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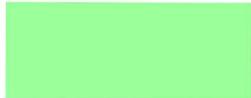
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

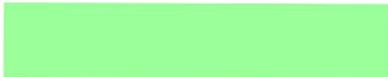


U.S. Citizenship
and Immigration
Services



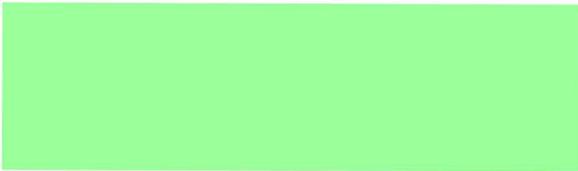
Date: **MAY 06 2014**

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:

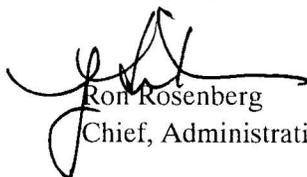


INSTRUCTIONS:

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 Vermont Service Center Acting 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 her U.S. citizen spouse.

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

On appeal, the petitioner, through 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 was born in Ethiopia, and entered the United States as a nonimmigrant fiancée on April 5, 2008. The petitioner married H-M-¹, a U.S. citizen, on April 7, 2008. The petitioner and H-M- separated on October 9, 2009. The petitioner filed the instant Form I-360 on May 9, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residency with H-M- and good-faith entry into the marriage. The petitioner responded with additional evidence that the director found insufficient, and the director denied the petition.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Joint Residence

The director correctly determined that the record failed to demonstrate that the petitioner resided with her husband. The relevant evidence in the record is the following: a marriage certificate; a printout of a joint bank account; an apartment lease; a utility bill; eight photographs of the petitioner and G-T- together and with other people; and affidavits from the petitioner and her friends [REDACTED] and [REDACTED]. The eight photographs show the petitioner and G-T- pictured together as well as with other people, but the photographs are mostly of outdoor activities and are not

¹ Name withheld to protect individual's identity.

identified as having been taken at any specific residence that the petitioner shared with her husband. The joint bank account record is undated. While the bank account record shows the names of both the petitioner and her husband, the petitioner and her husband are not listed as having the same residential address. The utility invoice is addressed only to the petitioner, and reflects the service address (where the electricity is supplied) as [REDACTED] the address that is shown for the petitioner's husband on the bank account record. On July 18, 2009, the petitioner and her husband signed a lease agreement for an apartment located on [REDACTED] in Reno, Nevada. Although the petitioner and her husband signed a lease agreement together, a joint lease agreement and the other documents, when considered together, are not sufficient in demonstrating that the petitioner and her husband resided together from May 2008 until October 2009, as stated in the Form I-360.

To establish joint residency, the petitioner also submitted an affidavit, and affidavits from her sister, [REDACTED] and from her friends, [REDACTED]. The petitioner stated that she joined H-M- in Las Vegas on April 5, 2008, and that they married two days later on April 7, 2008. She declared that in September 2008 they moved to Reno, Nevada, for her husband to continue his studies at the [REDACTED]. She stated that they initially lived in a small apartment before moving to an apartment on [REDACTED]. The petitioner, however, fails to provide any detailed information about the claimed marital residences with her husband or about shared residential routines, apart from the abuse. The affidavits from [REDACTED] and [REDACTED] stated that the petitioner and H-M- received their visits, but they do not describe any particular visits in any meaningful way or provide any substantive information about the claimed shared residence. The statement by [REDACTED] that s/he spent one night at the petitioner and her husband's apartment in Reno, Nevada, is devoid of any probative details. Overall, the affidavits lack sufficient information establishing that the petitioner and H-M- shared a marital residence. Accordingly, the preponderance of the relevant evidence fails to demonstrate that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

