

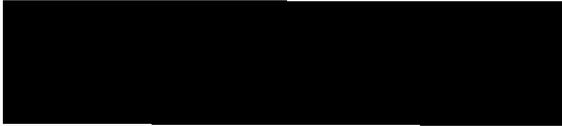
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

Ba



FILE: [REDACTED] Office: VERMONT SERVICE CENTER
EAC 06 057 50425

Date: JAN 24 2007

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to
the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 classification as a special immigrant pursuant to 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 a United States citizen.

The director denied the petition because the record did not establish that the petitioner entered into her marriage in good faith and that she was battered by or subjected to extreme cruelty by her spouse.

The petitioner submits a timely appeal.

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 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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(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 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.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(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.

The petitioner in this case is a native and citizen of Jamaica who entered the United States on July 5, 2003 as a B-2 nonimmigrant visitor. The petitioner married V-B-¹ a United States citizen, in New York City, New York on November 14, 2003. The petitioner filed this Form I-360 on December 9, 2005.² On February 28, 2006, the director issued a Request for Evidence (RFE) to the petitioner. In response to the RFE, the petitioner requested an additional 60 days to submit evidence. On May 17, 2006, the director issued a Notice of Intent to Deny the petition. The petitioner responded to the director's RFE and NOID on May 24, 2006. After reviewing the evidence submitted, the director denied the petition on July 5, 2006, finding that the petitioner failed to establish that she had been battered by or subjected to extreme cruelty by her spouse and that she entered into her

¹ Name withheld to protect individual's identity.

² Although not at issue in this proceeding the record also contains a Form I-130, Petition for Alien Relative, filed in the petitioner's behalf by her citizen spouse and a Form I-485, Application for Permanent Residence concurrently filed by the petitioner. The Form I-130 and the Form I-485 were denied on June 21, 2004.

marriage in good faith. The director's discussion will not be repeated here. The petitioner submitted a timely appeal with additional affidavits. As will be discussed, we concur with the director's determinations and find that the petitioner's appellate submission does not overcome the grounds for denial of the petition.

Battery or Extreme Cruelty

In her initial statement, the petitioner generally indicated that her spouse was "oppressive, abusive, and intimidating" and that she suffered "physical and emotional distress." The petitioner did not describe any specific instance of physical abuse or extreme cruelty and provided no details regarding the claimed abuse.

In response to the RFE and NOID, the petitioner submitted a second statement and five statements from acquaintances and family. In her second statement, the petitioner describes three incidents involving alleged abuse. In the first incident, the petitioner claims that her spouse slapped her across the face and forced himself upon her. The petitioner indicated that the second incident occurred one day prior to her interview with the Service on the Form I-130 that her spouse filed in her behalf. The petitioner claimed that while her spouse was on "one of his drinking binges along with smoking something," that her spouse raped her "until she had diarrhea." The petitioner states that the next day, she had a friend accompany her to the doctor's office but was too ashamed to let the doctor perform an examination. While the petitioner claims that the doctor wrote a letter to the Service to let them know that she could not attend the interview, the record does not contain any letter from the petitioner's doctor or any other explanation for her failure to appear for her interview. The petitioner described a third incident where she claimed that she was kicked in the stomach by her spouse after asking him who he was speaking to on the telephone. Additionally, the petitioner claimed that she was hurt when her spouse ignored her son when he would come to visit and that he would give her "a hard time" when she was talking on the phone to her brother.

The first statement submitted on the petitioner's behalf by her father-in-law, [REDACTED] does not provide any statement regarding the petitioner's claimed abuse.

The second statement, provided by the petitioner's former neighbor indicates that the petitioner's eyes appeared to be "puffy" in the morning, that she heard "stumbling" in the petitioner's apartment "like when people are wrestling," and that on one occasion she saw a bruise on the petitioner's face. The petitioner's neighbor's description of "stumbling" and "wrestling" sounds are not consistent with the three incidents claimed by the petitioner where she claims to have been slapped, forced to have sex, and kicked in the stomach. She does not indicate that she heard loud voices or shouting. While the affiant also states that after the petitioner's spouse left, the petitioner started to tell her about the abuse, the affiant provides no further description of any incident or alleged abuse.

