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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 **JAN 24 2012** Office: VERMONT SERVICE CENTER

FILE: 

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:

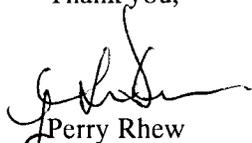


INSTRUCTIONS:

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 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)(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 determined that the petitioner had not established that she had entered into the marriage in good faith. On appeal, the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief and two additional letters.

Applicable 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 based on his or her relationship to the abusive spouse, 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 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 explained 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 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

On June 21, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner claimed on the Form I-360 that she resided with [REDACTED] from April 2009 until October 2009. On December 22, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had entered into the marriage in good faith. Counsel for the petitioner submits a Form I-290B, a brief and two additional letters.

Good Faith Entry Into Marriage

In the petitioner's initial personal statement accompanying the petition, the petitioner provided no information regarding how she met [REDACTED]. In a May 13, 2010 psychological evaluation prepared by [REDACTED] the petitioner reported to [REDACTED] that she met [REDACTED] while she was staying at her cousin's house in the United States when he was doing carpentry work there. [REDACTED] noted the petitioner's report that when she moved into her own apartment, she started dating [REDACTED] and fell in love and accepted his proposal of marriage. The petitioner reported that [REDACTED] was very good with her daughter and that she believed she had found the man of her life and that they would form a family together.

The record also included: a one-year residential lease for the couple beginning April 1, 2009 and ending March 31, 2010; utility statements issued to the petitioner in care of the couple for January, February, and March 2010; joint checking account statements for December 17, 2009

¹ Name withheld to protect the individual's identity.

through April 16, 2010 showing a minimal balance except for one deposit of \$3,570.10 on January 29, 2010; and a copy of an Internal Revenue Service (IRS) Form 1040A filed by the couple for the 2009 year. The petitioner also provided a statement from her sister who noted that before the petitioner married [REDACTED] they had a normal relationship but over time [REDACTED] proved to be a totally different person. In a May 18, 2010 affidavit signed by the petitioner's cousin, the petitioner's cousin noted that the petitioner met [REDACTED] when he was doing carpentry work for her and that they would invite [REDACTED] to family functions. She also declared that when the petitioner rented her own apartment, she began dating [REDACTED] and one day [REDACTED] proposed to the petitioner in front of the family and they prepared a small wedding that most of the family attended. In a June 3, 2010 affidavit signed by [REDACTED] declared that [REDACTED] worked for her husband remodeling the petitioner's cousin's home and that is where [REDACTED] met the petitioner and that when the petitioner rented her own home the couple began dating more frequently. The record further included a number of photographs.

In response to the director's RFE, the petitioner provided a second personal statement. The petitioner noted that when she met [REDACTED] at her cousin's house she felt chemistry with him and after several days the couple became friends and enjoyed being together. The petitioner indicated: [REDACTED] would flatter her; he helped her move to her apartment; they began to spend a lot of time together at the pool and the beach; he took her and her daughter to dinner; and he would go with her to pick up her daughter after school and buy them ice cream. The petitioner noted that [REDACTED] enjoyed helping her daughter with her homework and playing videogames, and going to the mall and movies together. The petitioner indicated that [REDACTED] liked eating at nice restaurants, dressing with expensive brand-clothes, going to nightclubs and the casino, smoking every day, and listening to Latin music. The petitioner stated that [REDACTED] proposed to her in front of her family and they married a few weeks later in a small and private ceremony.

The petitioner provided two additional affidavits relating to the claims of abuse and a letter confirming that [REDACTED] worked as a carpenter from October to December 2009 along with his payroll statements.

The director determined that the petitioner had not established that her intent when entering into the marriage was in good faith.

On appeal, counsel for the petitioner asserts that the tax return, the utility bills, bank account, and lease showed that the couple shared accounts, bills, and a home. Counsel references the previously submitted affidavits and contends that the affiants spoke of the couple's introduction to one another, the engagement, and the marriage showing the good faith nature of the marriage. Counsel submits two additional letters to demonstrate the petitioner's intent when entering into the marriage. In the May 23, 2011 letter signed by [REDACTED] declares: "I have personal knowledge of the good faith marriage and the relationship of [REDACTED] and the petitioner," and that he was at their wedding and had seen them together as a couple many times in a variety of situations at his house, their house, and in public. In the January 5, 2010 letter signed by [REDACTED] she writes that the petitioner and the petitioner's daughter are good persons and that she was present at the petitioner's wedding to [REDACTED]. Counsel asserts that as the director

determined that there was abuse in the relationship it stands to reason that this was a bona fide marriage.

Preliminarily, we observe that a petitioner must establish that she entered into the marriage in good faith as a separate and essential element in a Form I-360 petition. The petitioner in this matter has not provided sufficient evidence to establish she entered into the marriage in good faith. The petitioner provides an overview of meeting [REDACTED] and recites generalities regarding his personal habits and tastes. She does not provide a detailed timeline of her interactions with [REDACTED] prior to or subsequent to the marriage. For example, she does not provide the timeframe when she met [REDACTED] and she does not indicate when she moved into her apartment. Although the petitioner states that she felt chemistry with [REDACTED] and thought she had found the man in her life, she does not provide the requisite underlying detail necessary to ascertain her actual intent when entering into the marriage.

The statements of the petitioner's friends and relatives also fail to provide the necessary detail regarding their observations of the bona fide nature of the petitioner's marriage. None of the declarants describes any particular or specific incident where they witnessed the alleged bona fides of the couple's marital relationship. Simply stating that they attended the wedding or visited the couple or believed that the couple had a bona fide relationship does not provide the required information establishing the petitioner's intent when entering into the marriage.

The petitioner's testimony is general and provides an overview of her introduction and subsequent interactions with [REDACTED]. She has not provided probative testimony that she entered into her marriage with [REDACTED] to establish a life together with him. The failure to supply the details of her courtship, wedding, marriage, and subsequent life together with [REDACTED] precludes a determination that the petitioner entered into the marriage in good faith.

Regarding the documentary evidence submitted, the bank statements do not include the underlying transactional information; thus they are insufficient to establish that the couple used the joint account for the necessities of a life together. Moreover, the bank account contained only minimal funds except for a one deposit apparently of a tax refund check which the petitioner states was immediately withdrawn by [REDACTED]. The bank statements do not assist in establishing the petitioner's intent in entering into the marriage. The lease provided may show that [REDACTED] moved into the apartment but does not assist in establishing the petitioner's intent in entering into the marriage. Likewise, the photographs show that the couple was together on different occasions but do not establish the petitioner's intent. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf also fail to support a finding that she entered into the marriage in good faith. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reason. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

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