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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 18 2012 Office: VERMONT SERVICE CENTER



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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (“the director”), denied the immigrant visa petition and the Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen and to reconsider. The motion will be granted. The AAO’s previous decision will be affirmed and 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.

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.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: “A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.” The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

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. The AAO dismissed the subsequently filed appeal, concurring with the director's decision. Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, checking the box indicating that he is filing a motion to reopen and a motion to reconsider. Counsel asserts that the evidence previously submitted complies with the “any credible evidence” standard applicable to this petition. Counsel also submits additional affidavits in support of the petition.

Preliminarily, we note that section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to “consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Ac and that this mandate is reiterated in the regulation at 8 C.F.R.

¹ Name withheld to protect the individual's identity.

§ 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 good faith marriage, 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 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

Good Faith Entry Into Marriage

The AAO previously discussed and set out the deficiencies of the statements submitted by the petitioner, the statements of those who submitted statements on her behalf, as well as the documentary evidence previously submitted. On motion, counsel for the petitioner submits an additional four declarations in support of the motion. He also submits one additional photograph of the couple at the wedding ceremony.

In the February 27, 2012 declaration provided by [REDACTED] on motion, [REDACTED] notes that the petitioner was a good friend, that she knew the petitioner married B-H-, and that she attended their wedding. The remainder of her declaration relates to the petitioner’s claims of abuse perpetrated by B-H-. In the February 17, 2012 declaration of [REDACTED], [REDACTED] declares that she has known the petitioner for seven years and that in August 2008 she visited the petitioner and met B-H- at which time the couple was making wedding plans. She notes that the couple took her out to different places in Boston and she attended their church before she left. In a February 21, 2010 statement, [REDACTED] declares he had known B-H- since 2006 and met the petitioner on numerous occasions and that the couple seemed happy together. In the February 17, 2012 statement of [REDACTED] [REDACTED] declares that the petitioner is a good person, a good mother, and likes helping people.

The declarations submitted on motion do not include probative testimony establishing the petitioner’s intent when she entered into the marriage. Although [REDACTED] and [REDACTED] state generally that they observed that the couple went out together, their testimony is insufficient to assist in ascertaining the petitioner’s intent when she entered into the marriage. Similarly, [REDACTED] [REDACTED] indication that she attended the couple’s wedding and that the petitioner confided in her regarding the claimed abuse, does not establish the petitioner’s intent when entering into the marriage. [REDACTED] declaration that the petitioner is a good person likewise fails to describe interactions between the couple that establish the petitioner entered into the marriage in good faith. The limited and general testimony of the declarants on motion does not include sufficient detailed information to conclude they had personal knowledge of the relationship and the intent

of the petitioner when entering into the marriage. The AAO has also reviewed the additional photograph provided; however, the issue is not whether a marriage occurred, but whether the petitioner's intent when entering the marriage was in good faith. The petitioner does not submit testimony on motion and the record continues to lack probative testimony of her courtship, the wedding ceremony, her joint residence with B-H-, or any of their shared experiences, apart from the claims of abuse. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with B-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

A review of the testimony and documentary information submitted on motion does not include sufficient probative evidence to overcome the AAO's prior decision. 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 motion is granted. The AAO's January 30, 2012 decision is affirmed and the petition remains denied.