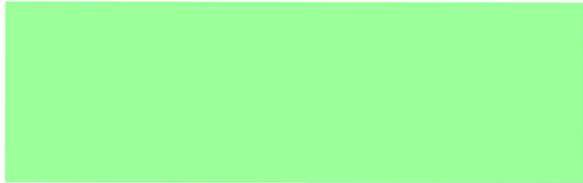




U.S. Citizenship
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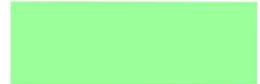
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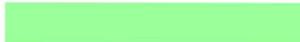
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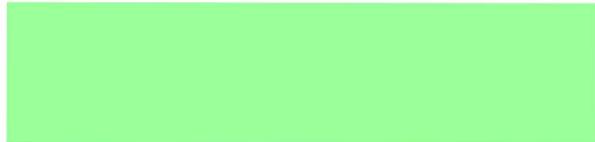
IN RE:

Self-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 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 in accordance with the instructions on 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed 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 spouse. On motion, counsel submits new evidence.

Applicable Law

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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:

(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 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.

Facts and Procedural History

The petitioner is a native and citizen of Mexico, who claims to have entered the United States in or about July 2000 without inspection, admission, or parole. On August 13, 2008, she married a U.S. citizen in Texas. On February 3, 2010, the petitioner filed the instant Form I-360. The director denied the petition for failure to establish the requisite entry into the marriage in good faith and good moral character. In its February 28, 2012, decision on appeal, incorporated here by reference, although the AAO found that on appeal the petitioner established that she was a person of good moral character, we upheld the director's decision regarding the petitioner's failure to establish that she entered into her marriage in good faith and dismissed the appeal.

Although counsel does not submit a brief, on the Form I-290B, Notice of Motion, she describes the new evidence submitted. Counsel cites no binding case law or precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Counsel also fails to establish that the AAO's prior decision was incorrect based on the evidence of record at the time. See 8 C.F.R. § 103.5(a)(3) (prescribing this additional requirement). Consequently, the motion to reconsider must be dismissed. See 8 C.F.R. § 103.5(a)(4).

Counsel's submission does, however, meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Counsel submits new evidence; an affidavit from the petitioner's husband and a new affidavit from the petitioner. Accordingly, the motion to reopen is granted.

Analysis

In our prior decision, the AAO determined that the petitioner had not established the requisite good faith entry into the marriage because the petitioner did not provide detailed probative testimony regarding her interactions with her husband prior to or subsequent to the marriage sufficient to assist in ascertaining her actual intent when entering into the marriage, and although the petitioner provided general statements regarding activities the couple engaged in at various times, she did not provide probative testimony of her courtship leading up to the wedding, the wedding ceremony, the

shared residence, or shared experiences except as it related to the claim of abuse. Similarly, the statements of her parents, sister, and friends contained no probative information regarding the petitioner's intentions in marrying her spouse. Additionally, the photographs provided and the telephone bills, while showing the couple were together on several different occasions, did not demonstrate the petitioner's intent when entering into the marriage. In her personal statement provided on appeal, the petitioner stressed her husband's continued love for her; however, his intent in entering into the marriage was not the issue.

On motion, the petitioner submits another affidavit dated March 26, 2012, in which she repeats much of what she stated in previous affidavits. The petitioner again lists activities that she and her husband engaged in together, but she does not provide probative descriptions of her feelings for her husband, her intentions in entering into the marriage, her courtship leading up to the wedding, the wedding ceremony, their shared residence, or their shared experiences. The petitioner also submits an affidavit from her husband in which he states that they married in 2002 because they loved each other and the petitioner cared for him. He describes his affairs and discusses his mistreatment of and love for the petitioner. The petitioner's husband also recalls that the petitioner did not want to go forward with the immigration process once she found out about his affair. As noted in the previous AAO decision, however, the petitioner's husband's intent in entering into the marriage and his current feelings for her are not the issue in this case. While the petitioner's husband notes that the petitioner "loved him," he does not provide any probative descriptions of the basis for this belief, nor does he describe their courtship, the wedding ceremony, their shared residence, or their shared experiences, other than his affairs. On motion, for the reasons stated above, the petitioner has not submitted sufficient evidence to overcome the previous finding of the AAO. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On motion, the petitioner has failed to overcome the AAO's finding that she did not establish the requisite entry into the marriage in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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). Here, that burden has not been met. Upon reopening, the prior decision of the AAO will be affirmed. The appeal will remain dismissed and the petition will remain denied.

ORDER: The motion is granted. The AAO's prior decision, dated February 28, 2012, is affirmed. The appeal remains dismissed and the petition remains denied.