



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **MAY 14 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](http://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 petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her United States citizen spouse.

The director denied the petition, concluding that the petitioner had failed to demonstrate that she had entered into her marriage in good faith and that she had resided with her spouse during their marriage. The petitioner filed a timely motion to reopen and reconsider. The director granted the motion but denied the petition on the same grounds. On appeal, the petitioner resubmits her brief on motion and evidence previously proffered.<sup>1</sup>

*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:

(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:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the

<sup>1</sup> The Form I-290B, Notice of Appeal or Motion, indicates that a supporting brief would be submitted within 30 days of the filing of the appeal, which was received July 17, 2014. We have not received the brief as of the date of this decision.

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 United States 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 was last admitted to the United States on February 7, 2003 on a B-2 nonimmigrant visitor's visa. She married M-P-<sup>2</sup> a citizen of the United States, on [REDACTED], 2008

<sup>2</sup> Name is withheld to protect the individual's identity.

and they subsequently separated. The record indicates that M-P- filed a petition for alien relative (Form I-130) on behalf of the petitioner on August 11, 2008, which the director denied after concluding that the couple's marriage was entered into for the sole purpose of bestowing immigration benefits on the petitioner here. The petitioner's spouse filed a second Form I-130 on March 31, 2010, but withdrew the petition on January 20, 2011. The petitioner filed the instant Form I-360 self-petition on July 19, 2011. The director denied the petition and a subsequent motion to reopen and reconsider. The petitioner timely appealed.

We review these matters on a *de novo* basis. A full review of the record, including the evidence submitted on appeal, does not establish the petitioner's eligibility. The petitioner has not overcome the director's grounds for denial on appeal, which will be dismissed for the following reasons.

#### *Entry into the Marriage in Good Faith*

The relevant evidence submitted below and on appeal fails to demonstrate that the petitioner's entry into her marriage was in good faith. The record contains the petitioner and her daughter's statements; wedding photographs; the statement of two of the petitioner's friends; a blank check for an account in both the petitioner and M-P-'s names; copies of postcards addressed to the petitioner; and a psychological evaluation by licensed psychologist, Dr. [REDACTED], Ph.d.

In her statement, the petitioner indicated that she met her husband on August 26, 2006 at the home of her friends, [REDACTED], where M-P- was getting his nails done. She stated that they had a conversation about [REDACTED] and eventually, this led to a friendship. The petitioner recounted how M-P- started coming to her friend's home more often. As she herself was very organized, she indicated that she thought she could help him with his house which was in disarray. She stated that her interest in M-P- was not romantic at the time because he was overweight and needed to be able to better support himself financially, but his desire for her to learn English made her care for him. She started cleaning his home, which was extremely disorganized. The petitioner started caring for him deeply and so began spending hours cleaning M-P-'s home daily after she finished working. Thereafter, she decided to help him lose weight and they started going for walks together. The petitioner stated that she and her daughter moved into M-P-'s home in 2007. They started talking about getting married and finally married in [REDACTED] 2008. As they did not have much money, they did not have a big party and held a small party at [REDACTED]'s home attended by [REDACTED]'s extended family. The petitioner's statement does not describe in any probative detail her intentions in entering the marriage or her marital relationship, including their courtship, engagement, their wedding, their joint residence or any of their shared experiences, aside from the claimed abuse.

The record also contains a brief affidavit from the petitioner's daughter who indicated that she initially liked M-P-, that he was "nice," and that they attended many family reunions together, including when her family visited from Brazil in 2008. However, the petitioner's daughter did not provide any probative details about her mother's relationship with M-P-, or of specific events and occasions to establish her mother's good faith intentions in marrying M-P-.

