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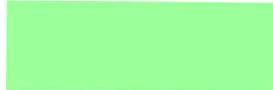
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

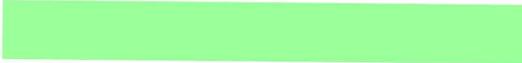


U.S. Citizenship  
and Immigration  
Services



Date: **MAY 05 2014**

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 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 a U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her former husband in good faith and they jointly resided together.

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 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.

\* \* \*

(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.

\* \* \*

(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.

\* \* \*

(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 Peru who last entered the United States on October 26, 2003 as a nonimmigrant visitor. The petitioner married G-S, a U.S. citizen, on July 11, 2004 in Miami, Florida.<sup>1</sup> The marriage dissolved in a divorce on February 7, 2012. The petitioner filed the instant Form I-360 on August 6, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and her residence with her husband. The petitioner, through counsel, timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

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<sup>1</sup> 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 appeal does not overcome the director's ground for denial and it 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 met G-S- through some friends at a party and they started dating. She stated that they wed on July 11, 2004 and the first months of their marriage were happy. In the affidavit submitted in response to the RFE, the petitioner reiterated that she met G-S- at a party. She recounted that they went out to eat at a restaurant where her cousin worked. The petitioner stated that G-S- took her to court to get married as a "surprise" and then moved into her home. She recounted that they rented movies and went to the beach together. The petitioner's brief statements about her marriage lack credible, probative details of their courtship, wedding, joint residence or any of their shared experiences, apart from the abuse.

The petitioner submitted an affidavit from her friend, [REDACTED] who claimed to have visited the petitioner and G-S- at their home on several occasions. She stated that the petitioner told her that she was getting married on July 11<sup>th</sup> and requested that she attend the wedding ceremony. Ms. [REDACTED] further stated that "I could not attend their wedding and [the petitioner] was sad . . ." Ms. [REDACTED] reiterated these statements in her second affidavit submitted in response to the RFE. These statements are inconsistent with the petitioner's claim that G-S- "took [her] to the Court by surprise" to get married on July 11, 2004. She further stated that G-S- "told [her] not to tell anybody because he wanted it to be a surprise for everyone." The significant inconsistencies between these statements undermine the petitioner's claim of good faith marriage to G-S-.

The petitioner also submitted below and in response to the RFE, affidavits from her friends, [REDACTED] and [REDACTED] claimed to have visited the petitioner and G-S- at their home "several times." However, she did not describe any particular visit or social occasion in detail or otherwise provide detailed information establishing her personal knowledge of the relationship. [REDACTED] and [REDACTED] briefly discussed the petitioner's marriage, but spoke predominately of the alleged abuse and provided no detailed, probative information regarding the petitioner's good-faith entry into the marriage.

The petitioner also submitted letters from [REDACTED] and [REDACTED] and [REDACTED] from the domestic violence social services agency, [REDACTED]. These individuals focused only on the abuse in the petitioner's marriage and did not speak of her good-faith intentions in entering the marriage. She also submitted a psychological evaluation from [REDACTED] who diagnosed her with Adjustment Disorder with Mixed Anxiety and Depressed Mood. Ms. [REDACTED] also focused on the abuse in the petitioner's marriage and did not discuss the couple's courtship and good-faith intentions in entering the marriage.

The petitioner also submitted copies of numerous documents, which are of little probative value in establishing her good faith entry into the marriage. She provided a certificate of title, registration and insurance for her car, which are all in her name only. She submitted a police report for a car accident

she was involved in after she separated from G-S-. She also submitted financial documentation issued to her after she separated from G-S-, including an automobile loan statement, resident account statements, utility bill payment receipt and electric bills, all in her name only. She provided earnings statements that show her marital status as "single." Although she also provided joint bank account statements, several of the statements are dated after her separation from G-S- and the one statement that was issued during her residence with G-S- is only for a three-week period.

On appeal, counsel asserts that the petitioner submitted affidavits and documentary evidence to demonstrate her good-faith entry into the marriage. Counsel states that the couple's joint bank account had overdrafts because G-S- did not contribute any money to the account. Counsel notes that according to an August 29, 2005 letter from [REDACTED] the petitioner reported that G-S- destroyed objects and important papers. Counsel also references the affidavits from the petitioner's friends as examples of the petitioner's good-faith entry into the marriage.

A full review of the relevant evidence submitted below fails to reveal any error in the director's determination. The relevant documents show that the petitioner and G-S- briefly held a joint bank account together. In her affidavits, the petitioner failed to provide credible, probative details of her courtship with G-S-, their wedding, joint residence or any of their shared experiences, apart from the abuse. The petitioner's assertion in her second affidavit of having a "surprise wedding" is also inconsistent with the two affidavits from her friend, [REDACTED] who stated that the petitioner's wedding was planned and she was invited to it. This inconsistency further detracts from the credibility of the petitioner's claim of having entered the marriage in good-faith. The remaining letters from the petitioner's friends fail to provide detailed, probative information regarding the petitioner's good faith in entering the marriage. 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.

#### *Joint Residence*

The director also correctly determined that the record fails to demonstrate that the petitioner resided with her former husband. On the Form I-360, the petitioner stated that she lived with G-S- from March 2004 until May 2005 and that their last address was in Hallandale, Florida. In her affidavits, the petitioner does not specify the dates of her residence with G-S-. The petitioner stated that after her marriage, she rented movies and walked on the beach with G-S-, but she failed to describe their shared residential routines and marital home in any detail. The letters from the petitioner's friends also fail to provide credible, probative details of the couple's joint residence. [REDACTED] in a one-sentence statement claimed to have visited the petitioner and G-S- at their home "several times," but she does not describe any particular visit or social occasion. [REDACTED] also claimed to have visited the petitioner and G-S- at their home on several occasions. However, as discussed, her statement is undermined by material inconsistencies. [REDACTED] stated that she witnessed G-S- yelling and [REDACTED] stated she witnessed G-S- having a "rude attitude" during their respective visits to the couple's home. However, their statements similarly do not discuss any social occasion or visit to the couple's home in any detail.

Although the bank statements reflect that they were addressed to the petitioner and G-S-, the one statement that was issued during the petitioner's residence with G-S- is only for a three-week period. The remaining documentary evidence, including an automobile loan statement, resident account statements, utility bill payment receipt and electric bills, are all in the petitioner's name only and are dated after her separation from G-S-. Finally, the petitioner submitted several undated photographs of a wall and door that she said were damaged by G-S- in their home. Photographs of a wall and door - without evidence of a residential lease, utility receipts, medical records, rental records, insurance policies, detailed affidavits or other credible documentation - are not probative of a couple's joint residence.

On appeal, counsel discusses the evidence of the couple's joint bank account. Counsel further states that the letters from [REDACTED] and the psychological evaluation confirm that the petitioner resided with G-S-. However, the individuals who authored the letters and psychological evaluation only reiterate the petitioner's own claims of marital abuse. They do not discuss the petitioner's marital home, residential routines or shared experiences with her husband, apart from the abuse. Accordingly, the record does not establish that the petitioner resided with her former husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Conclusion*

On appeal, the petitioner has not demonstrated that she entered into marriage with her former husband in good faith and they jointly resided together. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.