



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JUN 24 2015**

FILE #: [REDACTED]
PETITION RECEIPT #: [REDACTED]

IN RE: Self-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 SELF-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,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 self-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 a United States citizen.

The Director denied the petition finding the self-petitioner did not establish that she resided with her spouse and that she married her spouse in good faith. The self-petitioner, through counsel, submits a timely appeal.

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 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 explained further 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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

Pertinent Facts and Procedural History

The self-petitioner was born in Kenya and last entered the United States as a B-2 nonimmigrant visitor on March 5, 2005. She married W-S-¹ a U.S. citizen, on [REDACTED] 2005. The self-petitioner filed the instant petition on February 20, 2013. The Director denied the petition finding the record insufficient to establish that the self-petitioner resided with W-S- and entered into her marriage with him in good faith. The self-petitioner, through counsel, timely filed an appeal.

We review these proceedings on a *de novo* basis. A full review of the record, including the relevant evidence submitted on appeal, does not establish the self-petitioner's eligibility, and we will dismiss the appeal for the following reasons.

¹ Name withheld to protect the individual's identity.

Joint Residence

On appeal, the self-petitioner asserts the Director's decision is erroneous as she submitted sufficient proof that she resided with W-S-, her abusive spouse. On her petition and in her statement, the self-petitioner indicates that she lived with W-S- as "husband and wife" from April 2005 until May 2007 at their residence on [REDACTED] California, and they maintained a separate mailing address that was "secure for receiving mail." She also indicates she moved from their residence in May 2007 to take care of her ailing mother-in-law.

To demonstrate her joint residence with W-S-, the self-petitioner initially submitted a personal declaration dated February 14, 2013; a copy of a marriage certificate and license; letters of support from friends dated February 27 and May 30, 2012; and copies of notices issued by U.S. Citizenship and Immigration Services (USCIS) addressed to the self-petitioner. In response to a Request for Evidence, the self-petitioner resubmitted the copy of her marriage license and certificate, and she supplemented the record with an additional letter of support from a friend dated November 25, 2013, and an evaluation from a licensed social worker dated April 19, 2013. In support of her motion to reopen and reconsider the denial of her immigrant visa petition, the self-petitioner submitted an additional personal declaration dated February 4, 2014 as well as a supplemental letter of support from a friend dated April 2, 2014.

In her February 2013 declaration, the self-petitioner generally indicated that she resided with W-S- in California until she left for Washington state to care for her mother-in-law in May 2007. And, in her February 2014 declaration, she indicated that she does not have proof of living together with W-S- because everything was "in [her] husband's name and [she] had no access to any documents." She also indicated that her friends, Ms. [REDACTED] and Ms. [REDACTED] visited her at the marital residence but did further describe the marital residence or provide any specific details regarding their residence together.

The letters submitted on the self-petitioner's behalf do not contain any further probative and detailed information to establish her claim of residence with W-S-. In her February 2012 letter, Ms. [REDACTED] generally indicated the self-petitioner invited her to California. Similarly, in his May 2012 and April 2014 statements, Mr. [REDACTED] indicates that he was a "frequent visitor" to the self-petitioner's and W-S-'s home. In her November 2013 letter, Ms. [REDACTED] indicated that her boyfriend, a cousin of W-S-, lived a block away from the self-petitioner and W-S-, and that she used to visit them weekly. Other than offering descriptions regarding the abuse, none of the letters provide specific details regarding the claimed joint residence.

In addition, the self-petitioner has provided inconsistent information regarding the dates that she and W-S- resided together. In her 2014 declaration, she indicated they lived together from March 2005 until May 2007, but she also indicated that they did not move in together until June 2005. The self-petitioner does not explain the internal inconsistencies concerning their joint residence.

Although the self-petitioner asserts on appeal that notices from USCIS are evidence of her joint residence with W-S-, the notices are addressed only to the self-petitioner and are based upon the

address she listed on the Form I-485 which she now indicates was not her physical address but her mailing address. Accordingly, they are not probative of her joint residence with W-S-.

In her affidavits, the self-petitioner does not clarify the dates or addresses of her residence with W-S-. Moreover, the declarations from the self-petitioner and those submitted on her behalf do not describe their home and shared residential routines in any detail, apart from the alleged abuse. When viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the self-petitioner resided with her spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Entry into Marriage

On appeal, the self-petitioner asserts that the Director erred as the regulations at 8 C.F.R. § 204.2(c)(2) do not require her to provide proof of, or to describe positive, shared experiences before or during her married life in determining that she entered her marriage with the intent of creating a life together with W-S-. She also asserts that a good-faith marriage “simply means that the couple did not enter into marriage to circumvent immigration laws.”

The self-petitioner correctly observes that the regulations do not require proof of positive, shared experiences. However, the self-petitioner must provide sufficient evidence, demonstrating that she married her spouse in good-faith and she did not enter into the marriage for the primary purpose of circumventing the immigration laws. See 8 C.F.R. § 204.2(c)(2).

Also on appeal, the self-petitioner asserts she has submitted numerous documents to demonstrate the good-faith nature of her five-year long relationship and marriage to W-S-, including a copy of their marriage license, copies of letters from W-S- during his incarceration, letters from friends who have visited them as a couple, and photographs.