On appeal, counsel asserts that the evidence of joint residence was primarily within the control of the petitioner's husband and that the director ignored the petitioner's initial evidence, and requested primary evidence that was not readily available to the petitioner. Upon review of the record, the director did not ignore the petitioner's initial evidence. The director found that the initial evidence demonstrated that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage, but was not sufficient to demonstrate a qualifying relationship, joint residence, or entry into the marriage in good faith. The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of U.S. Citizenship and Immigration Services (USCIS). 8 C.F.R. 204.2(c)(2)(i). Counsel contends that the director requested primary evidence that was not available to the petitioner. The director's request for evidence listed regulatory prescribed evidence (including affidavits) that would demonstrate the statutory requirements for a self-petitioner. Furthermore, traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). A self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). In this case, the information in the petitioner's affidavit and the affidavits from her sister and friends does not support a finding that the petitioner and her husband shared a marital residence. Neither the petitioner nor her sister and friends provide detailed information about the

petitioner's marital residence. Though the petitioner's friends stated that the petitioner and his wife received their visits, they do not describe in any detail a particular visit to the marital residence.

Counsel declares that the director erred in stating that the petitioner indicated on the Form I-360 that she lived with her husband from May 2008 until September 2009 at the [REDACTED] apartment. Counsel states that the director also erred in stating that the petitioner lived with her husband from July 2009 to July 2010. Counsel states that the petitioner lived with her husband from May 2008 until October 2009, and that the last address at which the petitioner lived with her husband was the apartment located on [REDACTED]. Although the director erred in stating that the petitioner's Form I-360 reflected that she resided with her husband at the apartment on [REDACTED] from May 2008 until October 2009, the director's statement did not prejudice the petitioner, and we find no error in her determination that the relevant evidence discussed above failed to demonstrate that the petitioner resided with her husband during the marriage.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to establish that she married H-M- in good faith. The relevant evidence in the record is the following: affidavits from the petitioner and from her friends [REDACTED] an affidavit from the petitioner's sister, [REDACTED] a marriage certificate; a copy of a joint bank account record, an apartment lease, a utility bill, and eight photographs of the petitioner and G-T- together and with other people.

The petitioner recounted in her first affidavit that she used to attend religious services at a local church where her godfather gave sermons. She stated that one day in May, after the sermon, she was introduced to H-M- by her spiritual father. She stated that she spoke briefly with H-M-, and the next day after church services, she and H-M- had coffee together. The petitioner declared that H-M- was new to town and she showed him around. She stated that two weeks after H-M-'s arrival she suggested that he move into the house where she lived with her sister and son. The petitioner stated that she and H-M- had a romantic relationship and that he stayed with her until he left Ethiopia a month and a half later. She declared that she joined H-M- in Las Vegas on April 5, 2008, a year before she graduated from college. She stated that they married two days later on April 7, 2008, and could not afford a wedding until after H-M-'s graduation. She stated that in September they moved to Reno, Nevada, where her husband continued his studies. In her second affidavit the petitioner stated that she came to the United States in April 2008 on a fiancée visa, and married H-M- shortly thereafter. She stated that they lived together in Las Vegas until September 2008, when they moved to Reno for H-M- to attend the [REDACTED]. She stated that they initially lived in a small apartment before moving to an apartment on [REDACTED]. The petitioner has not discussed in any detail her first meeting with H-M-; their courtship and engagement; her decision to marry; their civil ceremony; their joint residence; and any of their shared experiences, apart from the abuse.

[REDACTED] recalled seeing the petitioner and H-M- at church, being received at the petitioner and H-M-'s apartment on a few occasions, and spending one night at their apartment in Reno. Mr. [REDACTED] recounted that he attended a dinner at H-M-'s house, where he first met the petitioner and her son. He stated that he had visited the petitioner and H-M- several times at their house. Both Mr.

█ and Ms. █ briefly asserted that during their visits they saw the petitioner and her husband “live as husband and wife.” Their affidavits, however, do not describe any particular visit in probative detail or provide any detailed substantive information about their observations of the petitioner’s interactions and relationship with H-M- during their marriage, apart from the abuse. The affidavit from the petitioner’s sister, █ briefly stated that she and the petitioner often called each other, and that the petitioner and H-M- had been a happy couple for the first few months. Her affidavit primarily discussed the abuse in her sister’s marriage, and provides little probative information about the petitioner’s good-faith intent upon marrying H-M-. Similarly, the affidavit from █ discussed the abuse in the petitioner’s relationship and provides little insight into the petitioner’s marital intentions.

