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U.S. Citizenship
and Immigration
Services

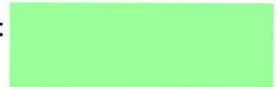


Date:

SEP 23 2014

Office: VERMONT SERVICE CENTER

FILE:



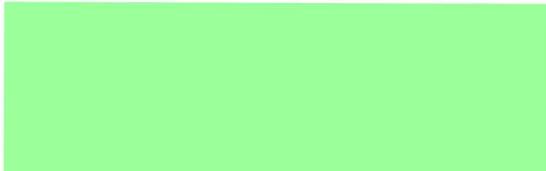
IN RE:

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 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 her U.S. citizen spouse.

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

On appeal, counsel submits a brief.

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 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:

(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.

* * *

(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, a citizen of Trinidad and Tobago, claims that she was admitted to the United States on August 7, 1988 as a nonimmigrant visitor. She wed K-W-, a U.S. citizen, on November 9, 2010 in North Carolina.¹ The petitioner filed the instant Form I-360 on August 2, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage. The petitioner, through counsel, responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

We conduct appellate review on a de novo basis. *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. Counsel's claims do not overcome the director's determination and the appeal will be dismissed for the following reason.

Entry into the Marriage in Good Faith

In her affidavit, the petitioner stated that she first met K-W- in May 2006 when she was visiting her aunt in a hospital in North Carolina. She stated that the couple dated from June 2006 until September 2006. The petitioner recounted that during their dates she visited K-W- at his home because he was recovering from heart surgery. She stated that she returned to her home in New York in September 2006 and K-W- came to visit her in June 2007 for four days. The petitioner recounted that they went sightseeing and K-W- met her daughter. She stated that K-W- returned to New York in October 2008 and proposed to her. She stated that she and her daughter visited North Carolina in August 2010 for four days and she returned to North Carolina alone in October 2010. The petitioner recounted that she wed K-W- at the "county jail" in [REDACTED] North Carolina on November 7, 2010 and then they went out to a club. The remainder of her statement focuses on the abuse in the marriage. The petitioner did not probatively describe her four-year courtship with her husband, 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 letters from her cousin, [REDACTED] her friends, [REDACTED]

Ms. [REDACTED] stated that she witnessed the petitioner's marriage to K-W- and their marriage is bona fide. She did not, however, provide any other information to demonstrate her personal knowledge of the petitioner's good-faith entry into the marriage. Ms. [REDACTED] stated that the petitioner told her that she wed K-W- in November 2010 and the couple had a "good relationship." However, her statements indicate that she never personally interacted with the couple. Ms. [REDACTED] stated that she lost touch with the petitioner during the time of the petitioner's marriage and residence with K-W- and she never personally interacted with the couple. Ms. [REDACTED] stated that the petitioner told her about K-W-'s marriage proposal and that the couple intended to wed around October or November of 2010. However, the petitioner recounted in her affidavit that her marriage to K-W- in November 2010 was completely spontaneous and not planned. Ms. [REDACTED] stated that she has knowledge that the petitioner and K-W- resided together, but did not describe any visits to the couple's residence. She also stated that the petitioner went into the marriage in good faith. However, she does not provide any information to describe how she has knowledge of the petitioner's good faith intentions in entering the marriage. Dr. [REDACTED] stated that the petitioner called him in November 2010 and told him that she wed K-W-. He stated that he knows that the petitioner's marriage to K-W- was bona fide. However, he also does not describe ever having personally interacted with the couple.

The petitioner also submitted the following relevant documentation: electronic message print-outs; bus ticket receipts; photographs; and a telephone record. The bus ticket receipts show that the petitioner traveled from North Carolina to New York on two dates in September 2010 and one date in November 2010. The electronic message print-outs show one-sentence correspondence between the petitioner and K-W- in December 2010 and during the couple's separation in January 2011. These messages fail to provide probative information to demonstrate the petitioner's good-faith entry into the marriage. The photographs of the petitioner and K-W- are undated and the majority of them were taken at unspecified locations. The telephone records are for the billing period of December 28, 2010 until January 27, 2011 and show that the petitioner made several calls to a phone number listed in [REDACTED] North Carolina, which she indicates is K-W-'s phone number, near the end of the couple's marriage and after their separation.

On appeal, counsel asserts that the director failed to acknowledge the petitioner's evidence under the "any credible evidence" standard and erroneously insisted on traditional primary and secondary evidence. Counsel further asserts that the totality of the evidence demonstrates the petitioner's good-faith entry into the marriage. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). The documentary evidence shows that the petitioner was photographed with K-W- and the couple had contact over the telephone and with electronic messages. However, the petitioner does not provide detailed, probative information regarding her intentions in marrying her second husband. The petitioner indicated that she had a four-year courtship with K-W-, but she does not substantively discuss their courtship. Nor does she discuss their shared residence and marital experiences, apart from the abuse. None of the petitioner's friends or her

pastor describe having personal knowledge of the petitioner's marriage or ever having interacted with the couple. The petitioner's cousin, who stated that she attended the couple's wedding ceremony, only provided a brief, two-sentence statement about her knowledge of the relationship. Accordingly, the petitioner has failed to demonstrate by a preponderance of the evidence that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that she entered into marriage with her husband in good faith. 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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.