



U.S. Citizenship
and Immigration
Services

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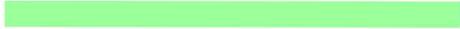
OFFICE: VERMONT SERVICE CENTER

FILE:



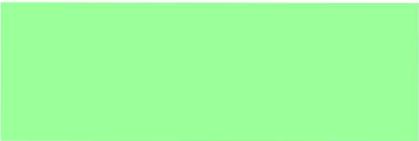
IN RE:

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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“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 entered into marriage with her husband in good faith.

On appeal, counsel submits a brief statement reasserting the petitioner’s eligibility.

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:

(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.

* * *

(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 Kenya who entered the United States on January 30, 2001 as a nonimmigrant student. The petitioner married a U.S. citizen on February 24, 2005 in Dallas, Texas. The petitioner filed the instant Form I-360 on April 5, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel 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. Counsel's claims do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her first affidavit the petitioner recounted that she first met her husband through a mutual friend. She stated that they started dating and during their courtship she went to his home and met his family members. In the affidavit she submitted in response to the RFE, the petitioner discussed with additional detail how she initially met her husband at her friend's apartment. She also provided additional details on their courtship and wedding ceremony. The petitioner recounted that during their courtship they went to the mall and the movies and after several weeks she met her husband's family members. However, the petitioner did not describe in probative detail their joint residence or any of their shared experiences as a married couple, apart from the alleged abuse. Also, the petitioner's two affidavits contain inconsistent descriptions of her courtship and engagement. The petitioner stated in her first affidavit that she argued with her husband during their courtship because she believed that they had to be married before becoming involved intimately. She stated that for this reason, they decided to get married. In her second affidavit, however, the petitioner discussed

being intimate with her husband prior to their marriage. She stated that they discussed their values and she was surprised when he eventually proposed to her. These inconsistencies detract from the credibility of the petitioner's claim of having entered into the marriage in good faith.

In response to the RFE, the petitioner submitted a letter from her friend, [REDACTED], who briefly discussed knowing the petitioner and her husband as a married couple, but spoke predominately of the alleged abuse and provided no probative information establishing her personal knowledge of the petitioner's good-faith entry into the relationship.

The director accurately assessed the relevant documents submitted below. The petitioner initially submitted an unsigned, joint federal income tax return for herself and her husband for the year 2006. However, the petitioner stated in her first affidavit that her husband was incarcerated from May 2005 until May 2007. In response to the RFE, the petitioner submitted an income tax return for the year 2008, but this return was filed under her name only as head of household. The petitioner also initially provided a residential lease that was jointly signed by her and her husband on January 15, 2007. As noted, her husband was incarcerated on the date that he purportedly signed the lease. In response to the RFE, the petitioner submitted a lease for a different residence. This residential lease, dated January 4, 2007, is issued in her name only and unsigned. The petitioner also submitted: bank, cellular telephone and utility statements that are in her name only; her automobile insurance policy listing her husband as an excluded driver; and six, undated photographs of herself and her husband taken at an unspecified location. The automobile insurance policy was issued over three years after the petitioner's separation from her husband. Although the petitioner's husband's name was included on the address labels for the electricity statements, they were issued during the period of his two-year incarceration.

On appeal, counsel cites to the petitioner's evidence and asserts that the petitioner "has been able to establish based on the facts and circumstances surrounding her marriage that her marriage was entered into in good faith." However, counsel does not specifically identify any error in the director's determination that the petitioner did not enter her marriage in good faith. A full review of the relevant evidence fails to establish the petitioner's eligibility. In her affidavits, the petitioner does not describe in probative detail her joint residence with her husband or any of their shared experiences as a married couple, apart from the alleged abuse. Her affidavits also contain inconsistent descriptions of their courtship and engagement. The petitioner's friend, [REDACTED] does not discuss in probative detail her observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. The relevant documents submitted below are also of little probative value. The six, undated pictures only show that the petitioner and her husband were photographed together on an unspecified occasion. The bank, cellular telephone and utility statements were issued in the petitioner's name only, and the joint, unsigned tax return and joint residential lease were issued during the petitioner's husband's incarceration. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that she entered 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.