



U.S. Citizenship
and Immigration
Services

(b)(6)



JUN 01 2015

DATE:

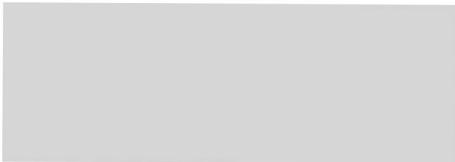
FILE #: 

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:

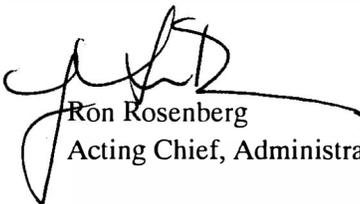


INSTRUCTIONS:

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,



Ron Rosenberg
Acting 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 petition for failure to establish that the petitioner entered into marriage with her husband in good faith and jointly resided with her husband. On appeal, the petitioner submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii) 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:

(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:

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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Brazil who entered the United States on June 27, 1999 as a nonimmigrant visitor. The petitioner married a lawful permanent resident on [REDACTED] 2010 in [REDACTED] Massachusetts. On May 21, 2012, U.S. Citizenship and Immigration Services (USCIS) approved a Form I-130 (Petition for Alien Relative) filed by the petitioner's spouse on her behalf. Her spouse became a U.S. citizen through naturalization on July 26, 2012. On September 30, 2013, USCIS revoked approval of the Form I-130 petition.

The petitioner filed the instant Form I-360 on December 19, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and her residence with her husband. The petitioner, through counsel, timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel filed a timely appeal.

The AAO reviews these proceedings *de novo*. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence

submitted on appeal do not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Joint Residence

On the Form I-360, the petitioner failed to respond to questions regarding the dates of her residence with her husband and their last marital address. In the petitioner's affidavit, she recounted that she and her husband first resided at an apartment on [REDACTED] Massachusetts. She stated that in March 2011, they moved to [REDACTED] Massachusetts. The petitioner did not indicate the length of her residence on [REDACTED] but she submitted below a joint lease for a residence on [REDACTED] Massachusetts, which indicates that the petitioner and her spouse had a prospective move in date of February 1, 2013. The petitioner stated that on October 3, 2013, she obtained a protection order against her husband. The temporary protection order is in the file and shows that it was issued for a period of two weeks, mandating that the petitioner's husband stay away from the residence at [REDACTED]. There is no evidence that a permanent order was obtained, and the petitioner does not indicate if she thereafter permanently separated from her husband.

The petitioner submitted as relevant evidence of her joint residence: a U.S. Postal Service (USPS) change of address confirmation letter; a 2011 joint tax return; her spouse's 2012 Internal Revenue Service (IRS) Form 1099-R; notices from USCIS, the IRS, U.S. Department of State (DOS) and the Massachusetts Department of Revenue; a collections notice; an invoice for gym membership; a jewelry store mailer; bank statements; and letters from her friend, [REDACTED] and her neighbor, [REDACTED].

Some of the evidentiary documentation confirms the addresses provided by the petitioner, but other documentation contains conflicting information. For example, the change of address notice, submitted by the petitioner's spouse to USPS on August 8, 2012, shows his old address as [REDACTED] in [REDACTED] Massachusetts and it lists his new address as [REDACTED]. The petitioner makes no mention of a residence on [REDACTED] and instead stated that she and her husband resided at an apartment on [REDACTED] prior to moving to [REDACTED]. The 2012 Form 1099-R notices are also issued to the petitioner's spouse at the [REDACTED] residence. In addition, the petitioner mentioned in her affidavit that the Massachusetts Registry of Motor Vehicles had another address for her husband during their claimed period of joint residence – a home located on [REDACTED]. The petitioner indicated that this additional address was mentioned in the Notice of Intent to Revoke (NOIR) the approval of the Form I-130 filed on her behalf, and she stated that it belonged to her sister-in-law, but she did not further discuss the reason for this discrepancy. Finally, the bank statements are addressed to the petitioner and her husband at a post office box in [REDACTED] Massachusetts, but the petitioner does not indicate that she ever resided with her spouse in [REDACTED].

The petitioner submitted below a letter from [REDACTED], who briefly stated that the petitioner and her spouse have been their neighbors since February 2013, but she failed to describe any interactions with the couple. The petitioner also submitted a letter from her friend, [REDACTED] who stated that the petitioner and her husband rented a room at her cousin's home in [REDACTED] Ms. [REDACTED] however, did not probatively describe any interactions with the couple at their residence. The director

correctly determined that this evidence fails to establish that the petitioner and her spouse resided together.

On appeal, the petitioner submits additional statements from her friends, [REDACTED]. These statements are of limited probative value in establishing the couple's joint residence. [REDACTED] briefly stated that they interacted socially with the petitioner and her husband, but they failed to describe any particular visit to the couple's residence or otherwise indicate their personal knowledge of the couple's joint residence. [REDACTED] stated that she resided in the same house as the petitioner and her spouse and spent time with them. However, Ms. [REDACTED] did not provide a residential address for the home she claims they shared. [REDACTED] stated that the petitioner and her husband rented a room in the home she owns on [REDACTED]. Ms. [REDACTED] fails, however, to specify the dates of the couple's purported residence at her home.

On appeal, the petitioner asserts that the addresses on the documentation must have been correct otherwise she and her spouse would not have received them. The issue here, however, is not whether the addresses exist and are "correct," but whether the couple jointly resided at them. While the letters the petitioner submitted from her friends provide some limited information of her joint residence with her husband, they do not overcome the contradictions discussed above regarding the petitioner's husband's addresses on [REDACTED] and [REDACTED]. Moreover, the petitioner does not in her affidavit describe her shared home(s) or residential routines with her spouse in any detail, apart from the abuse. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

In her affidavit submitted below, the petitioner briefly stated that she met her husband in a gym in March 2010; they dated for six months and wed on September 27, 2010. The remainder of the petitioner's affidavit focuses on discrepancies during her adjustment of status interview before USCIS and abuse during the marriage. The petitioner did not describe the couple's courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the abuse. [REDACTED] and [REDACTED] also do not discuss in the letters submitted below their personal knowledge of the couple's courtship or marriage.

The relevant evidence submitted below shows that the petitioner and her husband filed joint state and federal tax returns in 2011, signed a joint lease and had a joint bank account. Although these documents show that the couple commingled their finances, the director correctly determined that the record nevertheless fails to provide insights into the petitioner's intentions in entering the marriage.

In their statements submitted on appeal, the petitioner's friends fail to discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during the couple's courtship or marriage. [REDACTED] stated that the petitioner and her husband were "a happy couple." [REDACTED] stated that the couple had a "lifestyle together" that led him to believe they were married. Neither of these individuals provides any other details in their brief letters. [REDACTED]

█ stated that she resided in the same house as the couple, spent a lot of time with them and witnessed their intimacy. However, in her letter submitted below, Ms. █ stated that the couple worked long hours and stayed in their room, indicating that she did not have significant contact with them. █ stated that she checked the couple's room monthly for cleanliness, but she did not further discuss having any interactions with the couple.

On appeal, the petitioner asserts that the director failed to indicate the standards that are being used to assess the insufficiency of the petitioner's statements. However, the regulation clearly states that evidence of a good faith marriage includes "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences." 8 C.F.R. § 204.2(c)(2)(vii). In this case, the evidence submitted by the petitioner fails to describe the couple's courtship, wedding, joint residence or any of their other shared experiences, apart from the abuse. Accordingly, the petitioner has failed to demonstrate 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 failed to establish that she entered the marriage in good faith and resided with her husband. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. 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. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.