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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:

Office: VERMONT SERVICE CENTER File:

OCT 10 2014

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 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 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 married her husband in good faith.

Relevant Law and Regulations

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 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 the Bahamas who claimed to have entered the United States as a B-2 nonimmigrant visitor on June 25, 2009. The petitioner married J-S-¹, a U.S. citizen, on April [REDACTED]. The petitioner filed the instant Form I-360 on July 20, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's entry into the marriage in good faith. The petitioner timely responded with additional evidence, which the director found insufficient and the director denied the petition.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, the petitioner has not overcome the director's ground for denial.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to demonstrate that she married her husband in good faith. In her initial statement, the petitioner recounted that she first met J-S- in October 2009 through a facebook page of a pastor, and that they exchanged telephone numbers. As they resided in separate states, she explained that they stayed in contact by telephone, talking about the bible, and first met in person on March 12, 2010 in Florida. She declared that they spent the weekend sightseeing in [REDACTED] and planned how they could be together. The petitioner stated that on April 28, 2010, she moved to [REDACTED] Ohio, and two days later they were married. She briefly referred to a dinner after the wedding with their landlord and another individual. The petitioner indicated that she and J-S- attended church on Sundays and bible studies on Thursdays. In her second and third statements, the petitioner explained that she believed "God had placed [them] together," that faith was important to the couple, and that they talked about their children and how they wanted to have children together. The petitioner also briefly described their second wedding anniversary. The petitioner explained why she did not have joint documents and stated that J-S- closed their joint bank account after an argument. She indicated that she separated from J-S- in January 2013. Apart from the abuse, the petitioner did not further describe meeting J-S- for the first time, their subsequent courtship and engagement, wedding ceremony, joint residence, shared belongings, and residential routines.

The petitioner also submitted a letter from their landlord, [REDACTED] who although confirming the couple's residence together at [REDACTED] did not provide any

¹ Name withheld to protect the individual's identity.

details about the couple's wedding, dinner after the wedding, or any other information to establish the petitioner's good-faith intent.

She petitioner submitted several documents, such as utility bills in J-S-'s name, medical bills, mail listing the petitioner's and J-S-'s address at two locations in [REDACTED] Ohio, and the petitioner's 2012 Form W-2. However, these documents relate to the petitioner's residence with J-S-; they do not, provide probative information of the petitioner's intentions in marrying J-S-.

Regarding joint documentation, the petitioner submitted a February 3, 2012 lease agreement signed by herself and J-S- for [REDACTED] and rent receipts; joint [REDACTED] account statements for July, August, and September 2010²; and two greeting cards to the couple. In addition, the petitioner submitted photographs of herself and J-S- pictured together on several occasions, Facebook posts from J-S-'s account complimenting the petitioner on her Thanksgiving dinner and stating that she was supportive after his father's death. The petitioner also submitted a copy of October and November 2012 pay statements from Walmart indicating the petitioner's tax status as "Single."

On appeal, the petitioner resubmits copies of her statements submitted below and new letters from [REDACTED] and a friend, [REDACTED]. In her new letter, Ms. [REDACTED] indicates that she first met petitioner when the petitioner arrived in Ohio two days prior to her marriage to J-S-. She states that she spent time with the petitioner and J-S-, mentioning an evening shared "downtown," a picnic, Sunday dinners, and a Christmas dinner. She states further that the petitioner prepared meals for J-S- and "kept a clean house." She claims that she knows the petitioner "really loved her husband," but does not provide any indication of her knowledge of the petitioner's good-faith intent. [REDACTED] indicates that she met the petitioner and J-S- in May 2011 when they became neighbors, more than a year after the petitioner's marriage. Ms. [REDACTED] states that she visited the couple at their house, attended church with them, and "witnessed their affection towards each other and can see that they love each other." The petitioner's friends make general observations about the petitioner and her husband as a couple, but provide no further probative information about the petitioner's intentions in marrying J-S-.

On appeal, the petitioner argues that the director did not apply the "any credible evidence" standard and points to the evidence demonstrating a joint residence as "overwhelming evidence" of the petitioner's good-faith entry into the marriage. In addition, the petitioner argues that she had previously explained why she did not have additional documentation of joint utilities, accounts, and liabilities, and submits supplemental evidence on appeal regarding her lack of health insurance. Section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. The same or similar evidence may be submitted to demonstrate, for example, residence and entry into a good faith marriage, but meeting one eligibility requirement will not necessarily demonstrate the others. Further, as stated by the petitioner, joint documentation is not required to demonstrate a good-faith entry into the marriage; traditional forms of joint documentation such as joint insurance policies are not required to demonstrate a self-petitioner's entry into the marriage in good faith. 8

² The record also contains a June 2010 statement but the petitioner failed to submit page 1 of the statement to indicate that the account was jointly held at this time.

[REDACTED]

NON-PRECEDENT DECISION

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C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). However, the determination of what evidence is credible and the weight accorded that evidence lies within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2). In this case, the petitioner's statements did not probatively describe her first meeting with her husband in Florida, their courtship and engagement, and shared routines and experiences apart from the abuse. Similarly, the letters from Ms. [REDACTED] and Ms. [REDACTED] lack detailed, substantive information to establish their personal knowledge of the petitioner's courtship, engagement, and marital relationship to establish her good-faith intent. The petitioner has not established by a preponderance of the evidence that she entered into marriage with J-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The record does not establish that the petitioner married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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 and the petition will remain denied.

ORDER: The appeal is dismissed.