

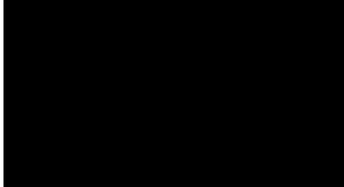
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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DATE: **MAR 15 2012**

Office: VERMONT SERVICE CENTER

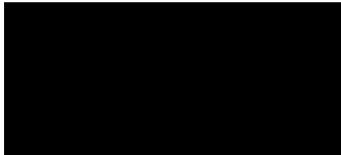
FILE: 

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:

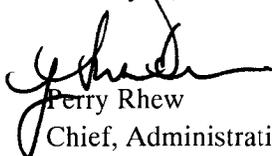


INSTRUCTIONS:

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 a brief. 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 of Turkey. She claims she entered the United States in early 2003 to sign the divorce papers terminating her marriage to her first husband, an individual living in San Diego. She married T-C-,¹ the claimed abusive USC on March 12, 2003. She re-married T-C- on May 13, 2003, after notification that her first marriage had not been dissolved and thus her March 12, 2003 marriage to T-C- was invalid. On April 26, 2008 her marriage to T-C- was terminated. On April 23, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a Notice of Intent to Deny (NOID) the petition. Upon review of the totality of the record, including the petitioner's response to the NOID, 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, and a brief on appeal.

Good Faith Entry into Marriage

The director discussed the inconsistencies in the petitioner's testimony and the deficiencies of the testimony of the individuals who submitted statements on her behalf in regards to the petitioner's intent when entering into the marriage. The director observed that the administrative record showed that the petitioner arrived in the United States on March 3, 2003. The director noted that the petitioner's initial marriage to T-C- took place nine days after her arrival in the United States, and after notification that her March 12, 2003 marriage to T-C- was invalid, her re-marriage to T-C- took place two months after her arrival in the United States. The director noted that the petitioner in her April 21, 2010 declaration indicated that she started dating T-C- a week after meeting him and six months later T-C- asked her to marry him. The director noted that the petitioner's declaration was inconsistent with other information in the record and found the petitioner's testimony

¹ Name withheld to protect the individual's identity.

unreliable. The director also found that the statements of the petitioner's witnesses were inconsistent both with the petitioner's declaration and the information in the record or failed to provide probative testimony regarding their observations of the couple's interactions prior to or during the marriage. The director listed the documentary evidence submitted and upon review found: the photographs submitted did not establish the petitioner's intent when entering into the marriage; the greeting cards and affidavit signed by T-C- reflected his intent but not the petitioner's intent when entering into the marriage; and that the 2003 and 2004 personal copies of the couple's income tax return and the letter from H&R Block indicating the company had prepared the tax returns was insufficient to establish the petitioner's intent when entering into the marriage.

On appeal, counsel asserts that the petitioner suffers from memory problems and is unable to remember exact dates. Counsel references a letter from a licensed social worker provided in response to the NOID wherein the social worker reported that the petitioner's symptoms were consistent with Post Traumatic Stress Disorder (PTSD). Counsel asserts that the petitioner's confusion in her declaration regarding when she met T-C-, how long they dated, and when they married is attributable to the petitioner's diagnosis of PTSD. Counsel avers that the petitioner had made several trips to the United States prior to March 2003 and during her previous visits she was able to establish a relationship with T-C-. Counsel notes that the petitioner had a B1/B2 visa issued in March 2000 which was valid until March 2010 and that the petitioner's passport includes a 2000 entry stamp and a 2002 entry stamp. Counsel does not provide further testimony from the petitioner on appeal.

Counsel also references the documentary evidence submitted. Counsel notes that the phone bill submitted, although only in T-C-'s name, showed calls made to Turkey and asserts that this is evidence the couple shared this account. Counsel references a lease agreement signed in December 2005, a loan agreement signed by both the petitioner and T-C-, and an invoice showing that the petitioner and T-C- lived at the Island Inn from February 2004 until November 2004. Counsel contends that the objective evidence showing the couple entered into contracts and agreements together, lived together, and filed joint tax returns is sufficient to overcome any reliability issues regarding the petitioner's testimony and is evidence that the petitioner entered into the marriage in good faith.

Upon review of the record, the petitioner has not provided probative, consistent testimony describing when she met T-C-, their courtship, wedding ceremony, shared residences and experiences. Counsel's contention that the petitioner met T-C- on an earlier trip to the United States during the time period she met and married her first USC husband, is unpersuasive.² The petitioner has not offered probative testimony explaining the circumstances of meeting T-C- while married to her first husband. She does not provide any testimony that she met T-C- on an earlier trip to the United States. Neither has she provided probative testimony describing other interactions with T-C- prior to their marriage on March 12, 2003. She also fails to provide probative testimony regarding the circumstances of her re-marriage to T-C- on May 13, 2003 after notification by United States

² The petitioner testified that she met her first husband in 2002 and the couple married a month after meeting. The record also includes the April 23, 2003 judgment nullifying the petitioner's marriage to her first husband.

Citizenship and Immigration Services (USCIS) that her marriage to T-C- was invalid. The AAO acknowledges counsel's contention that the petitioner's memory is faulty regarding dates and that this is attributed to her PTSD; however, the record does not include the probative detail necessary to obtain insight into the petitioner's intent when she entered into the marriage.

Upon review of the documentary evidence submitted, a lease and an invoice from a motel may provide some evidence of joint residence, but these documents do not however establish an individual's intent when entering into a marriage. As the director noted, the tax returns are unsigned and personal copies and there is no evidence that the tax returns prepared by H&R Block were filed with the Internal Revenue Service. Even if filed, filing joint tax returns does not establish intent when entering into marriage. Similarly, phone bills and a loan agreement are insufficient to demonstrate good faith intent when entering into the marriage.

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with T-C- 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 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.