



U.S. Citizenship
and Immigration
Services

(b)(6)



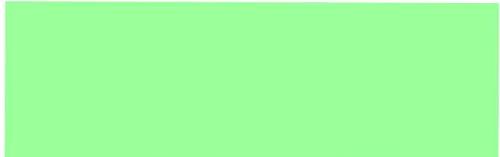
Date: **SEP 25 2014** Office: VERMONT SERVICE CENTER

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 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 and 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 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 Mongolia, entered the United States on August 26, 2001 as a J-1 nonimmigrant exchange visitor. She wed C-C, a U.S. Citizen, on December 24, 2010 in Kentucky.¹ The petitioner filed the instant Form I-360 on August 7, 2012. 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 and the additional evidence submitted on appeal do not overcome the director's determination. The appeal will be dismissed for the following reason.

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 initial affidavit, dated June 27, 2012, the petitioner stated that she was introduced to C-C- through her friend who was also a co-worker. She stated that they first met in December 2009 and began to visit his house daily as it was close to her work. The petitioner recounted that in January 2010 she and C-C- decided to live together and they wed on December 24, 2010 at her parent's home in Louisville, Kentucky. The petitioner did not probatively describe how she met her husband, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the abuse.

The petitioner also initially submitted several photographs of herself and C-C-, which counsel indicated were taken on C-C-'s mother's birthday, the petitioner's birthday and at the couple's wedding ceremony. In the RFE, the director correctly determined that the petitioner's statement lacked probative

¹ Name withheld to protect the individual's identity.

details and failed to demonstrate the petitioner's good-faith intentions in entering the marriage. The director also correctly determined that the photographs, without other probative documentation, do not hold sufficient evidentiary weight to establish by a preponderance of the evidence the petitioner's good faith entry into the marriage.

The director denied the petition because the petitioner failed to respond to the RFE with any additional evidence of her good-faith entry into the marriage. On appeal, the petitioner submits a second affidavit from the petitioner, dated November 8, 2013. The second affidavit is nearly identical to the petitioner's first affidavit with some additional information on her courtship with C-C-. The petitioner briefly recounts that during their courtship they watched television, drank together and C-C- enjoyed cooking. The petitioner, however, fails to provide additional details of the couple's wedding ceremony, joint residence or any of their shared experiences.

On appeal, the petitioner also submits an affidavit from [REDACTED] who states that he is married to C-C-'s cousin. Mr. [REDACTED] states that he visited the couple at their apartments, saw the couple at family gatherings, and that the couple had a good faith marriage. However, he fails to describe his visits to the couple's home(s) or his interactions with the couple at family gatherings with any specificity. Although he indicates that he attached a copy of a photograph of the couple taken at his wedding ceremony, the record does not contain such a photograph.

On appeal, counsel asserts that the petitioner, who is not proficient in English, "should not be obligated to painstakingly write a novel detailing minutia in the form of a sworn statement." However, the regulations allow for a statement written in a language other than English if an alien submits a certified translation of the document. See 8 C.F.R. § 103.2(b)(3). Counsel also asserts that the director should have referred the matter to a U.S. Citizenship and Immigration Services (USCIS) field office to elicit oral testimony from the petitioner, pursuant to 8 C.F.R. § 204.2(c)(2)(vii). The regulation at 8 C.F.R. § 204.2(c)(2)(vii) describes the evidentiary requirements for establishing a good-faith marriage, but does not require or include an in-person interview or the need for "oral" testimony. Under this regulation, "[a]ll credible relevant evidence will be considered," including affidavits from the petitioner, which provide testimony of her courtship, wedding ceremony, shared residence and experiences. In this case, the petitioner in her affidavits has failed to probatively describe her and C-C-'s courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the abuse. [REDACTED] in his affidavit stated that he frequently socialized with the couple, but he did not discuss his observations of the petitioner's interactions with or feelings for C-C-. The remaining evidence shows that the petitioner and C-C- were photographed together on three occasions. 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.

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NON-PRECEDENT DECISION

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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.