

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Be

APR 24 2009

FILE:

[Redacted]
EAC 07-193-50033

Office: VERMONT SERVICE CENTER

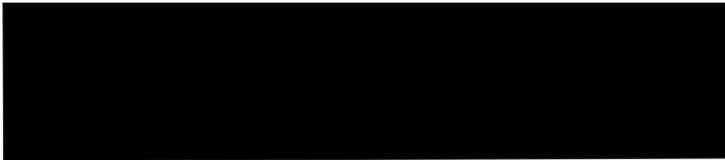
Date:

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)

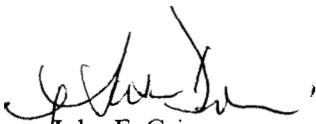
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as having been battered or subjected to extreme cruelty by her U.S. citizen spouse. The director denied the petition finding that the petitioner failed to establish that she had resided with her spouse, was battered or subjected to extreme cruelty by her spouse during their marriage and that she entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal with a brief and an additional affidavit.

We concur with the director's determination that the petitioner has not established by a preponderance of the evidence the requisite residence, battery or extreme cruelty, and that she entered into her marriage in good faith. Counsel's claims and additional evidence on appeal do not overcome the grounds for denial of the petition.

Eligibility for Immigrant Classification under Section 204(a)(1)(A)(iii)

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner 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, 8 U.S.C. § 1154(a)(1)(J), 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 regulation at 8 C.F.R. § 204.2(c)(1) provides guidance regarding relevant eligibility requirements:

(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.

(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.

* * * *

(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.

(ii) *Relationship.* A self-petition filed by a spouse must 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.

(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.

Procedural History and Pertinent Facts

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of El Salvador who last entered the United States on June 26, 2003 with a B-2 nonimmigrant visitor visa. On June 3, 2005 the petitioner married J-G,¹ a U.S. citizen, in Los Angeles, California.

The petitioner filed the instant I-360 Petition on June 21, 2007. On March 10, 2008 the director issued a Request for Evidence (RFE) that the petitioner had resided with her U.S. citizen spouse, had been battered or subjected to extreme cruelty by her spouse and had entered into her marriage in good faith. In response, on June 23, 2008 the petitioner, through counsel, submitted additional statements in support of the petitioner's claim and asserted that the petitioner's testimony, if credible, may be sufficient to sustain her burden of proof without additional corroboration.² The director found that the petitioner had failed to provide sufficient evidence that she had resided with her U.S. citizen spouse, had been battered or subjected to extreme cruelty by her spouse and had entered into her marriage in good faith, and denied the petition on August 28, 2008.

On appeal, the petitioner, through counsel, filed a Form I-290B, Notice of Appeal, on September 26, 2008. Counsel asserted that the petitioner's sworn statement explained in great detail her relationship with her husband and was not properly considered in the adjudication of her petition, and that she submitted as much evidence as she was able to obtain; counsel also asserted that the

¹ Name withheld to protect individual's identity.

² The record of proceedings indicates that no response to the RFE was received, and the petition was, therefore, denied on July 24, 2008; the record was later corrected to indicate that the petitioner timely responded to the RFE. The July 24, 2008 decision to deny was reopened, and all the evidence duly reviewed and considered by the director.

testimony of an applicant, if credible, may be sufficient to sustain her burden of proof without additional corroboration. Counsel submitted one additional affidavit on appeal.

