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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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FILE:

EAC 06 173 50169

Office: VERMONT SERVICE CENTER

Date: FEB 11 2009

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:

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. Grisson, 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 immigrant classification under 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 petitioner did not establish that she had a qualifying relationship with a U.S. citizen, that she was eligible for immediate relative classification based on such a relationship, that she entered into a qualifying relationship in good faith, that she was battered or subjected to extreme cruelty by the U.S. citizen, that she resided with the U.S. citizen and that she is a person of good moral character.

On appeal, counsel submits an additional letter.

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

(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.

(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.

* * *

(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 citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. 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.

(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.

* * *

(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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Bangladesh who entered the United States (U.S.) on January 8, 2000 as a nonimmigrant visitor (B-2). The petitioner subsequently went to Canada where she was ordered deported to the U.S. on June 1, 2004. That same date, the petitioner was issued with a Notice to Appear (NTA) for removal proceedings charging her as removable under section 237(a)(1)(B) of the Act as an alien who remained in the U.S. beyond her period of authorized stay. On July 27, 2004, the

petitioner married A-A-¹, a U.S. citizen, in Virginia. The petitioner remains in proceedings before the Arlington, Virginia Immigration Court and her next hearing is scheduled for March 19, 2009.

On May 17, 2006, the petitioner filed this Form I-360. On November 6, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of a qualifying relationship with a U.S. citizen, eligibility for immediate relative classification based on such a relationship, entry into such a relationship in good faith, residence with the U.S. citizen, battery or extreme cruelty and good moral character. The petitioner, through counsel, timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. On October 11, 2007, the director denied the petition on the grounds cited in the NOID.

On appeal, counsel reasserts the petitioner's eligibility and submits one additional letter. Counsel's statement and the additional evidence submitted on appeal fail to overcome the grounds for denial and we affirm the director's decision. Beyond the decision of the director, the record shows that section 204(g) of the Act also warrants denial of this petition.

Qualifying Relationship

The director determined that the petitioner had not established a qualifying relationship with A-A- because she did not submit sufficient evidence of the legal termination of her prior marriage. The record indicates that A-A- was the petitioner's fourth spouse. The record shows that the petitioner's first marriage in Bangladesh ended in divorce in 1992. In an undated statement submitted with the petitioner's prior Form I-914, Application for T Nonimmigrant Status, the petitioner stated that she married her second husband, M-C-² in a religious ceremony conducted over the telephone in December 1999. In her December 21, 2006 letter submitted in response to the NOID, the petitioner stated:

In Bangladesh as long as there are three witnesses including [REDACTED] father and two local people the marriage is considered legal. Therefore, there is no document that proofs [sic] their marriage. When I entered to the US and met [M-C-], he refused to register their marriage. Therefore, I do not have a proof of legal termination with [M-C-].

Counsel submits no evidence regarding the relevant laws regarding the recognition of marriages and divorces in Bangladesh. Even if the petitioner had submitted evidence that her marriage to M-C- was never recognized as valid in Bangladesh or that the marriage was legally terminated, she has still failed to establish the validity of her marriage to A-A- because she has not submitted evidence of the legal termination of her third marriage.

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

The petitioner submitted a copy of a Petition for Regular Dissolution of Marriage,³ Motion for Entry of Default and related court filings in her divorce case against her third husband, R-H-.⁴ The court documents state that the petitioner and R-H- were married on April 30, 2001 in Florida. The petitioner did not, however, submit any court order granting her petition or motion or any other documentation of the actual termination of her marriage to R-H-. 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. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires proof of the termination of the self-petitioner's prior marriages. The petitioner has not submitted sufficient proof of the legal termination of her prior marriages to her second and third husbands. Without such evidence, the petitioner has not established the validity of her marriage to A-A-. Accordingly, the petitioner has not demonstrated that she had a qualifying relationship with A-A- pursuant to section 204(a)(1)(A)(iii)(II) of the Act.

Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive U.S. citizen. As discussed in the preceding section, the petitioner has not demonstrated that she had a qualifying relationship with A-A-. She consequently has also failed to establish that she was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with A-A- in good faith:

- The petitioner's December 21, 2006 statement submitted in response to the NOID;
- November 10, 2004 letter from [REDACTED] stating that A-A- had suffered a stroke and written in support of the petitioner's request that she be allowed to stay with him during his recovery; and
- November 23, 2007 letter from the friend of [REDACTED], submitted on appeal.

The petitioner states that she met A-A- in New York, that he was nice to her and gave her a bottle of perfume and flowers. The petitioner reports that A-A- filed a fiancée petition for her and they were married after the petition was approved. The petitioner does not further describe how she met A-A-, their courtship, wedding and shared residence or experiences, apart from the alleged abuse.

⁴ Name withheld to protect individual's identity.

states that A-A- went to Canada to meet the petitioner. The petitioner does not explain the discrepancy between Mr. Miraminy's statement that the former couple met in Canada and her own assertion that they met in New York. further states that he spoke to the petitioner over the telephone when A-A- asked him for his opinion of the petitioner, but he does not discuss the content of their conversation. adds that he visited the petitioner and A-A- after their marriage and took the couple shopping on many occasions. does not describe any such visits or outings in any detail or offer any insight into the petitioner's intentions in marrying A-A-. Dr. letter indicates that the petitioner once sought permission to remain in the U.S. to care for A-A-, but provides no further, relevant information.

