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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



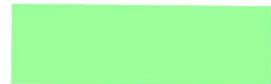
U.S. Citizenship
and Immigration
Services



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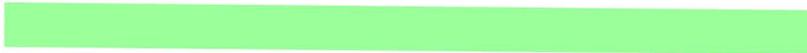
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Office: VERMONT SERVICE CENTER File:



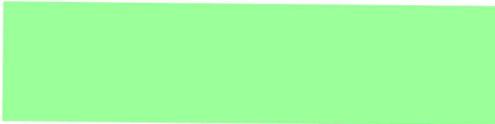
IN RE:

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 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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 a motion to reconsider. The motion will be treated as a motion to reopen and 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner jointly resided with her husband and entered into marriage with him in good faith. In its October 12, 2012 decision dismissing the appeal, the AAO found that the petitioner did not establish that she jointly resided with her husband and entered into marriage with him in good faith. Beyond the director’s decision, the AAO found that the petitioner did not establish that she is a person of good moral character and that she had a qualifying relationship with her husband and was eligible for immediate relative classification based on this relationship.

On motion, counsel submits a supplemental brief 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

* * *

(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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . .

(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.

* * *

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances,

criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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 Jamaica who entered the United States in July of 1989 as a B-2 visitor. The petitioner married R-A-¹, a U.S. citizen, in [REDACTED] Florida on March 4, 1997. The petitioner filed the instant Form I-360 on September 21, 2010. The director denied the petition for failure to establish the petitioner's residence and good-faith entry into the marriage with her husband. The petitioner, through counsel, timely appealed and the AAO dismissed the appeal on October 12, 2012. The petitioner timely submitted a motion to reconsider.

Counsel asserts that the AAO's prior decision failed to give the evidence submitted by the petitioner "the due weight and significance it deserved." Counsel does not, however, cite to 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's brief also fails to establish that the AAO's prior decision was incorrect based on the evidence of record at the time. *See id.* (prescribing this additional requirement). Consequently, the motion to reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

Although counsel did not indicate that he is filing a motion to reopen, his submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Counsel asserts that the petitioner resided with R-A-, that she entered into her marriage with R-A- in good faith, that she is a person of good moral character, and that she has a qualifying relationship with her husband and is eligible for immediate relative classification based on such a relationship. On motion, counsel's assertion is supported by additional affidavits from the petitioner, her friends, and a local police clearance report. Accordingly, counsel's motion to reconsider will be treated as a motion to reopen and the motion to reopen is granted.

¹ Name withheld to protect the individual's identity.

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 and the new evidence submitted on motion fail to overcome the grounds for denial. The appeal will remain dismissed for the following reasons.

Joint Residence

In its decision dated October 12, 2012, the AAO determined that the petitioner had not established that the petitioner resided with R-A- because the petitioner's statements and the letters from her friends did not provide probative details regarding the marital residence to overcome the lack of traditional forms of joint documentation. On motion, the petitioner submits another self-affidavit and affidavits from friends [REDACTED]. Upon review of the petitioner's affidavit, the petitioner does not expand upon the nature of the residence where she claims she lived with R-A-. She repeats much of her earlier statements and does not further describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with R-A- after their marriage.

In his affidavit, [REDACTED] states that he is good friends with the petitioner and has maintained contact with her over the years. He states that he first met R-A- at the petitioner's home a month before their wedding. He states that the petitioner lived on a ground floor apartment and recounts that the apartment building itself was green. Mr. [REDACTED] further states that he visited the petitioner and R-A- at this same address after the two were married and also heard R-A- in the background during telephone conversations with the petitioner. In her affidavit, [REDACTED] states that the petitioner used to rent one bedroom in a two-bedroom, two-bathroom apartment. Ms. [REDACTED] describes visiting the petitioner and sitting in the bedroom because the petitioner did not want to sit in her landlord's living room. Ms. [REDACTED] further states that she did not see R-A- at the petitioner's apartment but heard him in the background when she spoke to the petitioner on the telephone. Neither Mr. [REDACTED] nor Ms. [REDACTED] further describe any routines, observations or otherwise provide probative details regarding the living arrangement.

