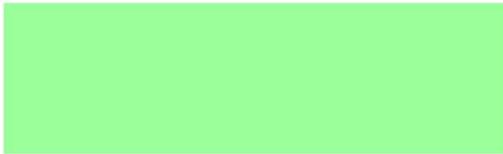




U.S. Citizenship
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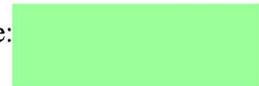


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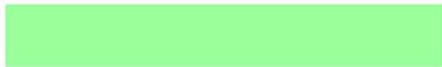
Office: VERMONT SERVICE CENTER

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:

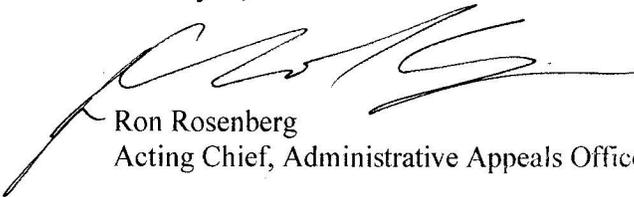


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I 290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Vermont 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 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with her husband and entered into the marriage in good faith.

On appeal, the petitioner, through counsel, submits a brief statement on the Form I-290B, Notice of Appeal or Motion and additional evidence.

Relevant 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, 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 further 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 further explicated 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.

* * *

(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 further explicated 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of the Dominican Republic who claimed she entered the United States on February 28, 1998. The petitioner married B-G-¹, a U.S. citizen, in Caguas, Puerto Rico on July 24, 2010. The petitioner filed the instant Form I-360 on May 18, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's joint residency with B-G- and good-faith entry into the marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

¹ Name withheld to protect individual's identity.

Joint Residence

The director correctly determined that the record failed to demonstrate that the petitioner resided with B-G-. The petitioner stated on her Form I-360 that she resided with B-G- from July to December of 2010 in Caguas, Puerto Rico. The record contains the following: affidavits from friends [REDACTED] a 2010 Puerto Rican joint tax return; a copy of a lease; and photographs of the petitioner and B-G- at their wedding and on one other occasion. The joint tax return lists the petitioner as B-G-'s spouse but shows a different address from the address stated on the form I-360 and the copy of the lease. Additionally, the lease is in the petitioner's name only and does not indicate that B-G- resided there. The photographs show that the petitioner and B-G- were pictured together at their wedding and one other occasion but are also not indicative of a shared residence.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). Here, the petitioner did not submit a self-affidavit or other type of personal statement. The letters from [REDACTED] are brief, nearly identical, and do not describe the petitioner's claimed joint residences with B-G- in any probative detail. As such the affidavits submitted carry insufficient evidentiary weight to establish the petitioner's and B-G-'s joint residence.

On appeal, counsel asserts that the documentary evidence provided merits the approval of the self-petition. However, she does not address the evidentiary deficiencies other than to explain that the lease was only in the petitioner's name because the petitioner resided there prior to marrying B-G- who then moved in with her. Also on appeal, the petitioner submits affidavits from [REDACTED] and B-G-. Mr. [REDACTED] states that after their marriage, the petitioner and B-G- lived together at the petitioner's residence and separated due to some differences. Ms. [REDACTED] states that she is neighbors with the petitioner and that the petitioner lived alone until her marriage to B-G-. Ms. [REDACTED] states that the two lived together but separated because B-G- was abusive. B-G- states that after their marriage, he moved in with the petitioner at her address. He states that they stayed together for a short time but separated due to incompatible differences. Neither Mr. [REDACTED] nor Ms. [REDACTED] describe any visits to the petitioner's marital residence or provide any substantive information regarding the claimed shared residence. Likewise in his affidavit, B-G- failed to provide any detailed information regarding his marital residence with the petitioner. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The director also correctly determined that the petitioner failed to establish that she married B-G- in good faith. The record contains: affidavits from friends [REDACTED] the 2010 Puerto Rican joint tax return; a copy of a lease; a receipt for a television set purchased during their marriage; and photographs of the petitioner and B-G- at their wedding and on one other occasion. The television receipt shows only that B-G- bought a

television set in August of 2010 and does not speak to the petitioner's good-faith marital intentions. The photographs show that the petitioner and B-G- were pictured together but also does not establish the petitioner's marital intentions. The lease carries little evidentiary weight as it is in the petitioner's name only and the tax return alone is insufficient to establish that the petitioner married B-G- in good faith.

Nonetheless, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." *See* 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner did not submit a personal statement providing any information regarding her and B-G-'s courtship, wedding ceremony, shared residence and experiences. Further, the affidavits of the petitioner's friends did not provide sufficient probative information to establish her good-faith intent upon marrying B-G-. The affidavits were very brief and did not describe any particular visit or social occasion in detail or otherwise provide probative information establishing their personal knowledge of the relationship. On appeal, the petitioner submits three additional affidavits from [REDACTED] and B-G-. Mr. [REDACTED] and Ms. [REDACTED] briefly attested to the petitioner's residence with B-G-, did not describe any particular residential visit or provide any probative information about the petitioner's marital intentions. Likewise, B-G- did not describe his relationship with the petitioner in any probative detail or otherwise establish that the petitioner married him in good faith. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.