The third statement submitted by a friend of the petitioner, [REDACTED] indicates that when she was on the phone with the petitioner, the petitioner's spouse would be in the background telling the petitioner to hang up the phone. She also claims that during the "many times" that she went to visit the petitioner, the petitioner's spouse would ignore her and "start some conflict." Ms. [REDACTED] describes an incident where the petitioner called Ms. [REDACTED] crying because her spouse had done something "that made her sick," but claims the petitioner would not tell her what he had done. Although the petitioner herself makes no such claim, Ms. [REDACTED] states that the petitioner turned all of her earnings over to her spouse and that the landlord forced the petitioner's spouse to leave their home because she did not want her house to be "a war zone."

The letter from the petitioner's instructor, [REDACTED] states that the petitioner "often complained of her husband's abuse," his "drinking and his erratic behavior," and that he tried to prevent the petitioner from attending class. Ms. [REDACTED] does not describe what the claimed abuse consisted of (e.g. whether it was verbal abuse or physical abuse), that she ever witnessed any bruises on the petitioner, or that she witnessed any of the claimed abuse firsthand.

The final letter, from [REDACTED], the landlord of the residence where the petitioner and her spouse resided prior to their marriage, does not indicate that he was a witness to any abuse either while the petitioner and her spouse resided at his residence or afterwards. Instead, Mr. [REDACTED] indicates that the petitioner would "complain about the way [the petitioner's spouse] has been treating her" and that he wanted to "do stuff that she's no [sic] approved of." Mr. [REDACTED] describes one instance where the petitioner came to his home with bruises all over her neck and face and stayed with him for a few days. Mr. [REDACTED] does not provide any other details regarding this incident and fails to provide even an approximate date for when it occurred. The statute requires that the abuse be perpetrated *during* the marriage. Given that the petitioner and her spouse resided in Mr. [REDACTED] home prior to their marriage, any abuse perpetrated against the petitioner at that time is not qualifying. Regardless, Mr. [REDACTED] statement does not provide sufficient detail to establish that the petitioner was battered by her spouse or that she was subjected to extreme cruelty.

On appeal, the petitioner submits a new personal statement and additional statements from [REDACTED] the petitioner's former roommate, and her father-in-law. However, as the petitioner was put on notice of the evidence necessary to establish her claim of abuse and was given a reasonable opportunity to provide the additional evidence before the visa petition was adjudicated, the AAO will not consider this evidence for any purpose on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding, before the director which, as discussed above, was not sufficient to establish that the petitioner had been battered or subjected to extreme cruelty.

The general claims made by the petitioner fail to establish that she was the victim of any act or threatened act of violence, including any forceful detention, psychological or sexual abuse or exploitation, or that her spouse's actions were part of an overall pattern of violence. As it relates to the petitioner's claim of battery, the sole evidence consists of statements made by the petitioner. While affiants submitted letters on the petitioner's behalf, the statements contain either only general statements regarding the alleged abuse or describe events that were not alleged by the petitioner. Accordingly, we do not find that the petitioner has established that she was battered by or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

It is noted that even if considered, the evidence submitted on appeal is insufficient to establish the petitioner's claim of abuse. The statement submitted by the petitioner on appeal does not address her claim of battery or extreme cruelty. Rather, the petitioner attempts to provide an explanation related to the director's second finding that the petitioner failed to establish her good faith marriage. The letter from the petitioner's father-in-law that was submitted on appeal does not provide any information regarding the claimed abuse. Further, we do not find the statement submitted by [REDACTED] on appeal to be sufficiently reliable. Specifically, the statement on appeal contains claims that were not described in either Ms. [REDACTED] previous statement or the petitioner's previous statements. Finally, the statement submitted by [REDACTED], the petitioner's former neighbor, simply reiterates her previous claims that she heard "stumbling" noises coming from the petitioner's apartment. This claim was found to be both insufficient to support the petitioner's claim of abuse and

inconsistent with the petitioner's description of the abuse. On appeal, Ms. [REDACTED] now states that she knew the petitioner's spouse was beating her and that the petitioner told her that she had been kicked in the stomach. Similar to the appellate statement of Ms. [REDACTED] the additional claims contained in the statements submitted on appeal, casts doubt on the veracity of the statements. Accordingly, the testimonial evidence submitted on appeal would be insufficient to overcome the director's finding that the petitioner failed to establish a claim of abuse.

Good Faith Entry into Marriage

In the statement submitted by the petitioner at the time of filing, the petitioner provided no details regarding how she met her spouse, how long they knew each other before deciding to marry, or any other details about their courtship and married life together. While the petitioner also submitted evidence indicating that she and her spouse had obtained life insurance, the documents did not indicate the beneficiary of either policy.

