



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 11 2015**

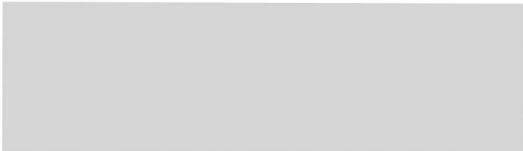
FILE #: [REDACTED]

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting director (the director) denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under 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 for failure to establish that the petitioner entered into the marriage with her 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 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)(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.

Facts and Procedural History

The petitioner, a citizen of Peru, entered the United States on September 22, 2005, as a B-2 nonimmigrant visitor. She married J-H-¹, a U.S. citizen, on [REDACTED] 2010, in California, and filed the instant Form I-360 self-petition on May 11, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's entry into the marriage with J-H- in good faith. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner did not establish that she married J-H- in good faith. In her initial Form I-360 submission, the petitioner provided an affidavit from a friend, [REDACTED] Mr. [REDACTED] stated that he periodically saw the petitioner and J-H- during their courtship but he did not substantively describe any specific occasions shared with the former couple. The petitioner also submitted correspondence from the Internal Revenue Service (IRS) indicating that she and her husband filed their 2011 federal income taxes together.

In response to the RFE, the petitioner resubmitted the letter from the IRS. She also submitted an affidavit from her sister, [REDACTED] Ms. [REDACTED] briefly stated that she met J-H- on one occasion between August 2010 when J-H- and the petitioner first became acquainted, and October 2010 when they married. She did not provide probative information regarding the meeting. Ms. [REDACTED] stated that she was present for the wedding and that the former couple spent Christmas and her birthday with her, but she did not describe any of the occasions they spent together. In addition, the petitioner submitted an internet telephone bill addressed to J-H- at their shared address.

In her decision, the director correctly noted that the relevant evidence was insufficient to establish that the petitioner married J-H- in good faith. On appeal, the petitioner submits a copy of her and J-H-'s

¹ Name withheld to protect the individual's identity.

jointly filed 2011 federal income tax return. She also submits photographs of her wedding ceremony and supplemental affidavits from Ms. [REDACTED] and Mr. [REDACTED]. In contrast to her initial affidavit, Ms. [REDACTED] claims on appeal that the petitioner and J-H- spent a number of weekends at her home before they married, in addition to two holidays and a birthday; however, she does not probatively describe any occasion spent with the former couple. Ms. [REDACTED] refers to the petitioner's wedding as "a simple ceremony," without further detail. Mr. [REDACTED] briefly attests to meeting J-H- in August 2010, attending the petitioner's and J-H-'s wedding, and viewing television with them at their home, but he does not substantively describe any of these occasions.

On appeal, the petitioner asserts that the director summarily discounted the relevant evidence and that due to the difficulties in the marriage, the available documentation is limited. However, section 204(a)(1)(A)(iii) of the Act does not require traditional forms of joint documentation 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). The petitioner is nonetheless required to establish her eligibility for the benefit sought. Here, the record contains minimal documentation of the petitioner's good-faith entry into marriage. In lieu of traditional joint documentation, 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." 8 C.F.R. § 204.2(c)(2)(vii). U.S. Citizenship and Immigration Services (USCIS) has sole discretion to determine credibility of evidence and weight accorded. Section 204(a)(1)(J) of the Act. The petitioner has not submitted a personal affidavit describing her courtship with J-H-, their wedding ceremony, shared residence and experiences. In their affidavits, Ms. [REDACTED] and Mr. [REDACTED] did not provide substantive information about the petitioner's relationship with J-H- sufficient to establish the petitioner's marital intent. When viewed in the totality, the relevant evidence does not demonstrate that the petitioner married her spouse in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not overcome the director's ground for denial. She has failed to demonstrate that she entered into the marriage with her husband in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on this ground.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.