

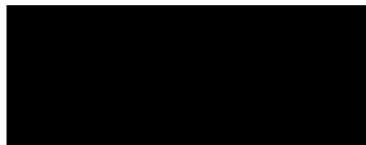
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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By

DATE: Office: VERMONT SERVICE CENTER

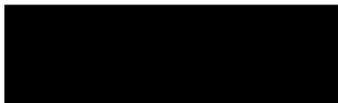
FILE: 

JAN 30 2012

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, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, the petitioner's additional statement, an additional affidavit, and copies of cable bills.

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

The petitioner is a native and citizen of Kenya. She entered the United States on April 24, 2006 as a nonimmigrant visitor. On January 22, 2008, she married B-H-¹, the claimed abusive United States citizen (USC) spouse. On April 13, 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 her USC spouse from January 2008 until April 22, 2009. The director issued a request for evidence (RFE) and 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, his statement on the Form I-290B, the petitioner's additional personal statement, an additional affidavit, cable bills, and a previously submitted psychological evaluation.

Good Faith Entry Into Marriage

In the petitioner's initial April 21, 2010 personal statement accompanying the petition, the petitioner stated briefly that when she met her future spouse he approached her for a date and she agreed, and the couple dated for about a year prior to their marriage in January 2008. The petitioner noted that subsequent to their marriage she lived with her spouse and they had continued to live together. In a November 18, 2010 psychological evaluation prepared by [REDACTED], the petitioner reported to [REDACTED] that she met her husband at a fellowship meeting at her friend's house, that her husband had worked as a painter for her friend and that her husband had just accepted Jesus Christ into his life. The petitioner told [REDACTED] that she began dating B-H- and believed that he was a good man and that she felt that her troubles were over and that she had found the life that she had been looking for and someone to love her.

¹ Name withheld to protect the individual's identity.

The petitioner provided affidavits from several friends, photographs of the couple, an insurance binder valid from June 2009 to June 2010, an incomplete letter regarding healthcare coverage, a March 2009 Verizon bill and invoices for a magazine subscription.

In the petitioner's statement on appeal, she notes that she provided inaccurate information on the Form I-360 regarding the date her joint residence with B-H- ended. She indicates that in April 2009 B-H- started bringing problems to the house but that the relationship ended in August 2009 when she obtained a restraining order against him. She notes that she could not find any utility bills from the early months of the marriage and provides Comcast bills issued to the couple from April to August 2009 on appeal.

The petitioner also provides an undated affidavit signed by [REDACTED] on appeal. [REDACTED] declares that she has known the petitioner for three years and they attend the same church together. [REDACTED] states that she knew the petitioner married B-H- as she had attended their wedding and that the petitioner looked happy for the first eight months of her marriage when she saw her in church.

On appeal, counsel for the petitioner asserts that United States Citizenship and Immigration Services (USCIS) should have eased the petitioner's burden regarding her good faith entry into the marriage, as the petitioner has established the other elements. Counsel contends that the photographs and affidavits submitted should have been sufficient to establish the petitioner's good faith. Counsel claims that the affiants could not describe the petitioner's state of mind in entering the marriage and to require such a description is an undue burden. Counsel asserts that the petitioner's husband destroyed their health insurance card and that the petitioner has clarified the director's questions regarding the insurance binder. Counsel avers that when considering the totality of the evidence, the petitioner has established that she entered into the marriage in good faith.

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 detailed testimony to meet her burden of proof in this regard. The petitioner provides a brief statement indicating that she met her husband, the couple dated for over a year, and they entered into the marriage. She does not provide sufficient information regarding her interactions with B-H- prior to or subsequent to the marriage to assist in ascertaining her intent when entering into the marriage. Her testimony does not include information regarding her actual courtship, the wedding ceremony, their shared residence, the types of activities the couple enjoyed together, or her interactions with B-H- except as it later relates to the claim of abuse. Although the petitioner told [REDACTED] that she believed B-H- was a good man and that she had found the life she had been looking for and someone to love her, 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 submitted below and on appeal contain no probative information regarding the petitioner's intentions in marrying her spouse. Counsel's

claim that it is an undue burden to require the individuals who submitted statements on the petitioner's behalf to describe the petitioner's state of mind in entering is unpersuasive. In this matter, none of the declarants describe particular or specific incidents or social occasions which include their personal observations of the petitioner's relationship with B-H-. The affiants do not provide testimony in detail establishing their personal knowledge of the petitioner's relationship with B-H-.

Regarding the photographs, utility bills, and insurance letters provided for the record, these documents are insufficient to establish the petitioner's good faith entry into the marriage absent a probative account of her courtship, wedding ceremony, shared residence, and experiences with B-H-. Thus, the record is insufficient to establish she entered into the marriage with B-H- 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.