



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 20 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:



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,

for
Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center 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 former spouse, a United States citizen.

The Director denied the petition for failure to establish that the Petitioner entered into her marriage with her U.S. Citizen spouse in good faith. On appeal, the Petitioner submits a brief and additional evidence.

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 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.

Pertinent facts and procedural history

The Petitioner is a citizen of Russia who last entered the United States on December 17, 2012, as a B-2 nonimmigrant visitor. The Petitioner married G-W-¹, a U.S. citizen, on [REDACTED] 2013, in Washington. The Petitioner filed the instant Form I-360 self-petition on September 17, 2013. The director subsequently issued two requests for evidence (RFE) and a notice of intent to deny (NOID) the petition for, among other things, the Petitioner's failure to demonstrate good-faith entry into her marriage with G-W-. The Petitioner responded to the RFEs and the NOID with additional evidence which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the petition and the Petitioner timely appealed.

We conduct appellate review on a *de novo* basis. Upon a full review of the record, the Petitioner has not overcome the Director's ground for denial. The appeal will be dismissed for the following reasons.

Entry into the marriage in good faith

The relevant evidence submitted below and on appeal does not demonstrate that the Petitioner entered into her marriage with G-W- in good faith. The record contains: the Petitioner's declarations; copies of residential leases; copies of bank account statements; automobile insurance documents; photographs of the Petitioner and G-W-; electronic mail correspondence between the Petitioner and G-W-; a letter from [REDACTED] a Russian and U.S. licensed attorney, describing the current Russian residential registration system and Russian cultural attitudes towards single mothers; and letters from family and friends. The Director properly addressed the deficiencies of the evidence submitted below.

In her first declaration, the Petitioner stated that she met G-W- through an online internet dating site in 2004 and that they met for the first time when G-W- travelled to Russia in April 2004. The Petitioner stated that they hit it off right away and that they were inseparable during his stay. The Petitioner claimed that she maintained contact with G-W- after he returned to the United States and reunited a few months later when the Petitioner, along with a close friend, joined G-W- in Germany where he was on a business trip. The Petitioner stated that they fell in love but that G-W- later became angry with her for refusing to move to China with him where he was assigned to work. The Petitioner stated that they broke up and she described how she remarried, had a child, and later left

¹ Name withheld to protect the individual's identity.

her second husband in 2007.² She recounted reconnecting with G-W- in 2007 through electronic mail messages and next seeing him in person in [REDACTED] Finland in 2011. The Petitioner also described coming to the United States in December 2012 to be with him and that the two were married in [REDACTED] 2013 after her divorce from her second husband was finalized.

In the NOID and the subsequent decision, the Director found that the Petitioner was not credible because of inconsistencies between the Petitioner's and her second husband's Forms DS-160, Nonimmigrant Visa Applications and the Petitioner's personal declaration. Specifically, the Director noted that, when the Petitioner applied for her nonimmigrant visa in 2012, she applied with her second husband, attended the visa interview with him as a married couple, and arrived together in the United States as a family. In addition, the Petitioner and her second husband both listed the same home address on their visa applications.

In her declaration submitted in response to the NOID, however, the Petitioner stated that she had been separated from her second husband since 2007 and that she resided with her mother. She stated that, due to the residential system in Russia, it was difficult to change her address. The Petitioner submitted a letter from [REDACTED] an attorney licensed in both Russia and the United States, to support her explanation. The Petitioner stated that, although she traveled to the United States in November 2012 with her second husband, they were part of a larger group of employees from the same company where they both worked and they did not actually travel together. She stated that the company that assisted them with their visa applications instructed them to list the same home address because they were still technically married. The Director correctly determined that the Petitioner's explanations were insufficient to overcome the inconsistencies of the record.

On appeal, the Petitioner asserts that the Director erroneously found her not credible due to the discrepancies between her visa application and declarations submitted in support of the instant self-petition. The Petitioner further asserts that the director erred in discounting the Petitioner's detailed statements, the statements from her family and friends, and the remaining relevant evidence regarding her relationship with G-W-. 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." *See* 8 C.F.R. § 204.2(c)(2)(vii). The determination of the weight to be given to credible evidence shall be within the sole discretion of the Secretary of Homeland Security. *See* Section 204(a)(1)(J) of the Act.

Here, the Petitioner submitted both documentation and testimonial evidence of her good faith marital intentions but she does not adequately explain the inconsistencies in the record which detract from the credibility of her statements. The record does not reflect, as the Petitioner claims, that she traveled to the United States in November 2012 to visit G-W- and as part of a group consisting of her colleagues. Instead, it shows that the Petitioner applied for a nonimmigrant visa together with her second husband and that they traveled to the United States with their child together and her daughter from her first

² According to the Petitioner's personal declaration, she was married to her first husband in 1994 and had her first child in [REDACTED]. She initially met G-W- through an internet dating service shortly after she divorced her first husband.

marriage. Further, at the nonimmigrant visa interview and upon entry to the United States, the Petitioner represented that the two resided together and her subsequent explanation that she followed the instructions of a travel agency that prepared her visa application do not sufficiently address these contradictions. Accordingly, when viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the Petitioner entered into marriage with G-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The Petitioner has not overcome the Director's determination that she did not enter into her marriage with G-W- in good faith. She is consequently ineligible for immigrant classification based on her marriage to G-W- 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 by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also 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.