



U.S. Citizenship
and Immigration
Services

(b)(6)



Date:

AUG 03 2015

FILE #:

PETITION RECEIPT #:

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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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 petition. 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the evidence did not establish that the petitioner had resided with her spouse during marriage and had entered into the marriage in good faith. On appeal, the petitioner 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 U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 regulation at 8 C.F.R. § 204.2(c)(1) provides, 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 United States 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:

(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.

Facts and Procedural History

The petitioner, a native and citizen of [REDACTED], last entered the United States on September 20, 1999 as a B-2 nonimmigrant visitor. She married J-J-¹ a U.S. citizen, on [REDACTED] in [REDACTED], New York. The petitioner filed the instant Form I-360 on June 6, 2014. The director issued a Request for Evidence (RFE) of the petitioner's residence with J-J- and good-faith marriage. The petitioner responded to the RFE with additional evidence. The director found the evidence insufficient to establish that the petitioner had resided with J-J- during their marriage and married J-J- in good faith. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal does not demonstrate that the director's decision to deny the petition was in error. Therefore, we will dismiss the appeal.

Joint Residence

The preponderance of the evidence demonstrates that the petitioner resided with her U.S. citizen spouse during their marriage. The director's conclusion to the contrary will be withdrawn.

In her brief on appeal, the petitioner asserts that she submitted the best evidence available to her and that the director erred by not considering the evidence in its totality. She claims that she provided

¹ Name withheld to protect the individual's identity.

explanations for any inconsistencies, submitted detailed affidavits to support her claim that she lived with J-J-, and provided sufficient supporting evidence.

In the affidavit submitted with her Form I-360, the petitioner states that she and J-J- moved in together at [REDACTED] New York in the fall of 2010. She asserts that this living arrangement was “blissful” at first because they were able to spend time together every day and the petitioner no longer had to live with roommates. She recounts that, when J-J- became abusive in the spring of 2011, she confronted him and he left, but he later moved back in. She further states that, on [REDACTED], she called the police regarding J-J-’s abuse and he was required to move out of the apartment. She indicates that after he left, she found that he had stolen her laptop, a folder of important documents, and other personal belongings.

The other documentation the petitioner submitted also indicates that the petitioner and J-J- resided together at [REDACTED] Street. A Family Offense Petition the petitioner filed against J-J- in the Family Court of New York, [REDACTED], on [REDACTED] states that the petitioner and J-J- both resided at [REDACTED] Street, that the abuse occurred at that address, and that the petitioner requested that J-J- “be excluded from the home.” Additionally, a Temporary Order of Protection orders that J-J- “immediately vacate the premises located at: [REDACTED] Street” A Domestic Incident Report from the [REDACTED] Police Department also states that, after J-J- was given time to take his belongings from [REDACTED] Street apartment, the petitioner found that some of her personal belongings were missing.

Furthermore, the petitioner submitted with her Form I-360 personal, financial, and insurance records which show that the petitioner and J-J- resided at the same address. The couple’s marriage license lists [REDACTED] Street as the address for both parties. A letter from the [REDACTED] and [REDACTED], addressed to J-J- at [REDACTED] Street, states that the petitioner was covered for certain benefits as J-J-’s spouse. Similarly, a letter to the petitioner at the same address from the [REDACTED] Company lists J-J- as the insured spouse. Tax returns from 2012 indicate that the petitioner and J-J- resided together at [REDACTED] Street and were married filing jointly, and letters and several account statements from [REDACTED] are addressed to both the petitioner and J-J- at the [REDACTED] Street address.

The petitioner submitted a lease for [REDACTED] Street which does not list J-J- as a tenant; instead, it states that the tenants are the petitioner and [REDACTED]. However, the petitioner provided a letter from [REDACTED], who states that he helped the petitioner obtain the lease because she did not have a Social Security number and that he gave his approval when J-J- later moved into the apartment. The [REDACTED] account statements in the record are accompanied by check images showing that J-J- paid the rent at [REDACTED]² from the couple’s joint bank account. The record below also contains a letter from [REDACTED], superintendent of the apartment building at [REDACTED] Street, who claims that the petitioner and J-J- both resided at the apartment beginning in August 2010. [REDACTED] further asserts that he changed the lock on the door after the petitioner obtained a restraining order against J-J-, who moved out of the apartment. Additionally, the

² The checks were addressed to [REDACTED] LLC. This name also appears on bills for the rent at the [REDACTED] Street apartment and a Tenant Information Letter regarding the residents of the apartment.

petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, in conjunction with a Form I-130, Petition for Alien Relative, that J-J- filed on her behalf. In relation to the Form I-485 and Form I-130, the petitioner submitted a Tenant Information Letter from [REDACTED] LLC stating that the petitioner and [REDACTED] were listed on the lease and that J-J- was also residing in the apartment.

As additional evidence of her residence with J-J-, the petitioner submitted several affidavits from neighbors, friends, and family members who claim that the couple resided together at [REDACTED] Street. For example, a neighbor, [REDACTED] states that the petitioner and J-J- lived across the hall and that she frequently spoke with them in the hallway and sometimes visited their apartment. Another neighbor, [REDACTED] contends that the petitioner and J-J- resided next door to her, that she frequently saw them in the building, and that she visited their apartment.

The relevant evidence submitted below, when considered in the aggregate, establishes by a preponderance of the evidence that the petitioner resided with J-J- at [REDACTED] Street. Accordingly, the petitioner has demonstrated that she resided with J-J- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. The director's contrary conclusion is withdrawn. However, for the reasons that follow, the evidence does not show that the director's decision to deny the petition was in error.