The petitioner submitted no further evidence of her good-faith entry into marriage with A-A- of the types listed in the NOID and the regulation at 8 C.F.R. § 204.2(c)(2)(vii). 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. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

The relevant evidence fails to demonstrate that the petitioner entered into marriage with A-A- in good faith. Apart from the petitioner's failure to meet her burden of proof in regards to her good faith, the petitioner has also failed to establish that she had a valid marriage or qualifying relationship with A-A-, as discussed above. Accordingly, the petitioner has not demonstrated that she entered or intended to enter into marriage with A-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Beyond the director's decision, section 204(g) of the Act also bars the approval of this petition. The record shows that the petitioner married A-A- while removal proceedings were pending against her. Consequently, she is subject to section 204(g) of the Act, 8 U.S.C. § 1154(g), which states:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after her marriage. The record also does not indicate that the petitioner has satisfied the bona fide marriage exception to section 204(g) of the Act, pursuant to section 245(e) of the Act, 8 U.S.C. § 1255(e), which states:

Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”) To demonstrate good faith entry into the qualifying relationship for a self-petition under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. 8 C.F.R. § 204.2(c)(2)(i); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to

be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As the petitioner has failed to establish that she entered into marriage with A-A- in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also failed to demonstrate that she qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition.

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). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Joint Residence

On the Form I-360, the petitioner stated that she lived with A-A- from July 2004 to June 2005 in an apartment on [REDACTED] in Annandale, Virginia. In her December 21, 2006 statement, the petitioner reiterates that she lived with A-A- at that address “for last least a year in total [sic],” but she does not further describe their joint residence in any detail, apart from the alleged abuse.

[REDACTED] briefly states that he visited the former couple at their “Annandale apartment” and took them shopping on unspecified occasions, but he does not state the former couple’s marital address or describe any of his visits to their residence in detail. The petitioner also submitted a letter from the Fairfax County, Virginia Police Department which summarizes a report made on May 2, 2006 by the petitioner of a “domestic dispute” that occurred on January 22, 2006. The report lists the Americana Drive address, but does not identify A-A- as residing there.

The petitioner submitted no other evidence of the types listed in the NOID or the regulation at 8 C.F.R. § 204.2(c)(2)(iii). 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. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

The petitioner has failed to demonstrate that she resided with A-A-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. Even if the petitioner established that she resided with A-A-, she

has not shown that their marriage was valid. Accordingly, she has not demonstrated that she resided with A-A- as her “spouse” pursuant to section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner’s claim that A-A- battered and subjected her to extreme cruelty:

- The petitioner’s December 21, 2006 statement submitted in response to the NOID;
- A copy of a hotel bill for the petitioner’s stay from June 23 to July 5, 2005; and
- A copy of the affidavit of [REDACTED], of the Center for Multicultural Human Services in Virginia, previously submitted with the petitioner’s prior Form I-914 application.

The petitioner states that four months after their marriage, A-A- began abusing her by yelling and demanding that she work although she did not have authorization to do so. The petitioner states that he kicked her daily and that she left him after he threatened to kill her. The petitioner reports that she called AYUDA and they let her stay in a hotel.

The hotel bill is addressed to the petitioner in care of AYUDA, but the petitioner submitted no letter or other documentation from AYUDA discussing her situation and need for staying in the hotel. Ms. [REDACTED]’s letter also fails to support the petitioner’s claims. [REDACTED] diagnoses the petitioner with Post Traumatic Stress Disorder due to the “abuse inflicted on her by her trafficker.” Although she does not identify the petitioner’s abuser by name, Ms. Antoine refers to incidents occurring shortly after the petitioner’s arrival in the U.S. As the record indicates that the petitioner entered the U.S. to live with M-C-, her second husband, [REDACTED] testimony appears to relate only to the petitioner’s second marriage and not her relationship with A-A-.

As previously discussed, the letter from the Fairfax County, Virginia Police Department states that the petitioner reported a “domestic dispute” on May 2, 2006, nearly four months after the incident occurred on January 22, 2006. The letter does not identify A-A- as the perpetrator of the dispute or indicate that the petitioner was injured or harmed by A-A- during the incident.

The relevant evidence fails to demonstrate that A-A- subjected the petitioner to battery or extreme cruelty. Even if the petitioner demonstrated the requisite abuse, she has not established the validity of her marriage to A-A-. Accordingly, the petitioner has failed to establish that A-A- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The petitioner submitted no evidence of her good moral character initially, in response to the NOID or on appeal. The petitioner has not submitted an affidavit attesting to her good moral character

accompanied by local police clearances or state criminal background checks as required by the regulation at 8 C.F.R. § 204.2(c)(2)(v). The petitioner has not explained that such clearances or checks are unavailable and submitted other evidence of her good moral character, as permitted by the regulation at 8 C.F.R. § 204.2(c)(2)(v). On appeal, counsel asserts that the petitioner is a person of good character, but submits none of the required evidence. The petitioner has 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.

The petitioner has not demonstrated that she had a qualifying spousal relationship with a U.S. citizen, was eligible for immediate relative classification based on such a relationship, entered into such a relationship in good faith, resided with the U.S. citizen, was subjected to battery or extreme cruelty by the U.S. citizen during the qualifying relationship and that she is a person of good moral character. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied. Section 204(g) of the Act further bars the approval of this petition.

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.