

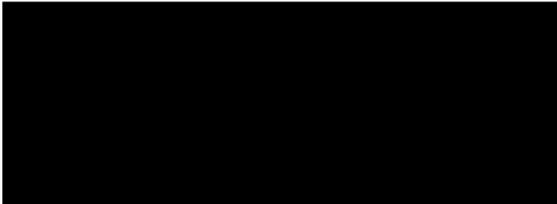
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE: **MAY 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 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, 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 and to reconsider. The motion will be granted. The AAO's previous decision will be affirmed and 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.

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." The regulation at 8 C.F.R. § 103.5(a)(3) states, in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Facts and Procedural History

The petitioner is a citizen of Peru who entered the United States on December 27, 2005 as a nonimmigrant visitor. She married [REDACTED] the United States citizen spouse, on [REDACTED] 2006. She filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on April 8, 2010 and stated on the Form I-360 that she resided with her spouse from April 2006 until June 2008. Upon review of the record, including the petitioner's response to the RFE, the director denied the petition after determining that the petitioner had failed to establish that she had entered into the marriage in good faith. The AAO dismissed the appeal, concurring with the director's decision. 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 and a motion to reconsider. Counsel does not state any reasons for reconsideration supported by pertinent precedent decisions establishing that the prior decision was based on an incorrect application of law or Service policy. Counsel does, however, submit additional affidavits and an account transcript of an Internal Revenue Service (IRS) Form 1040 for 2006. The matter is reopened to consider the additional information submitted.

Good Faith Entry into Marriage

¹ Name withheld to protect the individual's identity.

The AAO previously discussed and set out the deficiencies of the statements submitted by the petitioner, the statements of those who submitted statements on her behalf, as well as the documentary evidence previously submitted. On motion, counsel for the petitioner submits an additional six declarations in support of the motion, a copy of an account transcript of an Internal Revenue Service (IRS) Form 1040 for 2006, and photographs.

In the declaration of [REDACTED] states the petitioner rented a room at her house and in January of 2006 the petitioner met [REDACTED] at a barbeque at the house. [REDACTED] notes the petitioner and [REDACTED] began to go out to eat and to movie theaters and after three or four months the couple decided to get married. She indicates that the couple told her they loved each other and once married, [REDACTED] moved into the room that she was renting to the petitioner.

In the declaration of [REDACTED] declares that she has known the petitioner for about 30 years but she did not spend a lot of time with the petitioner. She indicates that one day the petitioner called her and told her that she was in love and asked if she and her husband could be witnesses at her wedding. [REDACTED] then describes the wedding at the courthouse.

In the declaration of [REDACTED] notes that he is the petitioner's brother and that the petitioner began renting a room in January 2006 at the same house in which he lived. He notes that the petitioner introduced him to [REDACTED] in 2006 and one day the petitioner called and said that she and [REDACTED] were getting married. [REDACTED] indicates that [REDACTED] moved into the house where he and the petitioner were living and that he got along with [REDACTED]. He states that in February 2007, the petitioner, [REDACTED] another friend and he went to Las Vegas for about two days.

In the declaration of [REDACTED] states that he has known the petitioner since January or February 2006 and that he met [REDACTED] on one occasion around March 2007 while at a barbeque lunch at the couple's home.

In the declaration of [REDACTED] indicates that she also lives in [REDACTED] home and that the petitioner met [REDACTED] in January 2006 at a small gathering at the home. [REDACTED] declares that subsequently [REDACTED] began to visit the petitioner at home quite often and after going out several times they became boyfriend and girlfriend. [REDACTED] states that the petitioner would cook for [REDACTED] and he would take the petitioner out to parks and give her expensive gifts. After a couple of months of dating, [REDACTED] indicates that the petitioner accepted [REDACTED] marriage proposal and after the marriage moved into the same home.

In the declaration of [REDACTED] indicates that he met the petitioner and [REDACTED] through his wife, [REDACTED] in December 2006 and he recalled visiting the couple and that [REDACTED] helped out at parties and other occasions and they seemed like a happy couple.

The declarations submitted on motion do not include probative testimony establishing the petitioner's intent when she entered into the marriage. [REDACTED] state generally that the couple went out together prior to marriage but do not provide sufficient information in the testimony to assist in ascertaining the petitioner's intent when she entered into the marriage. [REDACTED] although stating that he lived in the same house as the petitioner, does not

provide detailed testimony of his observations of the couple's interactions prior to or subsequent to the marriage. Similarly, [REDACTED] although indicating they met [REDACTED] and the petitioner on one or two occasions do not provide testimony sufficient to ascertain the petitioner's intent when entering into the marriage. The limited general testimony of the declarants on motion does not include sufficient detailed information to conclude they had personal knowledge of the relationship and the intent of the petitioner when entering into the marriage. The AAO has also reviewed the 2006 IRS account transcript; however, filing taxes together is insufficient to establish the petitioner entered into the marriage in good faith. Likewise, photographs of the couple together on one or more occasions are insufficient to establish the petitioner's intent when she entered into the marriage. The petitioner does not submit testimony on motion and the record continues to lack probative testimony of her courtship, the wedding ceremony, her joint residence with [REDACTED] 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 [REDACTED] 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 September 29, 2011 decision is affirmed and the petition remains denied.