Good-Faith Marriage

A preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with J-J- in good faith. Although traditional forms of joint documentation are not required to demonstrate good-faith marriage under section 204(a)(1)(A)(iii) of the Act, the petitioner must satisfy her burden of proof. In lieu of traditional documentation, the petitioner may submit, among other evidence, "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 . . . 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).

In her brief on appeal, the petitioner contends that she submitted substantial, credible evidence that her marriage with J-J- was bona fide, and that the director erred in finding individual documents insufficient rather than considering the evidence as a whole. She further asserts that the evidence she submitted to establish extreme cruelty by J-J- also supports her claim that she married him in good faith.

The petitioner states in her affidavit, dated May 30, 2014, that she met J-J- at a store called [REDACTED] on [REDACTED] in [REDACTED], New York around Thanksgiving of 2004. She asserts, "I remember this day like it was yesterday. He flittered [sic] with me and offered to buy me chocolate. We exchanged phone numbers and soon thereafter began seeing each other." The petitioner further claims that she and J-J- "had an on and off relationship that went on for approximately 6 years until he moved in with [her] in 2010." She states that J-J- became abusive about a year and a half after they moved in together, but that she accepted his proposal in November

2012 because she loved him and felt he would become a better partner. The petitioner asserts that, once engaged, she and J-J- decided not to wait any longer to get married, so they were married in court on [REDACTED]. She claims that her niece, [REDACTED], was the witness but that no one else could attend due to work obligations or living in Canada. The petitioner states they did not have a party because they could not afford it. According to the petitioner, "After [they] got married, things seemed to be going well in the first few months, but then the abuse began again."

Although the petitioner's affidavit provides significant detail about the abuse she suffered during her marriage to J-J-, it does not contain sufficient detail about the other aspects of their relationship to establish their good-faith marriage. Despite the petitioner's claim that she remembers their first meeting well, she has not provided detail about that meeting, their dating relationship, or her feelings about J-J- while dating. Similarly, although she claims that she and J-J- dated from 2004 through 2010 before moving in together, she provides no information regarding their relationship during that six-year period aside from the statement that it was "on and off." Furthermore, the petitioner has not described J-J-'s proposal, their wedding plans, her discussions with friends or family about her decision to marry, her plans for their future together, their wedding ceremony, or their actions after the ceremony. Other than her vague statement that "things seemed to be going well," she provides no information about any shared experiences during marriage other than abuse.

The affidavits the petitioner submitted from friends and family also lack detail regarding the petitioner's intentions in marriage. For example, J-J-'s niece, [REDACTED], claims that she was a witness to the ceremony, but provides no detail other than to say that it was "was very intimate and beautiful." [REDACTED], a friend of J-J-'s, states that the petitioner and J-J- demonstrated love for each other and "at no time has there been any concept of a[n] arranged marriage." The petitioner's neighbor, [REDACTED] states that the petitioner married for love and not for the purpose of evading immigration laws, and that she "saw their love for each other blossomed [sic]." [REDACTED] claims that the petitioner and J-J- "seemed very committed to each other" and that she was happy for them when they got married. The petitioner's sister, [REDACTED], asserts that the petitioner and J-J- "had an on and off romance for years" and then got engaged. She states that she "imagined they would have a happy marriage since they appeared to have a loving relationship before getting engaged." Other friends of the petitioner state that they were aware of the petitioner's relationship with and marriage to J-J- and then became aware of his abuse toward her. None of the affidavits provide any detail regarding the petitioner's dating relationship with J-J-, their decision to get married, their actions before and after getting married, any shared experiences other than abuse, their marriage ceremony, or their intentions to establish a life together. These affidavits, even when considered in conjunction with the other evidence in the record, are insufficiently detailed to establish that the petitioner married J-J- in good faith.

Although the petitioner has provided documentation that she and J-J- resided together and that he subjected her to battery or extreme cruelty, this documentation does not establish her good-faith marriage. The financial records she submitted, including tax returns, bank statements, and insurance letters, only establish that she and J-J- lived at the same address. The tax return for 2012 indicates that the petitioner and J-J- were married filing jointly, but they were married on [REDACTED], so the tax return applies to [REDACTED] of their marriage. A tax return for 2013 indicates that the petitioner and J-J- were married filing separately. She states in her brief on appeal that this is

because she filed the tax return in April 2014, after J-J- had moved out in February 2014, but the filing does not support her claim that she and J-J- were sharing finances as a married couple in 2013.

Additionally, the records from [REDACTED] indicate that the couple's two shared bank accounts were infrequently used. A letter from [REDACTED] indicates that the average balance in the couple's joint savings account over a period of 12 months was 50 cents and that the average balance in their checking account was \$73.25. Although statements for some months indicate use of the accounts, others indicate little to no activity. For example, the statement for June 1 through 30, 2013 lists no transactions in the checking account for that month, with an ending balance of \$0. Similarly, the statement for January 1 through 31, 2014 lists no activity. The letters the petitioner submitted from [REDACTED] and the [REDACTED] Company show that the petitioner and J-J- listed each other as beneficiaries on certain insurance policies, but are not sufficient to show that their marriage was in good faith.

We have also considered the documentation the petitioner submitted relating to the abuse she experienced, but this documentation does not establish that she married J-J- in good faith. The Family Offense Petition, Temporary Order of Protection, and Domestic Incident Report indicate that the petitioner and J-J- were married and residing together, and that she reported abuse by him. However, these reports do not show the petitioner's intentions in marrying J-J-.

Accordingly, even when considered in the aggregate, the evidence does not establish that the petitioner entered into marriage with J-J- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The record does not demonstrate by a preponderance of the evidence that the petitioner married her U.S. citizen spouse in good faith. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proving eligibility for the 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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.