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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

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B9.

DATE: **MAR 12 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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, 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).

The director determined that the petitioner had not established that she had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and additional documentation. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

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 native and citizen of Kenya. She claims she last entered the United States on May 30, 2008 on a B-1 visa with temporary authorization to remain in the United States until August 29, 2008. The petitioner married J-B-,¹ the claimed abusive USC, on May 23, 2008 in Kenya. On August 3, 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 J-B- from May 2008 until December 2009. 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, the petitioner's statement, a statement from the petitioner's friend, and a September 17, 2011 psychological report prepared by [REDACTED]

Good Faith Entry into Marriage

In the petitioner's initial personal statement, she indicated that in August 2007 she came to the United States on business and she and a friend from New York visited a friend in Kansas City. During her visit in Kansas City, the friends visited the Kansas City Zoo and that is where she met J-B-. The petitioner noted that they struck up a conversation while waiting for a show. She stated that she gave him her friend's telephone number and the next day J-B- called and asked to meet for a drink. The petitioner declared that is when she gave J-B- her Kenyan phone number. The petitioner indicated that J-B- called her almost every day after she returned to New York and to Kenya. She returned to the United States in December 2007 and in January 2008 visited her friend and J-B- in Kansas City and stayed with J-B- for a short time. The petitioner stated that during this time her love for J-B- grew stronger. The petitioner declared that J-B- said that he wanted to marry

¹ Name withheld to protect the individual's identity.

her and she told him if he was serious to come to Kenya to see her and that he did so in March 2008. The petitioner noted that J-B- stayed in Kenya for two weeks and that he spent time with her and her family. The petitioner declared that he proposed and paid for the traditional goat to give to the family to celebrate the engagement. The petitioner indicated that J-B- returned to Kenya in May 2008 and the couple married on May 23, 2008 in Kenya. The petitioner noted that after the marriage, J-B- returned to Kansas City and she followed a couple of days later on her B-1 visa. The remainder of the petitioner's declaration discusses the claimed abuse. In a July 15, 2011 declaration in response to the director's RFE, the petitioner reiterated that she loved J-B- very much. In her statements made to [REDACTED] as documented in [REDACTED] June 28, 2011 psychological evaluation, the petitioner noted that she left J-B- quickly and so left all her important documents behind and when she had further contact with J-B- he told her that he had gotten rid of all her things.

In addition to the petitioner's declaration and the psychological evaluation, the record also included one bank statement and one phone bill in the petitioner and J-B-'s names, several photographs, as well as an affidavit signed by [REDACTED] July 12, 2011 affidavit, she declared that the petitioner often visited her when she came to the United States on business and that she and the petitioner visited a friend together in Kansas City and that the petitioner met J-B- at the Kansas City Zoo on the visit. [REDACTED] who stated that she lives in New York, indicated she knew that the petitioner kept in touch with J-B- while the petitioner was in Kenya, knew that the petitioner stayed with J-B- on a subsequent visit, and that the petitioner and J-B- spent Thanksgiving in 2008 with her and other friends in New York and appeared to be in love and to care for each other.

The director discussed the deficiencies of the documentary evidence in the record and determined that the petitioner had not submitted satisfactory evidence demonstrating she had entered in the marriage in good faith.

On appeal, counsel asserts that the director failed to consider the petitioner's statement that J-B- was kind and caring and that she married him because he showed her love and promised companionship for the rest of their lives. Counsel notes that throughout the declaration, the petitioner expressed her love for J-B- and that is why she risked everything to be with him. Counsel contends that the director also failed to consider the petitioner's explanation that although some items were in both their names, she did not have access to their financial accounts.

The petitioner, in her statement on appeal, states that she owned a small successful business in Kenya and frequently traveled and although she frequently visited friends in the United States and Europe she never considered leaving Kenya because of her business, her mother, and her children.² The petitioner declares that this changed when she met J-B-. She notes that after meeting J-B- she wanted to be in love and be married and that after he visited her family in Kenya she knew that she wanted to marry and live the rest of her life with him. She states that she gave up a lot to be with J-B- which she would not have done unless she loved him.

² The record includes information that one of her children lives in Sacramento, California with the petitioner's first husband and a second child lives in Canada.

In the September 17, 2011 psychological report, ██████████ repeats the petitioner's report of her love for J-B- as the reason for her marriage and the petitioner's indication that she would not have brought J-B- to Kenya to meet her family and the elders of the community if the marriage was not for love. ██████████ opines: "[i]f the marriage had not been legitimate, [the petitioner] would not have withstood the pain and suffering to which she was subjected and she would not have the degree of PTSD [Post Traumatic Stress Disorder] and major depression for which she suffers still." ██████████ in her statement on appeal, declares that the petitioner told her of her relationship with J-B- and that when the petitioner visited her prior to going to Kansas, she looked very much in love and when she saw the couple together they were always smiling, holding hands, and very affectionate with each other. ██████████ declares that she knows that the petitioner would not have left Kenya, her mother, her children, and given up her business if she did not love J-B.

Upon review of the record, the petitioner's report that she is unable to supply bank statements and phone statements of accounts that were in her name as well as the name of her former spouse is unpersuasive. Although the petitioner may not have had access to these documents during her marriage, she fails to explain why she was able to supply one statement for each of these joint accounts but not any others to support her petition. The lack of documentary evidence, however, is not dispositive.

Upon review of the petitioner's testimony, the petitioner provides a general list of her interactions with J-B-. She does not provide probative detail of her interactions with J-B- in January 2008 in Kansas City, in March 2008 in Kenya, and in Kenya in May 2008. Although she expresses her love for J-B- throughout her declarations as well as her belief that he loved her in return, the petitioner does not provide probative testimony regarding their courtship, wedding ceremony, shared residences, and experiences, except as it relates to her claim of abuse. Her testimony is deficient in this regard. Similarly, the testimony of ██████████ is general. According to ██████████ testimony she was with the petitioner when she met J-B- in August 2007 and she met him and the petitioner on one other occasion when the couple came to New York for Thanksgiving in 2008. She does not provide probative testimony regarding her limited observations of the couple or of her personal knowledge of the relationship. The psychological report prepared by ██████████ is based on the same general testimony the petitioner provided to United States Citizenship and Immigration Services (USCIS). Moreover, the issue is not whether a marriage occurred but whether the petitioner's intent when she entered the marriage was in good faith. ██████████ does not provide sufficient observational evidence from which to conclude that the petitioner's intent in entering into the marriage was in good faith. Upon review of the petitioner's testimony and the testimony of others on her behalf, the petitioner has not provided sufficient probative evidence to ascertain her intent when entering into the marriage.

Considered in the aggregate, the relevant evidence 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

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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.