On motion, counsel asserts that the petitioner is unable to provide a more detailed description of her joint residence with R-A- because she has "limited cognitive endowment exacerbated by the lack of formal schooling" and because she suffers from Post-Traumatic Stress Disorder (PTSD) as a result of the abuse by R-A-. Counsel also asserts that the AAO failed to take into consideration the psychological findings and diagnosis of Dr. [REDACTED] PhD., which explains the inability of the petitioner to recall specific details of her residence with R-A-. However, the affidavits submitted by her friends also fail to provide detailed information regarding the petitioner's shared residence. Upon a full review of all the relevant and credible evidence submitted below and on motion, the record does not include sufficient probative testimony to establish that the petitioner jointly resided with R-A- during their marriage. Accordingly a preponderance of the evidence does not demonstrate that the petitioner and R-A- resided together after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

In its prior decision, the AAO determined that the petitioner had not established that she entered into marriage with R-A- in good faith because she failed to provide probative details regarding their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. The AAO decision on October 12, 2012 is incorporated here. On motion, the petitioner submits a self-affidavit and affidavits from friends [REDACTED]

In her affidavit, the petitioner states that she married R-A- for love and affection. She states that she did his laundry, cooked for him, and that he was her husband on paper and in the way that they lived. She does not add any probative information to the affidavits she submitted previously. Mr. [REDACTED] states that he first met R-A- when R-A- and the petitioner were dating. Mr. [REDACTED] further states that he attended their wedding at the courthouse but was unable to attend the reception at the restaurant afterwards. Ms. [REDACTED] states that although she has never met R-A- in person, she saw him once when he dropped the petitioner off at Ms. [REDACTED] home for a visit. Ms. [REDACTED] further recounts that the petitioner is a very private person but that she told Ms. [REDACTED] that she was dating R-A- and that they planned to get married as well. Ms. [REDACTED] states that the petitioner mentioned that R-A- wanted a small ceremony at the courthouse and so Ms. [REDACTED] did not ask to attend or question why she was not invited. Neither Mr. [REDACTED] nor Ms. [REDACTED] add probative information regarding the petitioner's good-faith marital intent and do not demonstrate that they had personal knowledge of the relationship. Therefore the evidence submitted on motion fails to establish that the petitioner entered into marriage with R-A- in good faith as defined at 8 C.F.R. § 204.2(c)(1)(ix).

Upon a full review of all the relevant and credible evidence submitted below and on motion, the petitioner has not overcome the basis of the director's denial. The petitioner's affidavit is brief and does not demonstrate that she married R-A- in good faith. Additionally, the affidavits from the petitioner's friends do not give insight to the petitioner's marital intentions and do not show that they knew the petitioner and R-A- as a married couple. When viewed in the totality, the preponderance of the relevant evidence submitted below 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.

Good Moral Character

In its prior decision, the AAO determined beyond the director's decision that the petitioner failed to establish that she is a person of good moral character because she failed to discuss her good moral character and failed to submit an adequate local police clearance. The police clearance report submitted by the petitioner was based on a name only search and the petitioner failed to include her married name although the record showed that she had used her married name on bank statements and other documents. On motion, the petitioner submits a local police clearance report that lists both her maiden and married names stating that a check of their records did not yield an arrest history for the petitioner. Additionally, the petitioner submits a third affidavit attesting to her good moral character and statements from two former employers asserting that she is a person of good moral character. Accordingly, the petitioner has demonstrated that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner has not, however, overcome the AAO's final ground for denial. On motion, she has failed to demonstrate a qualifying relationship with R-A- and her corresponding eligibility for immediate relative classification based on that relationship. The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of the marital relationship, including proof of the termination of all prior marriages. The petitioner initially submitted a Florida marriage certificate reflecting that she and R-A- wed on March 4, 1997 and a copy of her divorce decree from her prior marriage. The petitioner also submitted a copy of a Florida marriage certificate showing that R-A- married another woman allegedly without first obtaining a divorce from the petitioner. This called into question the status of the petitioner's relationship with R-A-. The Florida vital records search results that the petitioner submitted was found to be insufficient as the date range for the search was only between 1999 and 2001. It also did not include a search of the petitioner's maiden name despite the record showing that she has used both her maiden and married names. On motion, the petitioner submits a second Florida vital records search showing no record of divorce between the petitioner and R-A-. Although the date range for the search was broadened from March 4, 1997 to November 27, 2012, the search again failed to include the petitioner's maiden name. As such, the incomplete vital records search showing the absence of a record of a divorce does not establish that the petitioner is still married to R-A-. Accordingly, the petitioner did not establish a qualifying relationship with R-A- or her corresponding eligibility for immediate relative classification based on her relationship with R-A-, as required by subsections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act. See 8 C.F.R. § 204.2(c)(1)(i)(B) and (c)(1)(ii).

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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal remains dismissed and the petition remains denied.