

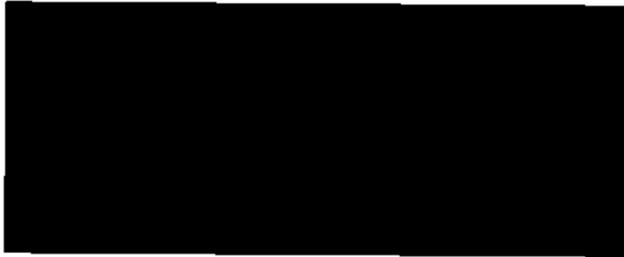
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

DATE: JUL 13 2012 Office: VERMONT SERVICE CENTER FILE:

IN 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (the director), 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 (USC).

Applicable Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a USC may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the USC 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 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 pursuant to Section 204(a)(1)(A)(iii) 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)(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.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Facts and Procedural History

The petitioner is a citizen and native of Ghana. She entered the United States on May 21, 2000 on an F-1 student visa. She married J-B-¹ the claimed abusive USC on May 7, 2004. On or about August 5, 2004, J-B- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On February 24, 2005, J-B- withdrew the Form I-130 petition and the district director denied the Form I-130 on March 16, 2005. On August 13, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner stated on the Form I-360 that she resided with the claimed abuser from June 2003 until August 2005. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for further 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 for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and a supplemental brief.

Good Faith Entry into Marriage

In the petitioner's July 27, 2010 personal statement, she stated generally that she met J-B- at work and they became good friends. She noted that J-B- asked her out in December 2002, that he proposed to her on May 7, 2003 and that the couple married on May 7, 2004 in a small ceremony with friends and family attending. The petitioner indicated that the couple moved to an apartment and for the first few months everything was great and that J-B- liked buying her things and taking her on trips. The petitioner declared that a few months after the couple moved in together, J-B- became more controlling. The remainder of the petitioner's personal statement relates to her claim that she was subjected to abuse. She noted that at some point she obtained a job in Minneapolis and she moved out without telling J-B-.

The record also included a copy of the couple's lease beginning in July 2004, a bank statement for the time period between February 15 and March 14, 2005 addressed to the couple at their address on

¹ Name withheld to protect the individual's identity.

the lease, a bank statement for the time period between November 16, 2005 and December 15, 2005 addressed to the couple at a different address, an electric bill for service between January 14, 2005 and February 9, 2005 identifying the petitioner as the account holder, and an October 3, 2005 designation of J-B- as the petitioner's beneficiary on an insurance plan. The petitioner also provided affidavits signed by [REDACTED] and [REDACTED] who stated generally that they knew the petitioner and had met J-B- or had attended the couple's wedding. The record also included two photographs of the couple.

In response to the director's RFE, the petitioner provided a second personal statement in which she declared that she and J-B- loved one another, that they worked on setting up utility accounts together and that some accounts were in her name and some in his name, and that payment of their bills was from their joint account. She noted that she designated J-B- as her beneficiary on her insurance as he was still her husband in October 2005.

The petitioner also provided a copy of J-B-'s 2004 Internal Revenue Service (IRS) Form 1040A, showing J-B- had filed his tax return as married but filing separately and owed the IRS taxes for the year. She also provided previously submitted documents. The record further included affidavits signed by [REDACTED] and [REDACTED] and second affidavits signed by [REDACTED] and [REDACTED]. [REDACTED] declared that she had known the petitioner since childhood and that the petitioner introduced her to J-B- in 2003, that she spoke to J-B- on the phone a few times, and that the couple sounded deeply in love. [REDACTED] declared that the petitioner introduced J-B- as her boyfriend in 2003, the couple visited him prior to their marriage, and that he visited them after the marriage and put together a small party for the couple. [REDACTED] added to his previous affidavit by noting that he had invited the couple to an event and that they had invited him to their wedding which he attended with his wife. [REDACTED] added to his previous statement by indicating that he talked to the petitioner often and she had mentioned J-B- and it seemed that J-B- had purchased perfume for the petitioner. [REDACTED] noted that he had met J-B- when he visited Minnesota and had lunch with the couple and that the petitioner seemed in love.

