

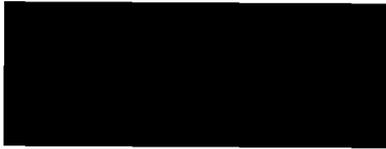
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



B9

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:

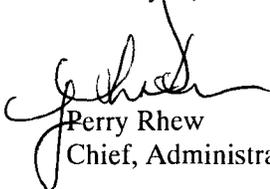
SELF-REPRESENTED

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 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 jointly resided with the claimed abusive United States citizen or that she had entered into the marriage in good faith. On appeal, the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a supplemental statement and previously submitted documentation.

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:

(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 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.

* * *

(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.

Facts and Procedural History

The petitioner is a native and citizen of Kenya. She entered the United States on April 24, 2007 as a nonimmigrant B-2 visitor with temporary authorization to remain in the United States until October 23, 2007. On November 17, 2008, she married B-P-¹ the claimed abusive United States citizen. On October 12, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.² On November 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 jointly resided with B-P- or that she had entered into the marriage in good faith. The petitioner timely submits a Form I-290B, a supplemental statement, and previously submitted documentation.

¹ Name withheld to protect the individual's identity.

² The petitioner previously filed a Form I-360 (EAC 10062 50129) which was denied on September 7, 2010 due to abandonment.

Residence

The petitioner in this matter indicated on the Form I-360 that she jointly resided with B-P- from February 2007 until July 2009 in Denver, Colorado. In the petitioner's December 24, 2009 statement in support of the petition, she does not address the couple's joint residence other than stating that the couple began to live together in April 2007. The record also included the petitioner's Form G-325A, Biographical Information sheet, which indicated the petitioner began to live at the same address as B-P- in April 2007. In response to the director's RFE, the petitioner re-submitted her initial statement and provided affidavits from three individuals. One affiant claims that she visited the couple on a couple of Sundays after church. The two other affiants do not state that they ever visited the petitioner and B-P- at the claimed joint residence. The record also included a civil protection order issued against B-P- on October 14, 2009.

The director determined that the record was insufficient to establish that the petitioner had jointly resided with B-P-.

On appeal, the petitioner states that she is unable to provide evidence of a joint bank account or a lease and notes that she was new to the country and did not pay attention to the requirements of her marriage. She also claims that she is unable to obtain further information as she obtained a temporary restraining order against B-P- to stay away from her.

Upon review of the information in the record, we concur with the director's assessment of the evidence. The petitioner does not provide detailed information regarding the claimed joint residence. She states on the Form I-360 that she began living with R-L- in February 2007, a date prior to her entry into the United States. In her personal statement she indicates that she began living with B-P- in April 2007, the same month she entered the United States. She does not further expound upon the living arrangements either prior or subsequent to the marriage. She does not describe their jointly-owned belongings if any, she does not describe their home furnishings, and she does not describe their residence. She does not provide the necessary probative, consistent detail to establish that the couple resided together during the marriage.

The affiants who submitted testimony on the petitioner's behalf also fail to include detailed information regarding the petitioner and B-P-'s claimed joint residence. The affiants' statements when reviewed in total do not describe the joint residence and do not indicate that they visited the petitioner or B-P- specifically at the claimed joint residence. Their statements lack the probative detail necessary to establish that the couple jointly resided together at any time during their marriage.

Upon review of the totality of the information in the record, the record does not include probative testimony or documentary evidence sufficient to establish that the petitioner resided with the claimed abuser.

Good Faith Entry Into Marriage

In the petitioner's December 24, 2009 personal statement, she stated generally that her friend who worked at the same place as B-P- introduced her to him. She notes that her friendship with B-P- began immediately and that he introduced her to his mother who lived in Texas. She does not indicate specifically when she met B-P- only that she began to live with him in April 2007; thus within six or seven days of her arrival in the United States. She does not describe the couple's interactions in detail while living together prior to marriage or subsequent to the marriage. She cursorily mentions that she was introduced to B-P-'s mother and that she talked to his mother frequently. The petitioner noted that she entered into the marriage with the hope of a long and lasting marriage and that for one and one-half years their relationship was very good.

The petitioner also provided three affidavits from friends. The affiants do not provide detailed information regarding the observed interactions of the couple.

The director determined that the petitioner had not established that she had entered into the marriage in good faith.

On appeal, the petitioner does not directly address the issue of her good faith intent when entering into the marriage.

In this matter, upon review of the petitioner's statement in support of the petition, she provides an overview of meeting B-P- and recites generalities such as driving around together, planning to visit Kenya together, and having children together. She does not provide a consistent timeline of her interactions with B-P- prior to or subsequent to the marriage. For example, she stated on the Form I-360 that she moved in with B-P- in February 2007 and that the couple resided together until July 2009. In her statement, however, she describes meeting B-P- and moving in with him in April 2007, within six or seven days of her arrival. Moreover, she does not provide any information regarding the couple's ultimate separation. She references claimed abuse that takes place in August 2009, one month after she and B-P- separated, but does not provide the requisite detail and circumstances describing the separation.

Upon review of the totality of the testimony in this matter, the record does not contain consistent, probative testimony regarding the petitioner's courtship with B-P-, the types of activities they enjoyed together in detail, or her interactions with B-P- except as it relates to the claim of abuse. Although the petitioner states that she entered into the marriage with the hope of a long and lasting marriage, 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.

The petitioner's testimony is general and provides an overview of her introduction and subsequent interactions with B-P-. She does not provide a consistent chronological timeline of events leading up to her marriage and her testimony does not include probative consistent detail regarding her interactions with B-P- subsequent to the marriage. She has not provided probative testimony that she and B-P- established a life together. Although we acknowledge her explanation regarding her lack of documentary evidence, she must nevertheless establish her good faith intent when entering into her marriage. The AAO has reviewed the petitioner's testimony submitted in support of her good faith entry into marriage; however, upon review, her testimony is of little probative value as it lacks detail and consistency. Upon review of the totality of the record in this matter, the record does not include sufficient probative evidence establishing that the petitioner entered into marriage with B-P- 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 reasons. 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.