



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) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

60 Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (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 the petitioner's failure to establish that she resided with her U.S. citizen husband, and that she entered into the marriage with him 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:

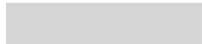
(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(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 citizen of Uganda, last entered the United States on December 4, 2012, as a B-2 nonimmigrant visitor. She married J-G¹, a U.S. citizen, on [REDACTED] 2013 in [REDACTED], Kentucky, and filed the instant Form I-360 self-petition on April 14, 2014. The director issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage and joint residence with her spouse, among other documentation. The petitioner timely responded with additional evidence,

¹ Name withheld to protect the individual's identity.

which the director found insufficient to establish eligibility for the benefit sought and denied the petition. The petitioner timely appealed.

We review these proceedings *de novo*. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome all of the director's grounds for denial. The petitioner has established that she entered into the marriage with J-G- in good faith, but she has not demonstrated that she resided with him. Beyond the director's decision, the petitioner has failed to establish a qualifying spousal relationship with a U.S. citizen, and the corresponding eligibility for immediate relative classification. The appeal will be dismissed for the following reasons.

Good-Faith Entry into the Intended Marriage

De novo review of the record establishes by a preponderance of the evidence that the petitioner entered into her intended marriage with J-G- in good faith. In her initial affidavit, the petitioner stated that she married J-G- on [REDACTED] 2013 before [REDACTED] and his judicial clerks. The petitioner provided an affidavit from [REDACTED] Executive and Legal Secretary for [REDACTED], who attested to interviewing the petitioner and J-G- prior to their marriage ceremony. Ms. [REDACTED] indicated that based on her observations, she believed that the couple was in love. The petitioner also submitted one joint bank account statement in both her and J-G-'s names, covering a period between May and June of 2013. She also provided a photocopy of a greeting card addressed to her and J-G- from her aunt, [REDACTED]. In addition, the petitioner submitted unlabeled photographs of what appear to be her wedding ceremony and two other occasions.

In response to the RFE, the petitioner submitted an additional personal affidavit in which she described meeting J-G- at a coffee shop shortly after her arrival in the United States. She discussed in substantive detail various activities that the couple shared during their courtship, and the day the couple married in April 2013. The petitioner also provided an affidavit from her aunt, [REDACTED], who stated that the petitioner introduced her to J-G- in December 2012, and that he visited her home on numerous occasions to spend time with the petitioner, who was living with her at the time. The petitioner provided photographs of her and J-G- on one additional occasion.

In her decision, the director acknowledged the petitioner's affidavits, but stated that the petitioner failed to submit sufficient documentary evidence to support her claims. In particular, the director noted that the petitioner did not demonstrate commingling of resources and shared financial responsibilities. On appeal, the petitioner submits a supplemental personal affidavit explaining that J-G- controlled the couple's finances, and ultimately withdrew all of their savings from their joint account. The petitioner resubmits the previously provided photographs, now labeled.

The petitioner has established on appeal that she entered into her intended marriage with J-G- in good faith. The director correctly observed that the petitioner did not demonstrate commingling of resources or shared responsibilities with J-G-; however, in Form I-360 proceedings, 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.” 8 C.F.R. § 204.2(c)(2)(vii). Here, the petitioner submitted detailed affidavits in which she provided a substantive description of her first meeting with J-G-, the couple’s courtship, various shared experiences, and the day they married. The petitioner’s statements are also supported by affidavits prepared by her aunt and Ms. [REDACTED] a court employee. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner entered into her intended marriage with J-G- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The director correctly determined that the petitioner failed to establish her joint residence with J-G-. On the Form I-360 self-petition, the petitioner stated that she resided with J-G- from April 2013 until September 2013. In her initial affidavit, the petitioner did not discuss her residence with J-G- except to indicate that the couple resided in an apartment. The petitioner submitted one bank statement, addressed to the couple at a residence on [REDACTED] in [REDACTED] Kentucky ([REDACTED]), and a photocopy of a greeting card envelope addressed to the petitioner and J-G- at [REDACTED] from the petitioner’s aunt, [REDACTED]. In response to the RFE, the petitioner provided an affidavit from Ms. [REDACTED] who stated that the petitioner initially resided in Ms. [REDACTED] home in [REDACTED] Kentucky, and that J-G- and the petitioner had commenced a romantic relationship by the time Ms. [REDACTED] was deployed to Afghanistan in February 2013. Ms. [REDACTED] recounted that the petitioner informed her by telephone that she had moved in with J-G- in April 2013. Ms. [REDACTED] indicated that the petitioner and J-G- were still residing together in [REDACTED] when she returned from Afghanistan in August 2013, but did not explain how she was aware of this. She further indicated that the petitioner moved back in with her in September 2013. Also in response to the RFE, the petitioner submitted a personal affidavit in which she stated that she was residing in [REDACTED] but did not further describe the residence. She stated that she and J-G- opened a bank account together, but that she did not use it beyond her initial deposit and an attempted transaction shortly before the account was closed.² The petitioner provided bank statements addressed to her and J-G- at [REDACTED].

