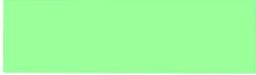


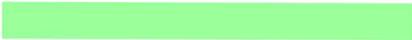


U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **OCT 07 2013** Office: VERMONT SERVICE CENTER

FILE: 

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)

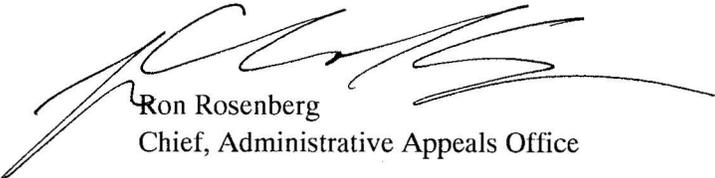
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“the director”) denied the immigrant visa petition and 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 on the basis of his determination that the petitioner had failed to establish that she married her U.S. citizen husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. On appeal, counsel submits a brief in the form of a letter.

Applicable 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:

(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.

* * *

(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 record in this case provides the following pertinent facts and procedural history. The petitioner is a citizen of Saint Lucia, West Indies, who was admitted to the United States on December 7, 2000, as a nonimmigrant visitor. The petitioner married T-W¹, a U.S. citizen in [REDACTED] New York, on September 4, 2007. The petitioner filed a prior Form I-360 petition on December 21, 2009.² The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and her husband's battery or extreme cruelty. The petitioner, through counsel, responded with additional evidence, which the director determined was not sufficient to demonstrate the petitioner's entry into marriage with her husband was in good faith, and denied the petition.

The petitioner filed the instant Form I-360 petition on June 27, 2011. The director subsequently issued a Notice of Intent to Deny (NOID) regarding the petitioner's good-faith entry into the marriage, their joint residence, and her husband's battery or extreme cruelty. The petitioner, through counsel, timely responded with previously submitted evidence, which the director found insufficient to establish the petitioner entered into marriage in good faith, and denied the petition.

On appeal, counsel asserts that the director denied the instant Form I-360 petition without explanation and without addressing updated documentation that was not submitted with the prior Form I-360.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record, we find no error in the director's ultimate determination.

Good-Faith Entry into the Marriage

¹ Name withheld to protect identity.

² Receipt Number [REDACTED]

De novo review of the evidence submitted below fails to demonstrate that the petitioner married her spouse in good faith. The record contains a letter from the petitioner dated December 4, 2009 and her affidavit dated May 22, 2010. The petitioner briefly related in the affidavit that she met T-W- in the summer of 2005 and “[w]e dated for two years and in this time we became very close and fell in love. We spent all of our time together hanging out, going to the movies and an occasional party.” The petitioner recounted that “[a]fter two years of dating, on my birthday in July of 2007, [T-W-] surprised me and asked me to marry him. I was overjoyed at the prospect of becoming his wife and we decided to get married that September, 2007.” The petitioner stated that they moved in together at the end of July 2007, and married on September 4, 2007. The petitioner failed to discuss in detail how she met her husband, their period of courtship, engagement, and wedding; their joint residence or any of their shared experiences, apart from the abuse.

The petitioner submitted letters from five friends - [REDACTED] [REDACTED]³ Ms. [REDACTED] and Ms. [REDACTED] state that they knew of the petitioner’s marriage, but primarily discuss the abuse. Mr. [REDACTED] briefly stated that he was a witness at the petitioner’s wedding, but he does not describe the ceremony or provide any further information regarding the petitioner’s relationship apart from the breakdown of their marriage. Ms. [REDACTED] declared that she has known the petitioner for four years, and that the petitioner is married and lived with her husband. Ms. [REDACTED] reported that she has been friends with the petitioner for five years and has a close relationship with her. She stated that she had known the petitioner’s husband since he started dating the petitioner in the summer of 2006, and had welcomed him “as an extended member of my family.” Neither Ms. [REDACTED] nor Ms. [REDACTED] described in detail any visit or interactions they had with the petitioner and her husband or otherwise demonstrated their personal knowledge of the relationship.

The record also contains statements from [REDACTED] and [REDACTED]. Ms. [REDACTED] declared that she is a neighbor of the petitioner, and met the petitioner’s husband when he was moving in. Ms. [REDACTED] stated that she is the superintendent of the building where the petitioner resides, that the petitioner added T-W- to her lease and she saw them together in the building. While Ms. [REDACTED] and Ms. [REDACTED] briefly mention disputes between the petitioner and her husband, they provide no probative information regarding the petitioner’s intentions in marrying T-W-.

The petitioner also submitted joint [REDACTED] invoices and a payment statement for the petitioner and her husband dated between January 29, 2008 and April 29, 2010; a joint account running balance statement and invoices from Nationalgrid dated between December 7, 2007 and August 30, 2010; a joint [REDACTED] invoice dated February 4, 2008; and an annual apartment registration form dated 2010 that lists the petitioner and her husband as tenants in occupancy on April 1, 2010. However, the majority of these documents are dated after February 2009 – the date the petitioner states her husband abandoned her and are not probative of the petitioner’s intentions in entering their marriage.

³ These letters were previously submitted along with the first Form I-360 petition.

The record also contains photographs showing individuals pictured together on different occasions, but the dates, occasions, and individuals are not identified, and thus they provide no probative information of the petitioner's good faith intentions in marrying her husband.

On appeal, counsel asserts that with the instant Form I-360 petition, the petitioner filed previously submitted photographs with an explanation of them and an "updated" affidavit responding to the denial of her prior Form I-360 petition, but the record does not contain these documents and counsel's letter dated June 23, 2011 listing the documents filed along with the instant Form I-360 petition does not mention them.

Counsel also contends that the director failed to consider the psychoemotional and marital dynamics assessment, but counsel fails to explain the relevance of the assessment to the issue on appeal. The assessment briefly mentions the courtship of the petitioner and her spouse, but reports primarily on the abuse in their relationship, and provides no probative information sufficient to establish the petitioner's intentions in marrying her spouse. Counsel further asserts that the director's denial was an abuse of discretion. Counsel cites *Wong Wing Hang v. Immig. and Naturalization Serv.*, 360 F.2d 715, 718-719 (2d Cir. 1966), (denial of suspension of deportation) and *Motor Veh. Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (review of transportation agency's actions), but counsel does not explain how the eligibility requirements and evidentiary standard in an application for suspension or in a federal agency action regarding motor vehicle safety standards are relevant to a self-petition under section 204(a)(1)(A)(iii) of the Act.

The determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i). The preponderance of the relevant evidence fails to establish that the petitioner's entry into marriage with her husband was in good faith. The majority of the petitioner's joint documents are dated after her separation. The petitioner's statements are brief and do not probatively discuss her courtship, wedding, shared residence or other shared experiences, apart from the abuse. The letters of her friends and acquaintances also lack substantive information sufficient to establish their personal knowledge of the petitioner's marital relationship.

The petitioner has not demonstrated 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.

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.

ORDER: The appeal is dismissed.