At the time of filing, the petitioner submitted a declaration, dated May 1, 2007. In her declaration, the petitioner claimed that she met her future husband, J-G-, on April 3, 2004, after she was hired by his daughter to clean his apartment once a week. She said they would talk regularly when she would clean, and their "connection grew"; after a few months, J-G- asked the petitioner to move in with him and be his girlfriend; she continued to clean for him and keep him company every weekend for over a year and they enjoyed each other's company. The petitioner claimed that during this period, J-G- was jealous and would obsessively call her or others looking for her; she also claimed that they had a good time together on his birthday; they would cook together and watch television, and she was attracted to him. She claimed that on the day they married, June 3, 2005, she moved in with him; and she stopped working on June 28, 2005 to please him. She then described the problems in her marriage, including that J-G- would not give her a key to the apartment and constantly accused her of being with other men; objected when she insisted on returning to work on weekends in November 2005; and did not provide any money for their groceries; J-G- became increasingly angry with her, was a heavy drinker and would keep her up at night because he could not sleep. She also described one time when J-G- threatened her with a knife and another time when he put his hands around her throat and threatened her; she also claimed that he was rude to her and called her names and asked her to leave the house on several occasions and would cause her to wait outside for hours if he was not home because she did not have a key. She stated that once, around May 18, 2006, he was gone for several days and she had to stay with her employer and a neighbor, and finally spend three nights in the garage; and she decided to pack her things and leave her husband. As she had no place to stay, she went to the Salvadoran Association of Los Angeles (ASOSAL), where she was referred to Catholic Charities and their Good Shepherd Center shelter.

Other documents submitted by the petitioner at the time of filing were copies of two photographs of her with J-G-; a letter from her attorney, [REDACTED] dated May 25, 2006, referring the petitioner to Catholic Charities of Los Angeles' Good Shepherd Center Women's Village, noting that the jealousy and possessive behavior of the petitioner's husband prevented her from leading a normal life; an affidavit from [REDACTED] dated May 1, 2007, stating that she met the petitioner at the Salvadoran Association of Los Angeles towards the end of May 2006, and noting that the petitioner, who appeared homeless, explained how she had been abused by her husband; and an affidavit from [REDACTED]'s legal assistant, dated January 4, 2007, stating that she met the petitioner at her office and the petitioner has provided consistent and credible accounts of her life with her husband.

In response to the RFE, the petitioner submitted a note from [REDACTED] a former neighbor, who stated that the petitioner lived at [REDACTED] from July 2005 to May 2006; and three additional affidavits: (1) [REDACTED] stated that she met the petitioner in 2004 when they worked together as caretakers for an elderly woman; she never met J-G- but knew that the petitioner was happy when she married him and that later the petitioner said he mistreated her; once she saw a bruise on the petitioner's neck and the petitioner said her husband had taken her

by the neck in anger; she added that she knew that the petitioner lived with her husband until approximately 2006 because they were both still working together; (2) [REDACTED] stated that she met the petitioner in November 2005 when she began caring for [REDACTED]'s mother on weekends; she knows that the petitioner lived with J-G- until May 2006; and that on one occasion the petitioner told her that she was devastated because her husband had threatened her with a knife and later the petitioner told her she had separated from her husband; she also said that on May 22 and 26, 2006, the petitioner stayed at her house because the petitioner did not have a key to her apartment and she had been locked out and forced to sleep in the garage; and (3) [REDACTED] the director of ASOSAL, verified that the petitioner had sought help from the agency and had explained that her husband was very rude to her and treated her very badly.

On appeal, counsel submits a brief and one additional affidavit, from [REDACTED], who claims to have known the petitioner since the 1970s in El Salvador; she confirms that the petitioner married J-G-, though she did not attend the wedding; claims that he called her several times looking for the petitioner after they were married and accused the petitioner of having affairs with other men; and that the petitioner explained on several occasions how her husband was jealous and mistreated her, including asking her to leave their apartment, locking her out and threatening her with a knife.

As will be discussed, the AAO concurs with the findings of the director that the evidence is insufficient to establish the petitioner's eligibility.

Evidentiary Standard

Section 204(a)(1)(J) of the Act requires that U.S. Citizenship and Immigration Services (USCIS) "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of" USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claims, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i).

Residence

On her I-360 Petition, the petitioner indicated that she resided with her spouse from June 2005 to May 2006 and last resided with him at [REDACTED] in La Habra, California. She provided a statement from her neighbor confirming that she lived there at that time, but not

mentioning whether J-G- lived there. There is no other evidence in the record, other than her marriage certificate, that either the petitioner or her husband resided at that address; and no evidence in the record that the couple resided together at any time. The individuals who submitted declarations in support of the petitioner's claim base their statements on information provided by the petitioner; not one of the statements submitted indicates firsthand knowledge of the petitioner's or her husband's address at any time.

