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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: **JUN 07 2012** Office: VERMONT SERVICE CENTER

IN RE:

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)

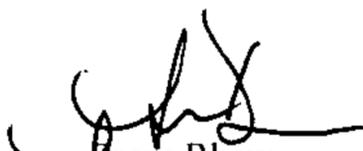
ON BEHALF OF PETITIONER:

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 with the field office or service center that originally decided your case by filing a 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,


Jerry 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 petitioner seeks immigrant classification pursuant to 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her husband in good faith and that they resided together.

On appeal, the petitioner submits a brief statement and additional evidence.

Relevant 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, 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 further 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 further explicated 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 further explicated 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of the United Kingdom who was admitted to the United States on December 25, 2001 as a nonimmigrant visitor under the visa waiver program. The petitioner married her second husband, D-Z-¹, a U.S. citizen, on August 13, 2002 in Norwalk, California. The petitioner filed the instant Form I-360 on August 17, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage and her residence with her spouse. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The petitioner's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In the undated statement she submitted in response to the RFE, the petitioner recalled that she met D-Z- through a friend on July 14, 2002. The petitioner stated that they "fell in love with each other instantly" and they "shared a life of bliss and happiness." The petitioner noted that D-Z- could not have his name on the lease to their apartment because he had bad credit. She stated that D-Z- did not file his tax returns because he did not want to pay child support for his children from a previous relationship. She also stated that they did not have joint bank accounts because D-Z- had previously cleared money from her bank account. The petitioner did not describe how she first met her husband, their courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

In response to the RFE, the petitioner also submitted letters from her neighbor, [REDACTED] and her pastor, [REDACTED], who briefly discussed the petitioner's marriage, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married her husband in good faith.

On appeal, the petitioner submitted a second letter from [REDACTED] who stated that the petitioner entered into her marriage with D-Z- in good faith. [REDACTED] noted that she witnessed the petitioner and D-Z- "together hand in hand" and in the laundry room at their apartment building. Although [REDACTED] briefly describes seeing the petitioner with her husband on a few occasions, she does not describe any particular visit or social occasion in detail or otherwise provide detailed information establishing her personal knowledge of the relationship.

In denying the petition, the director noted that on her Form I-217, Information for Travel Document or Passport, dated June 10, 2010, she listed her first husband whom she divorced on July 24, 2002, J-O-, as her spouse. On appeal, the petitioner asserts that listing J-O- on the Form I-217 "was an error/mistake" because they are divorced. She also asserts that D-Z- "absolutely refused to have his name jointly on anything."

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. We find reasonable the petitioner's explanation of the reasons she and D-Z- did not share any joint accounts. However, the petitioner has failed to submit other probative evidence of her good-faith marriage. In her statement, the petitioner briefly asserts that she and D-Z- "fell in love instantly," but she does not describe how they first met, their courtship, wedding, joint residence or any of their other shared experiences, apart from the alleged abuse. The supporting letters from the petitioner's friend and pastor fail to discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. The petitioner's inclusion of her first husband on her Form I-217 also detracts from the credibility of her claim. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record also fails to demonstrate that the petitioner resided with her husband. On the Form I-360, the petitioner stated that she lived with her husband from March 2002 until January 2004 and that their last joint address was an apartment in West Covina, California. However, in her statement, the petitioner does not describe their home(s) or shared residential routines in any detail, apart from the alleged abuse. The petitioner's neighbor, [REDACTED], and pastor, [REDACTED], do not describe any visit to her and her husband's residence(s). The director correctly determined that the initial letter from [REDACTED] failed to provide probative information regarding the petitioner's joint residence with D-Z-, such as details of their residence, belongings, home furnishings and daily routines. As discussed, the second letter from [REDACTED] which was submitted on appeal, is brief and also fails to provide probative details of the petitioner's joint residence. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determinations that she did not establish that she entered into the marriage in good faith and resided with her husband. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.