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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

PUBLIC COPY



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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:

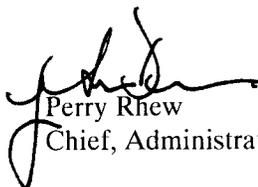


INSTRUCTIONS:

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 Rnew
Chief, Administrative Appeals Office

DISCUSSION: The service center director (“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 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.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that she married her husband in good faith. On appeal, newly-retained counsel submits a letter reasserting the petitioner’s eligibility and additional evidence.

Applicable Law

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Turkey who entered the United States on or around March 11, 2009. She married D-S-¹ a citizen of the United States, on June 9, 2009. The petitioner filed the instant Form I-360 on September 14, 2009. The director issued a subsequent request for additional evidence (RFE) and the petitioner, through prior counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to his RFE, the director denied the petition on October 29, 2010.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's ground for denying this petition.

Good Faith Marriage

The petitioner's testimony does not establish that she married D-S- in good faith. In her September 8, 2009 letter submitted below, the petitioner recounted meeting D-S- in late 2008 and stated that they were "just friends" during this time and that she "did not think any more of it." She claimed that she became romantically interested in him after she returned to the United States in March 2009 following her divorce. According to the petitioner, it was only after her return to the United States that their "occasional meetings . . . turned into something more." However, on appeal the petitioner re-characterizes the early stages of their relationship and indicates she and D-S- became romantically involved much sooner. Although she initially asserted that they only met occasionally before her divorce, in her January 12, 2011 letter submitted on appeal the petitioner claims that during this time she and D-S- shared intimate conversations, describes an occasion on which D-S-

¹ Name withheld to protect individual's identity.

publicly kissed her on a bus, and states that it was during this time that she began thinking of him romantically.

On appeal, counsel states that the petitioner's testimony submitted below did not adequately address her good faith entry into the marriage and directs us to her new testimony submitted on appeal. The petitioner's testimony submitted on appeal is more detailed. However, it is not credible, as the timeframe she provides for the feelings and activities she alleges occurred during the couple's courtship is inconsistent with her prior testimony.

The electronic mail (e-mail) correspondence between the petitioner and D-S- does not contain probative details regarding the relationship. In the absence of detailed and credible testimony from the petitioner regarding the bona fides of her relationship with D-S-, these e-mails are alone insufficient to establish that she married him in good faith.

Although the record contains letters from friends, neighbors, and a member of the petitioner's family, they do not establish that she married D-S- in good faith, either. [REDACTED] and [REDACTED] did not describe the relationship between the petitioner and D-S- beyond the abuse, and the affidavits from [REDACTED] and [REDACTED] are nearly identical to one another, which detracts from their credibility as evidence of their personal knowledge of the relationship between the petitioner and D-S-.

Finally, neither the fact that the petitioner went on a cruise with D-S- nor her tattoo of his name establishes that she married him in good faith, and the pictures of the couple together demonstrate only that they were together on several occasions.

Considered in the aggregate, the relevant evidence does not establish that the petitioner married D-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to overcome the director's grounds for denial and has not established that she married D-S- in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and this petition must remain denied.

In these proceedings, the petitioner bears the burden of proof to establish her 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). She has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.