The photographs show the petitioner and H-M- pictured together and with other people, but the photographs are of unspecified occasions and dates and provide no substantive information to establish the marital intentions of the petitioner. Similarly, the joint bank account record fails to demonstrate the petitioner’s marital intentions. The joint bank account record is undated, and although it lists the names of both the petitioner and H-M-, the residential address for the petitioner and H-M- is not the same. The petitioner’s address is listed as █ in Las Vegas, Nevada, whereas her husband’s street address is listed as █ in Reno, Nevada. The lease agreement, dated, July 18, 2009, for an apartment located on █ in Reno, Nevada, is signed by both the petitioner and her husband. The utility invoice, dated August 18, 2009, is addressed only to the petitioner and shows the mailing address as █ in Reno, Nevada; however, the utility invoice indicates that the service address (where the electricity is supplied) is █ in Reno, Nevada, which is the residential address listed for the petitioner’s husband on the bank account record. We have discussed the deficiencies in the relevant evidence, and the lack of a detailed affidavit from the petitioner describing her marital intentions. Even though the petitioner and her husband signed a joint lease agreement, without a detailed affidavit from the petitioner describing her marital intentions, 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.

On appeal, counsel asserts that Mr. █’s affidavit stated that H-M-’s admiration for Ethiopian women predates H-M-’s meeting the petitioner, a fact which demonstrates the bona fides of the petitioner’s marriage. For the Form I-360 petition, the self-petitioner bears the burden of proof to establish not only the validity of their marriage, but also her own good-faith entry into their union. Section 204(a)(1)(A)(iii)(I)(aa) of the Act. The petitioner’s husband’s admiration for Ethiopian women does not establish the petitioner’s intentions upon entry into the marriage. Counsel declares that the director failed to articulate why the affidavits of Ms. █ and Mr. █ did not demonstrate the bona fides of the petitioner’s marriage, and ignored their affidavits because they had not attended the petitioner’s wedding. A review of the denial decision shows that the director did not ignore the affidavits of Ms. █ and Mr. █. The director’s comment, that Ms. █ and Mr. █ had not attended the petitioner’s wedding, did not prejudice the petitioner because the director did not rely solely on the affidavits in her determination of whether the petitioner resided with her husband and entered into the marriage with him in good faith. The director considered all of the relevant and credible evidence in the record, and we find no error in her conclusion that the affidavits failed to establish that the petitioner’s entry into the marriage was in good faith.

Counsel argues that the director ignored the medical records, but counsel fails to explain the relevance of the medical records and mental status assessment report to the issues on appeal. An undated consultation sheet from a gynecologist stated that the petitioner was provisionally diagnosed with posttraumatic stress disorder due to an abusive relationship, but provides little insight into the petitioner's marital intentions. The remaining medical records relate to routine medical care. The mental status assessment report briefly mentions how the petitioner met her husband and their courtship, but reports mainly on the abuse in their relationship, and provides no probative information sufficient to establish the petitioner's intentions in marrying H-M-.

Counsel states that the director failed to consider all of the relevant evidence and articulate why the petitioner's submission did not demonstrate that the petitioner resided with her husband and entered into the marriage with him in good faith. A review of the denial decision shows that the director mentioned each item of the relevant evidence, and while her reference to the petitioner's credibility was misplaced, she considered the relevant evidence in the record. We have discussed the deficiencies in the submitted evidence, the most important of which is that the record lacks a substantive statement from the petitioner regarding her marital relationship, and that without a probative description from the petitioner she fails to establish her good faith intent in marrying her husband. Thus, when viewed in the totality, the preponderance of the relevant evidence fails to establish that the petitioner's entry into marriage with his wife was in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, and that the petitioner resided with her husband during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act, or entered into marriage with her in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.