The director discussed the deficiencies in the documentary evidence submitted and noted that the documentary evidence submitted was insufficient to establish the petitioner's good faith intent when entering into the marriage. The director determined that although the petitioner had provided an explanation for the lack of documentary evidence submitted, her statement that she had married in good faith was insufficient without supporting documentation to establish her intent when entering into the marriage.

On appeal, counsel asserts that the director failed to consider the "any credible evidence" standard applicable to individuals petitioning for relief as a battered spouse. Counsel references the legislative history of the Violence Against Women Act (VAWA) as well as United States Citizenship and Immigration Services (USCIS) internal memoranda regarding credibility and documentary requirements involving battered spouses. Counsel asserts that the director erred in finding that the documents submitted as evidence of a shared life were insufficient to establish that the marriage was valid. Counsel avers that the director misapplied Congressional intent by finding that the affidavits submitted in support of the petitioner's petition did not have sufficient details

about the petitioner's marriage to establish that she had entered into the marriage in good faith.

Preliminarily, the director's apparent requirement that the petitioner submit documentary evidence in order to establish that she entered into the marriage in good faith is improper and therefore is withdrawn. While documentary evidence may assist in establishing that a couple established a life together, documentary evidence is not required to establish an individual entered into a marriage in good faith. In regards to counsel's assertion that the mere submission of credible evidence is sufficient to establish eligibility, we find the assertion unpersuasive. Section 204(a)(1)(J) of the Act requires USCIS to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act. 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 guidelines for demonstrating good faith list examples of the types of documents that may be submitted and states, "All credible 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 of having married in good faith, 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.

In this matter, the documentary evidence submitted does not establish the petitioner's intent when she entered her marriage to J-B-. The bank statements, one submitted while the couple resided together and one submitted subsequent to the couple's separation, are insufficient to establish the petitioner's intent when entering the marriage. The bank statements submitted do not evidence that the couple commingled assets. The director correctly noted that there is no documentation from the bank indicating that J-B- deposited funds into the account or that J-B- withdrew funds from the account. Moreover, depositing and withdrawing funds from an account is insufficient to establish the petitioner's intent when entering into the marriage. We also observe that there is no evidence that the petitioner actually filed her designation of J-B- as a beneficiary on her insurance policy after she no longer resided with J-B- with the appropriate organization. Nor does this document, signed two months after the couple separated, assist in establishing the petitioner's intent when she entered into the marriage. Similarly, a utility bill issued to the petitioner at the claimed joint residence does not establish the petitioner's intent when she entered into the marriage. J-B-'s 2004 tax return while indicating that the couple entered into a marriage, does not establish that the couple commingled assets or otherwise established a life together. It also fails to demonstrate the petitioner's intent when entering into the marriage.

Upon review of the petitioner's testimony in this matter, she does not provide the requisite detailed probative testimony describing the detailed circumstances of their courtship, their wedding ceremony, their shared residence, or their shared experiences, except as it relates to the claim of

abuse. The petitioner provided a general statement indicating she met J-B- through work and that the couple dated, he proposed, and the couple married. She does not describe in probative detail their shared interactions during the courtship, their decision to marry, the circumstances of the marriage, or their shared experiences, except as it relates to her claim of abuse. Upon review, the petitioner's general testimony does not include the probative detail necessary to obtain insight into her intent when she entered into the marriage. Moreover, the petitioner's testimony includes inconsistencies with other information in the record. For example, in her personal statement she indicates that she did not move in with J-B- prior to the marriage which is inconsistent with her statement on the Form I-360. Her testimony is insufficient to offer insight into her intent when entering into the marriage. Similarly, the affiants who submitted statements on the petitioner's behalf provide no probative detail of their observations of the couple, except general statements that they met J-B- and it appeared the couple seemed to be in love. The affiants do not provide any probative information that demonstrates their knowledge of the relationship or assists in ascertaining the petitioner's intent when entering into the marriage.

Considered in the aggregate, the relevant evidence submitted fails to demonstrate that the petitioner entered into marriage with J-B- in good faith, as required by section 204(a)(1)(A)(iii)(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.