

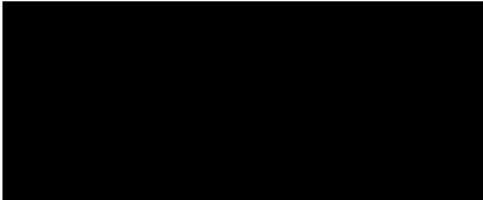
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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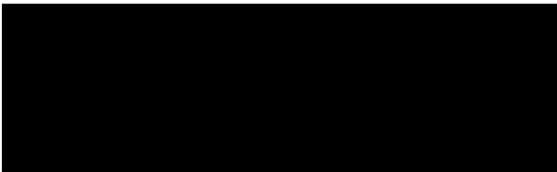
MAY 11 2012

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,

Jerry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. 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 pursuant to 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 determined that the petitioner had not established she had jointly resided with the United States citizen (USC) spouse or that she had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a brief and previously submitted 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 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:

(v) *Residence*. . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

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(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(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 citizen and native of Morocco who claims she last entered the United States on July 22, 2004 as an F-1 student. She married [REDACTED] the claimed abusive [REDACTED] 2005. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on July 16, 2007. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for 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 jointly resided with the USC spouse or that she had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a brief, and previously submitted documentation. Counsel asserts the director failed to fully consider the petitioner's statements and the statements submitted from third parties on the petitioner's behalf. Counsel contends that under the "any credible evidence" standard, all the evidence taken together establishes that the petitioner and her spouse resided together as well as the validity of their marriage.

¹ Name withheld to protect the individual's identity.

Preliminarily, the AAO observes 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 Act. This mandate is reiterated in the regulation at 8 C.F.R. § 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 residence and good faith lists 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)(ii) and (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 joint residence and good faith, 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 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

Joint Residence

The petitioner states on the Form I-360 that she resided with her spouse from June 1, 2005 until December 2006. The director set out the deficiencies in the evidence submitted regarding the couple’s joint residence. The director specifically noted that the petitioner provided inconsistent testimony and that her testimony lacked the necessary details to establish that she had jointly resided with her spouse. The director found that the statements submitted on the petitioner’s behalf did not provide probative testimony regarding the claimed joint residence(s). The director also noted the deficiencies in the lease submitted and found that the letter confirming that the petitioner and her spouse had a joint bank account did not provide evidence of the commingling of marital assets.

On appeal, counsel asserts that the petitioner and [REDACTED] jointly resided together with another roommate who subsequently left the residence and that soon after January 18, 2006 the couple separated but subsequently moved into a new apartment in June 2006. The petitioner does not provide additional testimony regarding the claimed joint residence on appeal.

Upon review of the petitioner’s statements, the statements submitted on her behalf, and the documentary evidence submitted, the petitioner has not provided probative testimony establishing that she jointly resided with her spouse. The petitioner does not describe the couple’s claimed initial residence or their alleged second residence. She does not describe the couple’s home furnishings, their neighbors, any of the jointly-owned belongings, or any of their daily routines within the residence. The affidavits of the petitioner’s spouse and father-in-law discuss the couple’s separation and the claim of alleged abuse. The affidavits of the petitioner’s spouse, father-in-law, and the affidavit of [REDACTED] although referencing that the couple lived together, do not provide detailed testimony regarding the joint residence of the couple. As the director determined, neither the lease nor the bank letter provides probative evidence that the couple actually resided together. Upon review of the totality of the information in the record, the record does not include probative

testimony or other evidence establishing the petitioner jointly resided with her spouse during their marriage.

Good Faith Entry into Marriage

The petitioner, in her June 29, 2007 personal statement, indicated generally that she met [REDACTED] at Oklahoma City Community College, where they both attended classes. She noted they met in 2003 and sometime in 2004 started spending time together and eventually became inseparable. She declared that she eventually fell in love with [REDACTED] and at some point he proposed. In the summer of 2005, she noted they obtained their marriage license and as it was only valid for nine days, they married in the courthouse on [REDACTED] 2005 and subsequently had a small wedding ceremony on [REDACTED] 29. The remainder of the petitioner's statement regards her claim of abuse. The petitioner's spouse's May 11, 2006 statement noted the couple was married and separated and that they were now searching for a new apartment. The petitioner's father-in-law's May 12, 2006 statement refers to the couple meeting, that they discussed their marriage plans, and that he was convinced that the couple loved one another. The record also included an October 20, 2006 statement signed by the petitioner's spouse's mother and father confirming the couple's marriage for 18 months and noting that the couple continued to work on their relationship. The record further included a November 10, 2006 statement signed by a representative of the [REDACTED] noting that the couple had attended marital counseling the past four weeks to improve their relationship.

Upon review of the petitioner's statement, she has not provided a probative account of her courtship, her decision to marry, the couple's shared residence(s) or shared experiences, except as it relates to the claim of abuse. The petitioner's testimony lacks probative detail that provides insight into her intentions when entering into the marriage. The statements of the petitioner's in-laws and friend do not include probative detail of their observations of the interactions of the couple and thus are also insufficient evidence of the petitioner's intent when entering into the marriage. General statements are insufficient to establish intent in this regard. The brief letter on the [REDACTED] [REDACTED] letterhead does not contain the requisite information to assist in ascertaining the petitioner's intent when entering into the marriage. The director noted the deficiencies in the documentary evidence submitted and we further observe that the documentary evidence does not establish the petitioner's intent when entering into the marriage. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has not established that she jointly resided with the claimed abusive spouse or that she entered into the marriage in good faith. 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 appeal is dismissed. The petition remains denied.