



U.S. Citizenship
and Immigration
Services

Administrative Appeals Office
Administrative Appeals Office
Administrative Appeals Office

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DATE: JUN 19 2017 Office: VERMONT SERVICE CENTER

FILE:



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 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. 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."

Facts and Procedural History

The petitioner is a citizen of the Philippines who was admitted to the United States on January 14, 1998 with a B1/B2 visa that was issued to another individual. The petitioner married her second husband A-R-¹ the claimed abusive United States citizen (USC), on October 1, 2007. The petitioner's marriage to A-R- terminated in divorce on October 28, 2009. On March 1, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. 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 or that she is a person of good moral character. The AAO dismissed the subsequently filed appeal, concurring with the director's decision on the issue of the petitioner's good faith intent but withdrawing the director's decision on the issue of the petitioner's good moral character. Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, checking the box indicating that she is filing a motion to reopen the AAO's prior decision. Counsel submits a brief and additional documentation.

Good Faith Entry Into Marriage

The AAO previously discussed and set out the deficiencies of the statements submitted by the petitioner and the statements of those who submitted declarations on her behalf. On motion counsel asserts that the previously submitted medical record and joint lease show the petitioner was using her ex-husband's last name and thus is evidence of a good faith marriage. Counsel notes that the petitioner's reason for visiting the doctor in May 2009 was due to shaking caused by seeing her former husband with another woman. Counsel avers that the petitioner's feeling of anxiousness due to witnessing her former's husband's dalliance demonstrates the petitioner's feelings toward her

¹ Name withheld to protect the individual's identity.

former husband. On motion, counsel provides, for the first time, an addendum to the previously submitted medical record and notes that the petitioner lists her marital status as married. Counsel also provides a January 11, 2007 affidavit signed by her former husband. In the January 11, 2007 affidavit, the petitioner's former husband declared that the petitioner's name was not on any utility bills because the bills were already in his name and that since she did not work or drive her name was not on his insurance or bank statements. He also stated that the petitioner and he were happy for about two years but the marriage did not work out.

Upon review of the additional documentation submitted on motion, we observe that neither counsel nor the petitioner explains why the documentation was not previously submitted. Upon review of the consolidated medical report provided, the petitioner's medical records do not assist in establishing the petitioner's intent when entering into the marriage. The petitioner's anxiousness regarding her former's husband association with another woman does not establish her intent when she entered into her marriage. Using her former husband's name on her medical records shows that the petitioner was married, but does not assist in ascertaining her intent when entering into the marriage. Similarly, the residential lease previously provided, although showing the petitioner and A-R- resided at a certain location, does not evidence the petitioner's intent when entering into the marriage. In his affidavit, signed on November 1, 2007, the petitioner's husband states that the couple married on October 1, 2007 and that they were "happy for about 2 years but it didn't work out." As this affidavit was signed one month after the petitioner married her former husband, his statement that they were happy for two years before the marriage broke apart lacks veracity. Even if the year that the affidavit was signed is a typographical error, this document does not demonstrate that the petitioner's intent in entering into the marriage was to establish a life together with A-R-.

The record still lacks probative testimony from the petitioner regarding her courtship, the wedding ceremony, her joint residence with A-R-, 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 A-R- 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 December 19, 2011 decision is affirmed and the petition remains denied.