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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: MAY 13 2008
EAC 06 074 52415

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:



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.

Maura Deadrack
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 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 finding that the petitioner did not establish that she was battered or subjected to extreme cruelty by her citizen spouse during their marriage, that she is a person of good moral character, that she has a qualifying relationship with her citizen husband and that she is eligible for immigrant classification based on that relationship.

The petitioner submitted 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).

An alien who has divorced a United States Citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States Citizen spouse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc)

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 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:

(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 . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

* * *

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.

* * *

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all marriages, if any, of both the self-petitioner and the abuser. If the self-petition is based on a claim that the self-petitioner's child was battered. . . the self-petition should also be accompanied by the child's birth certificate or other evidence showing the relationship between the self-petitioner and the abused child.

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Jamaica who claims on the Form I-360 that she entered the United States sometime in October 1990 as a visitor. On March 5, 1997, the petitioner married E-G¹, a U.S. citizen, in Hempstead, New York. The petitioner filed the instant Form I-360 and a corresponding Form I-485, Application to Adjust Status, on January 10, 2006. On March 22, 2006, the director issued a Request for Evidence (RFE). The petitioner failed to respond. On July 25, 2006, the director issued a Notice of Intent to Deny (NOID) the petition based upon the petitioner's failure to establish a qualifying relationship as the spouse of a United States citizen, eligibility for immigrant classification based on the qualifying relationship, the requisite battery or extreme cruelty, and good moral character. The petitioner failed to respond and on December 11, 2006, the director denied the petition based on the grounds cited in the NOID. On the same date, the district director denied the corresponding Form I-485. The petitioner submitted a timely appeal with additional testimonial evidence and copies of documents previously submitted. The petitioner provides no explanation or documentation for her failure to submit this additional evidence in the response to the director's RFE or NOID. As the record demonstrates that the petitioner was previously notified of the deficiencies in the record and afforded

¹ Name withheld to protect individual's identity.

numerous opportunities to respond, we will not accept the additional evidence submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533,537 (BIA 1988). Accordingly, the AAO need not and will not consider the evidence submitted for the first time on appeal. As will be discussed, we concur with the determinations of the director and find that the petitioner has failed to establish her eligibility.

Qualifying Relationship and Eligibility for Immigrant Classification

In support of her petition, the petitioner submitted copies of her marriage certificate and her spouse's Certificate of Naturalization. However, although the petitioner indicated on the Form I-360 that she was married, in her "Affidavit in Support," the petitioner referred to E-G- as her "former spouse." Accordingly, in his RFE, the director requested the petitioner to indicate whether she was still married to E-G-. As previously noted, the petitioner failed to respond to the RFE. Given the conflicting information regarding the petitioner's marital status, we are unable to determine whether, at the time of filing, the petitioner was married to her spouse or, if divorced, whether her divorce took place during the two-year period prior to filing and was connected to the alleged battery or extreme cruelty. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154 (a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Accordingly, the petitioner has failed to establish that she had a qualifying relationship as the spouse of a United States citizen, as required by section 204(a)(1)(A)(iii)(II)(CC) of the Act and that she is eligible for immediate relative classification based on that relationship, as required by section 204(a)(1)(A)(iii)(II)(CC) of the Act.

Battery or Extreme Cruelty

To support her claim of battery and extreme cruelty, the petitioner submitted two personal statements. In her "Statement of Facts," the petitioner generally claims that her spouse punched and kicked her in front of friends, held her in captivity, sexually assaulted her, and beat her on several occasions. The petitioner further claims, that on several occasions, her spouse threatened to call the authorities and report her immigration status as a means to control her. The petitioner also claims that her spouse would leave home for weeks at a time, and she would be left alone to take care of the household expenses and their small children. The petitioner claims that her spouse took complete control over her finances, forbade her from communicating with her family and friends, causing her to feel isolated and depressed. The petitioner states that when she tried to complain, her complaint was met with "violence and dangerous threats," which caused her to "fear seriously" for her life. The petitioner states that eventually, her spouse abandoned her and that her attempts to contact him proved to be futile. In her "Affidavit in Support" of the petition, the petitioner claims that her spouse was "oppressive, abusive, and intimidating," and that as a result, she suffered physical and emotional distress. The petitioner's generalized claims are not sufficient to establish that she was battered or subjected to extreme cruelty. Although she refers to "several occasions" where she was beaten, held captive, threatened, and sexually assaulted, she does not describe any specific incident in probative detail. We note that while the petitioner alleges that her friends were witness to an assault that occurred "sometime in 1998," she

