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

U.S. Citizenship and Immigration Services

Date: NOV 0 4 2013 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
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 under 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.

The director denied the petition for failure to establish that the petitioner entered into marriage with her United States citizen spouse in good faith.

On appeal, counsel submits a brief.

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 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)(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:

> (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 citizen of Jamaica who entered the United States on September 3, 2008 as a student. She married S-T-[1], a U.S. citizen, on March 8, 2010 in New York. The petitioner filed the instant Form I-360 on June 1, 2011. The director subsequently issued a Request for Evidence (RFE) of the shared residence and entry into marriage with S-T- in good faith. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner entered into marriage in good faith and denied the petition. The petitioner timely appealed.

On appeal, counsel asserts that the director failed to properly consider the submitted evidence, and arbitrarily denied the instant Form I-360 petition.

The AAO reviews these proceedings *de novo*. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, we find no error in the director's ultimate determination.

Good-Faith Entry into the Marriage

De novo review of the evidence submitted below fails to demonstrate that the petitioner married her spouse in good faith. The record contains a statement from the petitioner dated May 31, 2011. The petitioner briefly recounted in her statement that she met S-T- in July 2009 at a summer barbeque, and fell in love when she first met him. She stated that they talked on the phone, and she visited him at his mother's house in where they went out. The petitioner related that seven months later S-T- proposed to her, and she was "filled with joy." She stated that after they wed on March 8, 2010 they moved in together at her apartment in but her husband still worked in The petitioner stated that after a few weeks her husband was laid off, but continued to spend most of his time in However, the petitioner failed to discuss in detail how she met her husband, their period of courtship, engagement, and wedding; their joint residence or any of their shared experiences, apart from the abuse.

[1] Name withheld to protect the individual's identity.

The petitioner submitted affidavits from seven friends – Ms. all described the petitioner and her husband as a happy or loving couple, and briefly mentioned visits with the petitioner and S-T-, but none of the affiants discussed in any detail a particular visit or interactions between the petitioner and S-T-, or provided any detailed information establishing their personal knowledge of the petitioner's relationship, apart from the deterioration of her marriage. The affidavits provided only short one or two sentences regarding the petitioner's dating of S-T- and her interactions with him, and mainly discussed the breakdown of her marriage. Mr. briefly recounted double-dating with the petitioner and S-T- and briefly stated that the petitioner and S-T- contemplated future plans together, but he did not describe in further detail interactions between the petitioner and S-T-, or any other occasion they went out together, or establish he had any other personal knowledge of the relationship, apart from the breakdown of the marriage. Ms. and Ms. also described the petitioner and S-T- as a loving couple, and Ms. Ford asserted that the petitioner was "head over heels in love," but neither Ms. nor Ms. discussed in detail any social interactions they had with the petitioner and S-T-, or otherwise demonstrated their personal knowledge of the petitioner's relationship with her husband apart from the abuse.

The psychological evaluation from Dr. a licensed clinical psychologist, only briefly stated how the petitioner met S-T-, and primarily discussed the abuse in the petitioner's marriage.

The petitioner also submitted bank card statements in the joint name of the petitioner and her husband reflecting their address; a bank card statement showing only the petitioner's husband's name and their address; a residential lease agreement signed by the petitioner and her husband; and photographs. The residential lease agreement and bank statements reflect that the petitioner resided with her husband and are not probative of the petitioner's good faith intentions in marrying her husband. The bank statements are from October 22, 2010 until September 13, 2011, and reflect almost no account activity and only $17 as the average monthly balance, and do not indicate that the petitioner and her husband used the account for shared expenses or savings. On appeal, counsel contends that the photographs are probative in showing the start of the petitioner's life with her husband, but the photographs provide no substantive information about the petitioner's marital intentions. The photographs are pictures of the petitioner's marriage ceremony, and of other unspecified occasions and dates.

Counsel argues that the debit card in S-T-'s name reflects that the petitioner and her husband resided together, and that their joint account has minimal account activity because the petitioner and her husband lacked the funds necessary for account activity. Counsel asserts that the Act does not require any particular amount of funds in a bank account to demonstrate that a petitioner entered into a marriage in good faith. The petitioner has established that she resided with her husband, and traditional forms of joint documentation such as a joint bank account are not required to demonstrate a self-petitioner's entry into the marriage in good. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). All credible relevant evidence will be considered including evidence regarding courtship, wedding ceremony, shared experiences, and affidavits of persons with personal knowledge of the relationship. *See* 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner only

briefly described in her affidavit how she met S-T- at a barbeque, and failed to discuss in detail their period of courtship, engagement, and wedding; their joint residence or any of their shared experiences, apart from the abuse.

On appeal, counsel contends that the affidavits of the petitioner's friends provide more than general information about the petitioner's marital intentions because they described interactions between the petitioner and S-T-, and recounted how they knew the petitioner and her husband as a couple and how their marital relationship changed over time. Review of their affidavits shows that the petitioner's friends mainly discuss the breakdown of the petitioner's marriage and provide little substantive information about the petitioner's good-faith intent upon marrying S-T-.

Counsel also argues that the director ignored the psychological evaluation, but counsel fails to explain the relevance of the evaluation to the issue on appeal. The evaluation briefly mentions how the petitioner met her husband and their courtship, but reports primarily on the abuse in their relationship, and provides no probative information sufficient to establish the petitioner's intentions in marrying her spouse.

Counsel asserts that the evidence in the record must be viewed in its entirety. The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i). As previously discussed, the preponderance of all the relevant evidence in this case fails to establish 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

The petitioner has not overcome the director's ground for denial on appeal and remains 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 Otiende,* 26 I&N Dec. 127, 128 (BIA 2013); *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 is dismissed.