



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 23 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:

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 cursive script that reads "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 petitioner had not established a qualifying relationship with her U.S. citizen spouse, her corresponding eligibility for immediate relative classification, joint residence with her spouse, and good-faith marriage. 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 clause (ii) or (iii) of subparagraph (B) 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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

(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 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. . . .

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

(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 Uzbekistan, last entered the United States on May 17, 2009, under advance parole. She married N-L-,¹ a U.S. citizen, on [REDACTED] 2005 in [REDACTED] Florida. The petitioner filed the instant Form I-360 on April 28, 2014. The director issued a Notice of Intent to Deny (NOID), indicating that the petitioner had not submitted sufficient evidence to demonstrate a qualifying relationship with N-L-, joint residence with N-L- during their marriage, good moral character, and good-faith marriage. The director also noted that the petitioner had

¹ Name withheld to protect the individual's identity.

previously filed two Form I-360 self-petitions based on the same marriage. The director denied the first petition on May 25, 2010 and we summarily dismissed the petitioner's appeal in a decision dated November 15, 2010. The director denied the second petition on March 20, 2014. In the NOID regarding the instant Form I-360, the director noted that the notary who conducted the petitioner's marriage, [REDACTED] had been convicted of arranging fraudulent marriages and had identified the petitioner's marriage as fraudulent. In response to the NOID, the petitioner submitted two affidavits from friends and photocopies of previously submitted evidence and asserted that the evidence she had previously submitted was sufficient. The director found the evidence insufficient to establish that the petitioner had a qualifying relationship with N-L-, resided with him during the marriage, and married him in good faith. Accordingly, the director denied the petition. 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 was in error. Therefore, we will dismiss the appeal.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The evidence in the record does not demonstrate that the petitioner has a qualifying spousal relationship with N-L-. The director found that the petitioner had not established a qualifying relationship as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa) because her marriage to N-L- was fraudulent. The director erred in finding that a fraudulent marriage, if valid in the state in which it was performed, cannot result in a qualifying spousal relationship under the Act. However, although we disagree with the director's analysis, we agree with the ultimate determination that the petitioner has not established a qualifying relationship with N-L- because she has not demonstrated that her marriage to N-L- was valid in Florida.²

The petitioner indicates in the instant Form I-360 that she has been married a total of two times. She submits with the instant Form I-360 a translation of an Uzbek divorce decree which indicates that she and her previous husband, [REDACTED] were divorced on [REDACTED], 2003. However, the translation of the divorce decree is not accompanied by a certification that the translation is accurate, so we cannot consider it. 8 C.F.R. § 103.2(b)(3). Additionally, it is not clear that the purported translation matches the original divorce decree as the original divorce decree is only a few sentences long, while the translated version covers an entire page. Further, the original divorce decree contains the year 2005, while the translated version does not.

Also, with her Form I-360 filed April 15, 2011, the petitioner submitted a different Uzbek divorce decree and translation. That translation also was not accompanied by a certification that the translation was accurate, and the second page of the translation listed the name of the petitioner's ex-husband, [REDACTED] as the plaintiff, but listed "[REDACTED]" rather than the petitioner, as the

² We may deny an application or petition that fails to comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

defendant in the divorce. The second page also indicated that the divorce occurred on [REDACTED], 2003, while the first page stated that it occurred on [REDACTED], 2003.

Without evidence to establish that the petitioner was divorced from her previous husband, we cannot find that her marriage to N-L- was valid.³ Accordingly, the petitioner has not established a qualifying relationship with N-L- and her corresponding eligibility for immediate relative classification as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa).

Joint Residence

The preponderance of the evidence does not demonstrate that the petitioner resided with N-L- during their marriage. In the RFEs, NOIDs, and denials of the Forms I-360 the petitioner has filed, the director notified the petitioner that the record did not contain sufficient detail regarding the home she claimed to have shared with N-L-. Her statements in support of the instant Form I-360 contain the same vague assertions regarding her shared residence with N-L-. In addition, she asserts that the statements submitted on her behalf in previously filed petitions were sufficient to meet the joint residence requirement. However, the affidavits submitted previously and in relation to the instant petition lack probative detail of the alleged shared residence. For instance, [REDACTED] stated that she visited the petitioner and N-L- at their apartment, which was “a usual furnished apartment,” and [REDACTED] indicated that “their apartment looked nice and clean.” Similarly, although other friends indicated that they “visited” or “drove [] to [the petitioner’s] place,” they provided no probative details describing the home and its location, the petitioner’s and N-L-’s shared belongings, or marital routines.

