

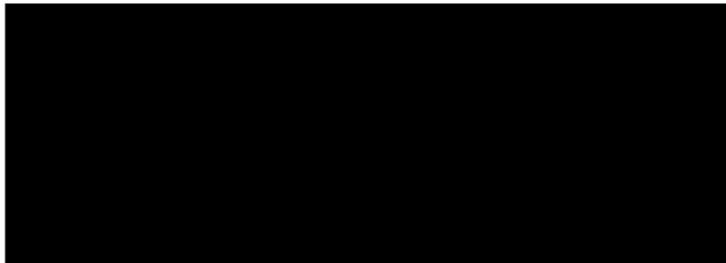
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B9

DATE:

JUL 18 2012

Office: VERMONT SERVICE CENTER

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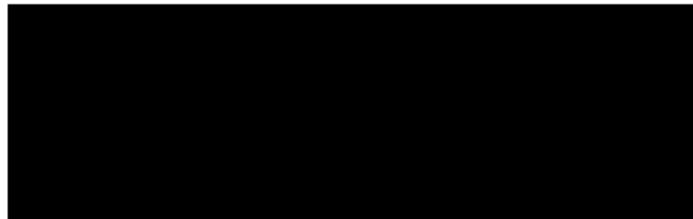
IN RE:

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.

Facts and Procedural History

The petitioner is a citizen and native of Ethiopia. She entered the United States on November 13, 2006 on a K-1 fiancé visa. She married C-S-¹ the claimed abusive USC spouse, on January 3, 2007. On November 18, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.² The petitioner stated on the Form I-360 that she resided with C-S- from November 2006 until November 2007. 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, a brief, and previously provided documentation. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Good Faith Entry into Marriage

In the petitioner's October 11, 2010 personal statement, she noted she met C-S- through the Internet in May 2005 and that in November 2005, C-S- visited her in Ethiopia. The petitioner declared that C-S- stayed for 21 days and they spent every day together, shopping, eating out, and attending church on two occasions. The petitioner indicated that C-S- promised he would take care of her, send her to school, and change her life for the better if she would marry him. The petitioner stated that she had never known anyone who showed so much love, care and respect and she fell in love with him and agreed to marry him. The petitioner reported that after C-S- left Ethiopia, they communicated via electronic mail and by phone while her immigration paperwork was completed. The petitioner noted that once she arrived in the United States in November 2006, the couple lived together in Redmond California, and on January 3, 2007, the couple married in Reno, Nevada.

In response to the director's RFE, the petitioner provided a second statement in which she declared that her intention had always been to make C-S- happy and keep her word of marriage to him. She noted that she did not have joint documentation because C-S- never put her name on anything. The petitioner referenced four Western Union receipts showing C-S- sent her money while she was in

¹ Name withheld to protect the individual's identity.

² The petitioner previously filed a Form I-360 [REDACTED] in August 2008 that was denied in February 2010 for failure to respond to a Request for Evidence.

Ethiopia and a postal receipt showing she had mailed a package to C-S- from Ethiopia. The petitioner also provided four declarations signed by her sister, her brother-in-law, her brother-in-law's fiancé, and C-S-'s niece. The petitioner's sister indicated she did not find out about the petitioner's wedding until after the couple married and so was not at the wedding but she knew that the couple was living together as husband and wife. The petitioner's brother-in-law declared that once the couple moved to Louisville, Kentucky, he took them shopping and saw that they were living in the same house together and C-S- introduced the petitioner as his wife. The petitioner's brother-in-law's fiancé stated that she observed the couple living together and visited their home several times. C-S-'s niece indicated that she met the petitioner in August 2007 when the petitioner returned from California and that the petitioner took good care of C-S- while he recovered from a car accident.

The director discussed the insufficiency of the petitioner's testimony and the deficiencies of 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 also discussed the deficiency in the documentary evidence submitted.

On appeal, counsel asserts that the petitioner submitted sufficient evidence to demonstrate that the couple entered into the marriage in good faith. Counsel cites *Damon v. Ashcroft*, 360 F.3d 1084 (9th Cir. 2004) for the proposition that entering into the qualifying marriage in good faith is an intrinsically fact-specific question reviewed under the substantial evidence standard and that whether the couple intended to establish a life together is the central question in establishing a marriage was entered into in good faith and not for an immigration benefit. Counsel contends that the petitioner and C-S- intended to establish a life together at the time they were married and that the petitioner has explained why she is unable to supply additional documentary evidence in this matter. Counsel asserts that the petitioner's evidence under the substantial evidence standard would compel any reasonable adjudicator to find that her marriage was entered into in good faith.

Preliminarily, we observe that 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). While section 204(a)(1)(J) of the Act requires USCIS to "consider any credible evidence relevant to the petition," a mandate reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i), 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 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.

The director in this matter properly considered the petitioner's testimony, the testimony submitted on her behalf, as well as the limited documentary evidence submitted. The director applied the proper standard of review and found that the petitioner had not submitted sufficient probative

testimony or other evidence to establish she had entered into the marriage in good faith by a preponderance of the evidence. We concur with the director's decision.

Upon review of the record, the petitioner has not provided probative testimony describing how she met C-S- through the Internet. Her affidavits provide general information regarding the 21 days she allegedly spent with C-S- in Ethiopia prior to his processing paperwork for her fiancée visa. The record does not include detailed testimony of their courtship, her decision to marry C-S-, their wedding ceremony, their shared residences, or their shared experiences except as it relates to her claim of abuse. Upon review, the petitioner's testimony does not include the probative detail necessary to obtain insight into her intent when she entered into the marriage. Similarly, the affiants who submitted statements on the petitioner's behalf provide no probative detail of their observations of the couple prior to the marriage and only note generally that they knew the couple shared a house as husband and wife. The testimony of the affiants does not include sufficient detailed information to conclude they had personal knowledge of the relationship and the intent of the petitioner when she entered into the marriage.

The record in this matter does not provide sufficient specific facts to analyze and ascertain the petitioner's intent when entering into the marriage. The petitioner's general and equivocal testimony does not establish that she intended to establish a life together with C-S- when she entered into the marriage. We also note that while documentary evidence may assist in ascertaining an individual's intent to establish a life together, it is not necessarily required. In this matter, it is the lack of probative testimony from the petitioner regarding her courtship and wedding, the couple's future plans together, shared residences, and shared experiences that fail to demonstrate her intent when entering into the marriage. Considered in the aggregate, the relevant evidence does not establish the petitioner entered into marriage with her USC spouse 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.