submits no statements from those friends which detail the incident. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The remaining allegations, that the petitioner's spouse left the home for weeks at a time, took control of the finances and forbade the petitioner from communicating with family and friends are similarly lacking. She fails to provide examples or probative details of specific events. Moreover, we find these claims of extreme cruelty to be contradictory. For instance, although the petitioner states her husband took complete control over the finances, she contradictorily claims that she had to take care of household expenses. In addition, it is unclear how her spouse prevented her from communicating with family and friends, given that her spouse was gone "for weeks at a time."

On appeal, the petitioner submitted additional testimonials from her friends. As previously discussed, we will not accept this additional evidence given the petitioner's failure to submit them when requested. Regardless, even if considered, the statements submitted on the petitioner's behalf on appeal do not establish that the petitioner was battered or subjected to extreme cruelty. First, the statement from [REDACTED] contains allegations not described by the petitioner. For instance, [REDACTED] states that she saw bite marks on the petitioner. The petitioner, however, does not describe being bitten by her spouse. M [REDACTED] also claims that the petitioner was forced to seek refuge at the homes of many of her friends. Again, however, the petitioner's statement does not contain any such claim.

The statement from [REDACTED] dated January 9, 2007 indicates that she had known petitioner and her spouse for years, and that she personally witnessed the petitioner's spouse verbally abuse the petitioner. N [REDACTED] claims that the petitioner's spouse approached her to convince the petitioner to "play by his rules" or he would make life "unbearable" for her. [REDACTED] claims that she was aware that the petitioner's spouse threatened to have the petitioner "sent home if she doesn't start being the demur wife he wants," refused to provide financial support, withdrew the petition filed on behalf of the petitioner, and frequently called the petitioner at work to deliver "veiled threats." [REDACTED] does not describe in probative detail any specific incident of abuse that she witnessed and makes no reference to any alleged battery against the petitioner. Therefore, even if considered on appeal, the statements would be insufficient to establish that the petitioner was battered or subjected to extreme cruelty by her spouse during their marriage.

As described above, the general statements submitted by the petitioner and on her behalf do not demonstrate that the petitioner was subjected to battery or that her spouse's actions rose to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

We concur with the director's determination that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good moral character

As evidence of her good moral character, the petitioner submitted her own personal statement where she merely attested that she is “law abiding and a person of good moral character.” The petitioner’s statement alone without the supporting evidence of the kind enumerated in the regulations at 8 C.F.R. § 204.2(c)(2)(v) is not sufficient to establish the petitioner’s good moral character. In this case, the petitioner failed to submit a local police clearance, state criminal background check or similar reports, or in the alternative, evidence that such evidence is not available. Accordingly, the petitioner failed to establish that she is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Beyond the director’s decision, we find discrepancies in the record regarding the petitioner’s claim of residence with her spouse. In the petitioner’s “Statement of Facts” she claims that she resided at [REDACTED] after her marriage on March 5, 1997. However, the birth certificate of her second child, dated November 21, 1997, lists the petitioner’s “usual address” as [REDACTED]. On the Form G-325 signed by the petitioner on September 20, 2005, under penalty of perjury, although the petitioner lists three prior residential addresses with no specific dates, she does not list [REDACTED] as one of her prior addresses. Given these discrepancies and the lack of specific and probative testimonial evidence or documentary evidence, the petitioner has failed to establish that she resided with her spouse. We therefore, withdraw the director’s finding in this regard.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.