In addition, the petitioner has provided inconsistent statements regarding the length of time that she began residing with N-L-. In the instant Form I-360, the petitioner indicates that she resided with N-L- from January 2005 until April 2006 and that they last resided at [REDACTED], Florida. She provides the same address in her August 2014 affidavit. However, in her affidavits of May 2013 and February 2010, she provided a different address in [REDACTED] stating that she and N-L- resided together at [REDACTED]. She also indicated in her May 2013 affidavit that they began living together on [REDACTED] in October 2005. However, in her February 2010 affidavit, she stated that N-L- “resided at this [REDACTED] address when [she] met him Before the marriage [they] moved in together to this address.” These inconsistencies do not support the petitioner’s claim that she resided with N-L- during their marriage.

Furthermore, notwithstanding these inconsistencies, the evidence of record does not provide sufficient probative detail to establish by a preponderance of evidence that the petitioner resided with N-L- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(dd).

³ Pursuant to Florida law, a marriage by a person who is already married is void *ab initio*. See, e.g., *Groover v. Groover*, 383 So. 2d 280, 282 (Fla. Dist. Ct. App. 1980); *Conley v. Reisinger*, 713 So. 2d 1113, 1114 (Fla. Dist. Ct. App. 1998).

Good-Faith Marriage

The preponderance of the relevant evidence also does not establish that the petitioner entered into marriage with N-L- in good faith. The petitioner states on appeal that she intended to live with N-L- as spouses and to create a family, and that it is not her fault that the marriage failed. She asserts that she was a victim of circumstances created by N-L- and the notary, Ms. [REDACTED] but that her decision to marry was in good faith and that her previously submitted evidence was sufficient. She states that Ms. [REDACTED] controlled all of the documents relating to her marriage to N-L- and that she has been unable to retrieve them. She also alleges that Ms. [REDACTED] recently told her during a telephone conversation that Ms. [REDACTED] had to identify all marriages she arranged as fraudulent, but that not all of them actually were. The petitioner further argues that the director did not consider the evidence she submitted, including her medical documentation, and that it is "easier" for U.S. Citizenship and Immigration Services (USCIS) to find her marriage fraudulent than to consider the evidence she has submitted.

In her April 2008 affidavit, the petitioner asserted that when she told N-L- that she had heard that Ms. [REDACTED] was not an attorney, N-L- said this was only a rumor. The petitioner claimed that when N-L- later "learned that the rumors were true," he became violent. This conflicts with her accounts in other affidavits, in which she alleged that N-L- was conspiring with Ms. [REDACTED] from the beginning. Furthermore, the petitioner did not provide the date and detailed description of her initial meeting with N-L-, their courtship, decision to marry, marriage ceremony, and shared experiences other than abuse. Rather, she stated generally that she and N-L- met at a party, saw each other at gatherings of other friends, developed a friendship that "turned to love," and were married.

The petitioner also submitted with the instant Form I-360 two affidavits from friends. [REDACTED] claimed that she attended the petitioner's marriage ceremony and believed that the petitioner and N-L- were a good match. [REDACTED] contended that she met the petitioner in 2005 and was aware of her marriage to N-L-, but did not see the couple often. Neither statement provides any details about the petitioner's relationship with N-L- other than as it relates to the abuse.

Similarly, although with her previous Forms I-360 the petitioner submitted affidavits from friends and family, the statements provided little to no detail regarding the circumstances of the petitioner's marriage, apart from the abuse. The only affidavit which provided some detail of the petitioner's relationship outside the abuse was that of [REDACTED] Mr. [REDACTED] noted the petitioner's impressions upon meeting N-L- and found that N-L- was knowledgeable of the petitioner's culture and that he made her happy. The remaining affiants did not discuss their knowledge of the petitioner's initial meeting with N-L-, their dating relationship, what she told them about her decision to marry, her marriage ceremony, her shared household, or activities with N-L- before or after the marriage. For example, [REDACTED] generally indicated that she was aware of the petitioner's marriage to N-L- and hoped she would have a happy life with him. Ms. [REDACTED] stated that she visited the petitioner at her home a couple of times and expressed a belief that the petitioner loved N-L- and did not intend to enter into a fraudulent marriage. [REDACTED] asserted that he hoped N-L- would treat the petitioner more kindly than her previous husband in Uzbekistan and attested that the petitioner married N-L- because she loved him, not for a green card. However, the

statements do not described the conversations, interactions, or exchanges that led them to conclude the petitioner's good-faith intent.

