon review of the motion, the director granted the motion to reopen and affirmed his previous decision. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and a brief on appeal. Counsel asserts that the director erroneously concluded that the petitioner had not provided sufficient evidence that she entered into the marriage in good faith. Counsel contends that as the director found that the petitioner established that she had been subjected to battery and/or extreme cruelty, the director erred when determining that the petitioner had not established that she had entered into the marriage in good faith. Counsel avers that the director failed to consider the petitioner's submissions in support of her good faith marriage in their totality.

Preliminarily, the AAO observes that Section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]." Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guideline for demonstrating good faith lists examples of the types of documents that may be submitted and states, "All credible

¹ Name withheld to protect the individual's identity.

relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(vii). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner’s burden of proof. While USCIS must consider all credible evidence relevant to a petitioner’s claim(s), the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner’s burden of proof. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

Good Faith Entry into Marriage

The director discussed the deficiencies in the petitioner’s testimony and the testimony of the individuals who submitted statements on her behalf in regards to the petitioner’s intent when entering into the marriage. The director specifically observed that the petitioner’s statements and the affidavits submitted failed to provide probative detail regarding her and her spouse’s courtship, wedding ceremony, or shared life together, except as it related generally to the claimed abuse. Upon review of the petitioner’s statements, we agree with the director’s conclusions. The petitioner stated generally that she met ██████ in Mexico around 2002, they dated, and fell in love and when ██████ asked her to move to the United States with him a few months later she agreed. She noted that she and ██████ lived together for a few years prior to marrying and that they decided to get married in 2007 and had a simple wedding ceremony. The petitioner declares that she married because she loved ██████. The affidavits submitted on the petitioner’s behalf, other than mentioning the petitioner’s wedding and that the couple and her children seemed like any other family, reveal no personal observations of specific interactions between the couple that demonstrates the petitioner’s intent when she entered into the marriage. Neither the petitioner’s testimony nor the testimony of her affiants describes the couple’s shared experiences before or after the marriage, except as it relates to the claimed abuse. The record does not include the probative detail necessary to obtain insight into the petitioner’s intent when she entered into the marriage.

Counsel’s claim that as the director found that the petitioner established that she had been subjected to battery and/or extreme cruelty, the director must necessarily find that she entered into the marriage in good faith is not persuasive. The petitioner must satisfy each requirement of the statute in order to establish eligibility for this benefit. Whether the petitioner established that she was subjected to battery or extreme cruelty perpetrated by her spouse is not an issue before the AAO. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with ██████ in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Conclusion

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition remains denied.