As noted above, there are various documents that may be submitted as evidence of joint residency, including employment records, utility receipts, school records, hospital or medical records, deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency. 8 C.F.R. § 204.2(c)(2)(iii). In this case, the petitioner claims that she and J-G- lived together for a year after they were married. Yet, not one credible document of the type suggested in the regulation has been submitted as evidence of joint residence.

While the petitioner is not required to have lived with her husband for any specific amount of time, the lack of relevant information provided in supporting affidavits, and the failure to provide probative documentary evidence detract from the credibility of her claim. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with her spouse as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The petitioner provides a detailed statement describing her husband's behavior, including two incidents where he threatened her with physical violence, once with a knife and once by grabbing her around the neck, choking the petitioner and leaving a bruise. These incidents, as well as other actions against the petitioner, including forbidding her to work, not providing living expenses, locking the petitioner out of their home and accusing her of having affairs, were reported by the petitioner and repeated in various degrees of detail in the affidavits submitted in support of her claim. All of the affiants explained that the petitioner had described her problems to them; one of them noticed a bruise on her neck; one received calls from J-G- when he was looking for the petitioner and during which he accused the petitioner of having affairs. None claims to have witnessed acts or threats of violence or the other behavior described by the petitioner; although two indicate that the petitioner stayed overnight with them when she claimed to have been locked out by her husband.

As noted above, 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; 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. 8 C.F.R. § 204.2(c)(2)(iv). In this case, the only relevant document submitted is the letter from [REDACTED], the director of ASOSAL, who verified that the petitioner had sought help from the agency and that the petitioner had explained that her husband was very rude to her and treated her

very badly. However, other than addressing the need for shelter, there is no indication that there was any follow up or assessment regarding any abuse the petitioner may have suffered at the hands of her husband.

The petitioner has described violent acts against her by her husband during her marriage, and she submitted affidavits from friends confirming her claims but based solely on information provided by the petitioner; no relevant document of the type suggested in the regulation has been submitted as evidence of abuse. While the petitioner is not required to submit primary evidence, and U.S. Citizenship and Immigration Services (USCIS) will consider all 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 USCIS. 8 C.F.R. § 204.2(c)(2)(i).

In this case, we do not find the petitioner's evidence sufficient to meet her burden of proof. The lack of relevant information in supporting affidavits based on personal knowledge, and the failure to provide probative documentary evidence detract from the credibility of the petitioner's claim. Considered in the aggregate, the relevant evidence fails to establish that the petitioner was battered or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

Evidence of a good faith marriage includes proof that one spouse has been listed as the other's spouse on insurance policies, income tax forms, or bank accounts; evidence regarding a wedding ceremony, shared residence and experiences and affidavits of persons with personal knowledge of the relationship. 8 C.F.R. § 204.2(c)(2)(vii). The record in this case fails to include any such evidence.

Other than the affidavits described above, including those from the petitioner, the record lacks any evidence that the petitioner entered into her marriage in good faith. While the petitioner and others describe an abusive relationship in detail, neither she nor others who claim to have known her before her marriage provide any credible details regarding her feelings for her husband before her marriage or her plans for a future with her husband. She describes only how she met J-G and how they spent time together on weekends for the year she worked for him, claiming that they enjoyed each other's company. She provided no further details of her own, and no information from others or additional evidence.

The record is devoid of information about why the couple married or what plans they had for a future together that would indicate a good faith marriage. Similar to the petitioner's own statements, friends failed to provide relevant details about the feelings or plans or activities of the couple during their courtship or marriage, but rather focus on the abusive relationship as described to them by the petitioner.

Accordingly, the petitioner has failed to demonstrate that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

For the reasons noted above, the AAO concurs with the director's decision that the petitioner has failed to establish by a preponderance of the evidence that she resided with her U.S. citizen spouse, was battered or subjected to extreme cruelty by her U.S. citizen spouse and that she entered into her marriage in good faith. Consequently, she is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The petition will be denied for the above stated reasons, with each considered as an independent and alternative ground 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.