



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **DEC 10 2014** Office: VERMONT SERVICE CENTER File:

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 (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 Acting 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 a United States citizen.

The director denied the petition, determining that the petitioner did not demonstrate that she entered into the marriage with her husband in good faith.

On appeal, the petitioner reasserts her eligibility and submits additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii)(I) 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 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 explained further 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 standard and 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:

(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 was born in the Dominican Republic and entered the United States as an B-1 nonimmigrant visitor on January 24, 2007. She married her U.S. citizen spouse, F-F-, on June [REDACTED] New Hampshire.¹ The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on September 13, 2013. On September 26, 2013, the director issued a request for evidence (RFE) of the petitioner's good moral character, and the petitioner timely responded. On October 21, 2013, the director issued an RFE seeking evidence that the petitioner entered into her marriage with F-F- in good faith. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility on this ground. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility.

Good-Faith Entry into Marriage

In her initial statement, the petitioner recounted meeting her husband at a party in Massachusetts in February of 2010. She explained that they dated for about a year before they married and "talked about lots of little things." She said she married F-F- because "he treated me well and I was tired of being alone." According to the petitioner, F-F- bought her presents and food when she was tired, asked her about her family and "made me feel like I mattered." The petitioner stated that F-F- moved in with her and brought her coffee in bed each morning. The petitioner indicated that F-F-

¹ Name withheld to protect identity.

worked odd jobs as a painter and mover at the same time he collected a disability settlement check, and she also worked odd jobs baby-sitting, cleaning houses, and painting nails. The petitioner described their shared residence, including furniture, a plant, the color of the bathroom tiles, their shower curtain, and the chairs that she alleged F-F- broke. The petitioner did not provide any probative information regarding their courtship, F-F-'s proposal, their wedding ceremony, or shared marital routines to establish her good-faith entry into the marriage. The petitioner also provided an affidavit from her friend, [REDACTED] who indicated that she was surprised to learn that the petitioner married F-F- while Ms. [REDACTED] was on vacation. Ms. [REDACTED] did not describe the petitioner's marital routines or interactions with F-F- apart from episodes of abuse that she claimed to have witnessed or heard.

The petitioner also submitted bank statements for June and July of 2012. The statements show only her husband's name and do not establish they commingled finances or that the petitioner entered into her marriage with F-F- in good faith.

In response to the director's October 21, 2013 RFE of shared emotional, economic or domestic bonds, the petitioner submitted affidavits from her friends. [REDACTED] who was married to the petitioner's cousin, stated that the petitioner babysat both of her children and introduced Ms. [REDACTED] to F-F-. Ms. [REDACTED] indicated that she did not like F-F-, but believed that "if [the petitioner] was happy, that was all that mattered." Although she indicated that she attended the petitioner's wedding to F-F-, Ms. [REDACTED] did not describe the ceremony or indicate whether there was a post-wedding celebration of any kind. After the petitioner and F-F- moved in together and married, Ms. [REDACTED] indicated that she continued to leave her children with the petitioner to babysit. Ms. [REDACTED] stated that one day she went to pick up her children at the petitioner's marital residence and saw that F-F- was very angry. When she saw the petitioner crying the next day, Ms. [REDACTED] explained that she left with her children and never used the petitioner as a babysitter again. Ms. [REDACTED] did not provide any probative details about the petitioner's courtship, her wedding ceremony, or shared marital routines with F-F-.

[REDACTED] indicated that her cousin introduced her to the petitioner and F-F-, and that she visited the house the petitioner shared with F-F- several times, and that they all drank and talked. Ms. [REDACTED] described them as initially being "a completely normal couple." However on two later visits, she said that F-F- had changed, was rude, and went into his bedroom. [REDACTED] asserted that she visited the petitioner at the home the petitioner shared with F-F- and that F-F- always went into another room and shut the door. She indicated that the petitioner was not happy anymore and stopped engaging with her friends. None of the petitioner's friends provided additional probative details about the petitioner's courtship with F-F-, marriage ceremony, or shared marital interactions or routines.

In response to the RFE, the petitioner also submitted photographs of her with her husband that appear to have been taken on four occasions in 2011, including the day of their marriage ceremony. While these show that the petitioner posed for photographs with F-F- on at least four occasions, these photographs do not provide any insight into the petitioner's intentions before or after her marriage to

F-F- and are insufficient to establish the petitioner's good-faith entry into her marriage. She also submitted an electric bill addressed to her husband, a letter from social security addressed to the petitioner, and envelopes showing the petitioner's name and her marital address. Although these documents may establish that the petitioner and F-F- resided at the same location, they do not provide insight into the petitioner's courtship with F-F-, their shared marital routines, or otherwise present probative information that would establish the petitioner's good-faith entry into marriage with F-F-. Therefore, the RFE response did not establish the petitioner's good-faith entry into her marriage with F-F-.

On appeal, the petitioner submits a new affidavit in which she discusses her courtship and asserts that when she and F-F- were dating, they spent hours at the home of [REDACTED] who first introduced them. The petitioner indicates that she and F-F- often took walks around the reservoir in [REDACTED] Massachusetts, had cookouts on a lake, ate dinner every Sunday night at one of two restaurants, watched the same television shows, and drank beer. The petitioner does not describe any specific dates, television shows they watched, or restaurant meals. She asserts that F-F- asked her to marry him "one night when he was visiting me" but does not describe the proposal in any detail or indicate that it took place on a particular date. She lists the date they married at city hall, but does describe the ceremony in detail or indicate whether or not she had a post-wedding celebration. The petitioner explains that she and F-F- did not share a bank account because she did not have a social security number, and that the electric company would only permit one name on the account and so would not add her name to that of F-F- on the monthly statements. She asserts that she paid the rent on their apartment, but that F-F- controlled the money in the house and therefore she does not have additional evidence of shared assets and commingled finances. The remainder of the affidavit primarily describes the abuse to which F-F- subjected the petitioner but does not include any probative details about their shared marital routines apart from the abuse.

On appeal, the petitioner asserts that USCIS appears to have improperly required specific primary evidence from the petitioner, whereas the regulations require the agency to consider any credible evidence. USCIS must consider all credible, relevant evidence of the petitioner's good faith marriage, but the determination of what evidence is credible and the weight accorded that evidence lies within the agency's sole discretion. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i), (vii). Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit specific documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "affidavits or any other type of relevant credible evidence of residency may be submitted." 8 C.F.R. § 204.2(c)(2)(i). In this case, however, the affidavits from the petitioner and her friends lack a probative account of the petitioner's marital relationship. The petitioner has not established by a preponderance of the evidence that she entered into her marriage with F-F- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to establish that she entered into the marriage with F-F- 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.