In her February 2013 declaration, the self-petitioner indicated that while visiting California in January 2003, she met W-S- at the birthday party of a friend’s aunt. The self-petitioner stated that she returned to Massachusetts and that she and W-S- began talking every other day. The self-petitioner indicated that she visited W-S- again in July 2003 and December of 2003 but did not provide any details of those visits. She stated that in March 2004, she learned that she was pregnant, and W-S- indicated “that was fine.” She also stated that she visited him again for one week in May 2004, and he called her every other day after she gave birth in October 2004. She claimed that after returning from Kenya in March 2005, W-S- asked her to marry him. The self-petitioner indicated that they married on July 18, 2005, but she does not provide any further details about their courtship, engagement or marriage, other than as it relates to the abuse.

In her February 2014 declaration, the self-petitioner further indicated that when she first met W-S- he talked about his desire to visit Africa and that he “seemed respectful and a good person.” She indicated that she “grew to have feelings for” him, that he “showered [her] with very kind words, seemed like such a sweet, genuine person,” and that they spoke about their families and growing-up. She stated generally that during her July visit with W-S-, she spent time with him and his grandfather, and that they attended church together during their visit in December 2003, which

attracted him to her as he was religious. She indicated that when she visited him in May 2004, they went to the movies and enjoyed spending time together but provided no further details of either visit. The self-petitioner again provided no discussion of their engagement other than to state that W-S- asked her thoughts about marriage and they both “cared a lot about each other.” The self-petitioner indicated that W-S-’s friends and aunt attended their wedding but did not further describe the ceremony or reception other than to indicate that W-S-’s aunt “took care of the catering.” After their marriage, she stated that she took care of W-S-’s grandfather, and then when she began to care for W-S-’s mother in Washington state, W-S- called her almost every day.

In her February 2012 letter, Ms. [REDACTED] indicated she and the self-petitioner met W-S- in May 2003 when they travelled to California for a birthday party at her cousin’s house. She further states that the self-petitioner and W-S- communicated a lot and that the self-petitioner travelled frequently to California to visit W-S- but she provided no further details about their relationship or the self-petitioner’s good-faith intent in marrying W-S-.

In his May 2012 and April 2014 statements, Mr. [REDACTED] indicated he has known the self-petitioner since 2003, when they met at his friend’s birthday party in California. He indicated that he would pick-up the self-petitioner from the airport when she would visit W-S- and that he was the best man at their wedding. He does not, however, provide any additional information regarding the self-petitioner’s good-faith intent. Similarly, in her November 2013 letter, Ms. [REDACTED] stated only that she met the self-petitioner in 2004 when the self-petitioner was visiting W-S- and that the self-petitioner and W-S- married in 2005. Moreover, the April 2013 evaluation provided by the social worker does not provide any additional probative details concerning the petitioner’s good-faith intent in marrying W-S-.

In addition, the record contains inconsistent testimony concerning the circumstances of the initial meeting between the self-petitioner and W-S-. In her declarations, the self-petitioner indicated that she met W-S- in January 2003, while attending Ms. [REDACTED] aunt’s birthday party in California. However, Ms. [REDACTED] indicated that she and the self-petitioner first met W-S- in May 2003 when they attended a birthday party at a cousin’s house in California. The self-petitioner does not explain why some documentation indicated that her initial meeting with W-S- occurred in January 2003, while other documentation indicated it occurred in May 2003. Also, the paternity of the self-petitioner’s youngest child is unclear. The social worker’s evaluation indicates that the self-petitioner reported that she became pregnant during a visit with W-S- during their courtship and that W-S- is the child’s birth father. However, the child’s birth certificate indicates that the birth father is a Kenyan national, the same individual identified as the father on the self-petitioner’s two other children’s birth certificates. Moreover, the self-petitioner indicated in her declarations that W-S- responded “that was fine” when she shared with him that she was pregnant with the youngest child. However, Ms. [REDACTED] indicated W-S- “refused to take responsibility.” The self-petitioner does not describe her relationship with the man listed on the children’s birth certificates during her courtship with W-S- and does not explain why some documentation indicates W-S- is the father of her youngest child, while other documentation indicates a different paternity.

Even without the inconsistencies discussed above, the record is insufficient to establish the self-petitioner's good-faith entry into her marriage. Although the self-petitioner states that the lack of joint documentation is the result of the control that W-S- exerted on "all aspects" of her life and that she was scared to contact him for further evidence, 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). Although the self-petitioner submitted photographs of herself and W-S- on their wedding day, as well as correspondence from W-S- during his incarceration to the self-petitioner at her residence in Washington, she has not provided sufficient probative and detailed information about her marital intentions. Her statements and those submitted on her behalf do not provide a probative account of their courtship, wedding ceremony, shared residence, and shared experiences, apart from the abuse. When viewed in the aggregate, the relevant evidence does not establish by a preponderance of the evidence that the self-petitioner entered into marriage with W-S- in good faith as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.

Conclusion

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. The appeal will be dismissed.

ORDER: The appeal is dismissed and the petition remains denied.