The petitioner also submits with the instant Form I-360 a copy of a previously submitted Bio-Psychosocial Assessment by [REDACTED] from December 16, 2009. Apart from the petitioner's claim of abuse, Mr. [REDACTED] report did not contain detail about the petitioner's relationship with N-L-, including their meeting, courtship, or decision to marry, to establish the petitioner's intentions in marrying N-L-. He described only that the petitioner met N-L- "through a mutual friend," that N-L- was nice to her and bought her things, that their "courtship went relatively fast, and they were both interested in marriage." Further, despite being based upon his interview with the petitioner, the report conflicts with the petitioner's previously submitted statements describing events in her marriage to N-L-. For example, Mr. [REDACTED] indicated that N-L- became abusive almost immediately after their wedding and that after living with N-L- for six months, the petitioner fled Florida and went to live with her brother in New York. Mr. [REDACTED] indicated that after moving to New York, the petitioner found out that Ms. [REDACTED] had been arrested. In contrast, the petitioner stated that she learned of Ms. [REDACTED] arrest shortly after marrying N-L-, while still living with him, and that after a violent outburst N-L- disappeared from the home, leaving the petitioner alone, and that she was unable to locate him. Additionally, according to Mr. [REDACTED] N-L- found the petitioner's phone number and called her in New York to ask her to return to Florida. This conflicts with the petitioner's account in her April 2014 affidavit that she tried to contact N-L- to obtain a divorce, and that he eventually responded to her telephone calls to ask what she wanted. In her May 2013 affidavit, the petitioner contended that any inconsistencies between her account and that of Mr. [REDACTED] can be explained by the fact that she was speaking to him through an interpreter, and that Mr. [REDACTED] reported the events "in a medical way." However, the inconsistencies between Mr. [REDACTED] report and the petitioner's affidavits do not involve only small details, but the broader timeline of events in the petitioner's marital relationship with N-L-.

On appeal, the petitioner claims that her medical records from [REDACTED] which indicate that she was treated for vaginal bleeding on August 30, 2010, demonstrate that she and N-L- had a sexual relationship as a married couple. However, the medical records are dated over four years after the petitioner claims N-L- left their shared household in April 2006 and appear to relate to an incident in August 2010 in which the petitioner describes being sexually assaulted by N-L- when she attempted to get him to sign the divorce papers.

As additional evidence of her good-faith marriage, the petitioner submitted below photocopies of two photographs of her and N-L- together. These photographs demonstrate that the petitioner and N-L- were together at a particular place and time. However, the photographs are undated and the petitioner does not describe the significance of the event depicted.

The petitioner claims on appeal that she cannot submit bills or other documentation demonstrating her marital life with N-L- because all of the couple's mail was sent to Ms. [REDACTED] address. She also asserts that N-L- controlled the finances and took all of their joint documentation when he left their shared residence. 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).

Our *de novo* review of all relevant, credible evidence in the record does not demonstrate that the petitioner married N-L- in good faith. The record contains inconsistencies regarding the timeline of the petitioner’s relationship with N-L-. Additionally, notwithstanding these inconsistencies, the petitioner has not submitted sufficient probative, detailed evidence describing her relationship with N-L-, including their courtship, decision to marry, marriage ceremony, or shared experiences other than abuse. Therefore, the evidence of record does not demonstrate that the petitioner married N-L- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(aa).

Conclusion

The record does not demonstrate by a preponderance of the evidence that the petitioner has a qualifying relationship with N-L-, her corresponding eligibility for immediate relative classification, that she resided with him during the marriage, and married him in good faith. Accordingly, she has not demonstrated eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

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.