In response to the director's RFE and NOID, the petitioner submitted additional testimonial and documentary evidence. The testimonial evidence consisted of the petitioner's second personal statement and statements from friends and her father-in-law. In her second statement, the petitioner indicates that she first met her spouse in November 1996 when she came to the United States to buy items for her shop in Jamaica. The petitioner states that they exchanged numbers, spoke on the phone a few times and went to a movie before she returned to Jamaica. When the petitioner visited the United States in April 2002, she ran into her spouse on the street, went out that evening and saw each other a few more times before she returned to Jamaica. The petitioner again visited the United States in 2003 and called her spouse, where they met up in New York. Regarding her trip in 2003, the petitioner stated:

... I liked the way he made me feel. He asked me to stay with him but I had some loose ends to tie back home. Three months later I was back in [the United States in] July. [V-B-] told me he had always thought of me through those years. He proposed to me and I accepted and told him to let us live together for awhile. We lived together in Queens for approximately six months until we got married"

The petitioner does not further discuss her husband courtship with her spouse, her reasons or feelings for her spouse when she married him, or any of their shared experiences, apart from her husband's alleged abuse.

The letters submitted on the petitioner's behalf provide no further information to support a finding of a good faith marriage. The petitioner's father-in-law acknowledges that the petitioner is his daughter-in-law, that "as far as [he] know[s]" she has been a good daughter-in-law, that she has been nice to him, that she sometimes helps him, and that he has given her money on occasion. [REDACTED] the petitioner's former neighbor, states that the petitioner and her spouse shared the same residence but offers no details regarding their relationship other than to state that they "both seemed happy and o.k. when they first came." Similarly, the petitioner's friend, [REDACTED] indicates that one day the petitioner told her that "she [met] a man named [V-B-]." Ms. [REDACTED] provides no other information regarding the petitioner's relationship with her spouse either before or after her marriage. The remaining letters from [REDACTED] and [REDACTED] do not discuss the petitioner's relationship with her spouse other than as it relates to her claim of abuse.

The documentary evidence submitted by the petitioner consists of an October 26, 2005 letter to the petitioner's spouse from the Internal Revenue Service (IRS), a December 2005 bank statement in the name of the

petitioner's spouse, and the petitioner's spouse's 2004 and 2005 W-2 Wage and Tax Statement. It is noted that the petitioner's spouse's 2005 W-2 indicates his marital status as "single." The petitioner also submitted a 2006 bill in the petitioner's name, a letter from her life insurance carrier indicating her son as the beneficiary, and two envelopes addressed to the petitioner and her spouse. While the evidence submitted by the petitioner is sufficient to establish the petitioner's residence with her spouse, it is not sufficient to demonstrate that their marriage was entered into in good faith. The evidence fails to establish that the petitioner and her spouse had any joint accounts or shared bills. Although the petitioner submits evidence of life insurance and that a change was made to her policy, the petitioner has failed to submit any evidence which demonstrates that she or her spouse were ever the other's beneficiary on the life insurance policy.

The petitioner also submitted four undated, uncaptioned photographs; two photographs are of the petitioner and her spouse and two other unidentified individuals and the remaining two photographs are of what appears to be the petitioner and her spouse on their wedding day. The petitioner submits no further photographs of the petitioner and her spouse to document her claimed relationship of over two years. Regardless, while the photographs are evidence that the petitioner and her spouse shared a particular event together, they carry little evidentiary weight in assessing the petitioner's intent in marrying her spouse.

Accordingly, we concur with the finding of the director that the petitioner has failed to establish that she entered into the marriage in good faith.

On appeal, the petitioner submits additional statements. As previously noted, where a petitioner has been notified of the deficiencies in the record and given a reasonable opportunity to supplement the record, the AAO will not accept evidence offered for the first time on appeal.

We again note that even if we considered the testimonial evidence that is offered on appeal, we would not find it sufficient to overcome the director's findings. The statements submitted on the petitioner's behalf contain little probative value of a good faith marriage. For instance, the statement from the petitioner's father-in-law submitted on appeal states that the petitioner "told me she came here once but I do not remember." As it relates to the petitioner's appellate statement, the petitioner attempts to explain the lack of documentary evidence. While her explanation for the lack of documentary evidence is plausible, as discussed above, the testimonial evidence submitted in support of the petitioner does not support a finding of a good faith marriage. The statements contain no specific details regarding their life together, either prior to or after their marriage, their shared events, trips, or other pertinent information. Accordingly, the petitioner has failed to establish that she entered into the marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.