In her decision, the director correctly determined that the petitioner’s evidence did not establish that she resided with J-G- during the marriage. On appeal, the petitioner submits a supplemental personal affidavit. Although she previously referred to the residence that she shared with J-G- as an “apartment,” in her affidavit on appeal, she now states that the [REDACTED] residence is a three-bedroom, two-bathroom house. The petitioner indicates that she moved there on April 26, 2013, the day that the couple married. The petitioner claims no knowledge of J-G-’s lease arrangement, and states that they did not buy any household items together. Although she states that she stayed home all day, she provides minimal description of the residence. The petitioner submits an additional piece of bank correspondence addressed to the couple at [REDACTED], and a photocopy of an envelope with an

² Although the petitioner claims that she did not use the account, the bank statements that she submitted show deposits in [REDACTED] and withdrawals in [REDACTED] on the same day. Nearly all of the deposits appear to have been made in [REDACTED] and all of the withdrawals in [REDACTED]. This pattern of ATM use is inconsistent with the petitioner’s claim that only one person used the account.

illegible postmark, addressed to the petitioner at [REDACTED] and which she represents was sent from her family in Uganda. United States Citizenship and Immigration Services (USCIS), considers all relevant, credible evidence in these proceedings; however, the petitioner must still sustain her burden of proof. Here, the petitioner's personal affidavits contain inconsistencies and provide only minimal description of the residence she purportedly shared with J-G-. Her aunt's affidavit lacks substantive information regarding the couple's joint residence. The statements for the bank account that the petitioner claims that she did not use, and photocopies of two envelopes sent by her family members, are insufficient to sustain the petitioner's burden of proof. When viewed in the totality, the preponderance of the relevant evidence of record does not establish that the petitioner resided with J-G- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Beyond the director's decision, the petitioner has failed to establish a qualifying relationship with a U.S. citizen, and the corresponding eligibility for immediate relative classification.³ The petitioner indicated on her Form I-360 self-petition, and also on her Kentucky marriage license, that she has only been married once. However, on November 2, 2011, the petitioner submitted an application for a B1/B2 tourist visa in which she asserted that she was married to [REDACTED] of Uganda. On November 10, 2011, the petitioner appeared at the U.S. consulate in [REDACTED] and affirmed to a U.S. consular official that she was married and had an infant, and provided information about her husband's employment. The regulation at 8 C.F.R. § 204.2(c)(2) requires a self-petitioner to submit proof of the termination of all prior marriages. Here, the record lacks proof of the termination of the petitioner's marriage to [REDACTED]. Accordingly, the petitioner has not established that she has a qualifying relationship as the spouse of a U.S. citizen and that she is eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa)(AA) and 204(a)(1)(A)(iii)(II)(cc) of the Act.

Conclusion

On appeal, the petitioner has established that she entered into the marriage with J-G- in good faith. The findings by the director to the contrary are withdrawn. The petitioner has not, however, demonstrated that she resided with J-G-. The petitioner has also failed to establish a qualifying spousal relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification. Accordingly, the petitioner is ineligible for immigrant classification under section

³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center 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); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). Upon *de novo* review, the petitioner has failed to establish a qualifying spousal relationship with a U.S. citizen, and the corresponding eligibility for immediate relative classification. We hereby notify the petitioner of this deficiency in the evidence, which must be overcome should the petitioner seek to prevail on motion.

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NON-PRECEDENT DECISION

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204(a)(1)(A)(iii) of the Act.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.