The record includes a statement from the petitioner's friend, [REDACTED], as well as a brief letter from [REDACTED]. Mrs. [REDACTED]'s statement, which is unsigned does not establish the petitioner's good faith

intentions in marrying her husband. Mrs. [REDACTED] stated briefly that the petitioner and her husband met through her beauty business and that after their marriage, the couple frequently visited her home. She asserted that the couple had a strong marriage, confirmed by the time they spent together and their dedication to each other. However, Mrs. [REDACTED] affidavit does not provide any probative details regarding the petitioner's marital relationship or reference any specific occasions or events, such as the petitioner's wedding at her home, to demonstrate the basis of her belief of the petitioner's good faith intentions. The brief letter from Ms. [REDACTED] is also similarly insufficient. Aside from noting adverse changes in the petitioner's appearance and mental state at some undisclosed point in her marital relationship, Ms. [REDACTED]'s statement does not address the petitioner's good faith intentions in marrying M-P-, and she does not indicate whether she had ever met the petitioner's husband or that she had personal knowledge of the petitioner's marital relationship.

The record also contains several photographs of what appears to be a celebration of the petitioner's wedding in a private residence. While the wedding photographs, along with the petitioner's marriage certificate, establish a legal marriage, they are insufficient by themselves to establish the petitioner's good faith intent. The petitioner submitted a copy of a single blank check for an account bearing both the petitioner and her husband's names, as well as copies of two postcards from an individual named "[REDACTED]" addressed to the petitioner and the author's "brother-in-law" at the petitioner's marital residence from sometime in 2008. These documents offer no insight into the petitioner's marriage and do not demonstrate the good faith intentions of the petitioner in marrying her husband.

The petitioner also submitted an evaluation from licensed psychologist, Dr. [REDACTED] Ph.D., dated May 4, 2010, to demonstrate her good faith intentions. As to the petitioner's marriage, the evaluation indicates only that the petitioner reported having a very good relationship with her husband who was her best friend, and that "[p]rojective test results" revealed that she has a strong and loving bond with her husband. The evaluation does not set forth any substantive information about the petitioner's marital relationship with M-P- or her good faith intentions in marrying him, apart from the abuse.

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). In this case, the petitioner's affidavit and the evidence submitted in these proceedings do not provide sufficient detail to sufficiently address her good faith intent upon marrying her husband. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Joint Residence*

The petitioner has also failed to establish that she resided with M-P- during their marriage as required. The petitioner stated on the Form I-360 that she resided with her husband from September 2007 until September 2010 and last resided together at [REDACTED]. The relevant evidence in the record includes the petitioner and her daughter's statements, the affidavit of [REDACTED], a

blank check bearing both the petitioner and M-P-'s names; copies of postcards addressed to the petitioner; a psychological evaluation; and the withdrawal of the Form I-130 by the petitioner's husband.

As noted, traditional forms of joint documentation are not required, and a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). Here, the petitioner's statement does not set forth any history or timeline of shared residences with her spouse. For instance, the petitioner gives no indication in her statement as to when she left her husband's residence; in the Form I-360, she stated that she lived with her husband until September 2010. However, in her May 2011 petition for an injunction against her spouse, she indicated that she and her husband separated in June 2010. She also submitted, and relies upon, her husband's withdrawal of the Form I-130 petition on her behalf, which indicated that the petitioner left her husband in August 2010. The petitioner has not provided an explanation for these discrepancies.

The petitioner's daughter's statement, Mrs. [REDACTED] statement, and the psychological evaluation from Dr. [REDACTED] are also insufficient to establish joint residency, as none of them make any reference to the petitioner and M-P-'s joint residence. The copies of two postcards addressed to the petitioner at her joint address with M-P- and the blank check bearing the joint address do not by themselves establish that she and her spouse resided together. On appeal, the petitioner asserts that the record sufficiently establishes her joint residence with her spouse and resubmits evidence already in the record. However, as discussed, the petitioner's statements do not provide probative details about her shared marital residence history with M-P-, including the address or addresses at which they jointly resided or the duration. Further, the statements in the record from family and friends do not evidence any knowledge of the petitioner's joint marital residence. Upon *de novo* review, the evidence of record fails to establish by a preponderance of the evidence that the petitioner resided with her husband after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### *Conclusion*

On appeal, the petitioner has failed to establish that she entered the marriage in good faith or that she resided with her spouse during their marriage, as required. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii)(I) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, she has not met his burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.