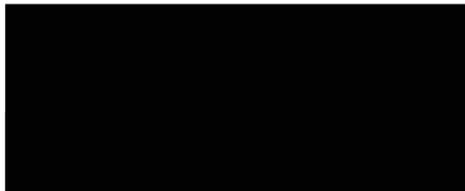


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B9

FILE:  Office: VERMONT SERVICE CENTER Date: **AUG 06 2010**

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.



of business and general
management and the
various departments of the
company.

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

The petitioner seeks immigrant classification 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 an alien battered or subjected to extreme cruelty by a United States citizen.

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).

On March 9, 2009, the director denied the petition, determining that the petitioner had not established that she had entered into the marriage in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, and resubmits previously submitted statements that on appeal show that the statements were notarized. Upon review we concur with the director's determination that the petitioner has not established that she entered into her marriage in good faith. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii) which was in effect when the petition was filed. The AAO observes that in addition to the petitioner's failure to establish that she entered into the marriage in good faith, the current record does not establish: that the petitioner has a qualifying relationship with a United States citizen spouse or lawful permanent resident; that she resided with her claimed abusive spouse; that she was subjected to battery or extreme cruelty perpetrated by her spouse; and that she is a person of good moral character.

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 explained 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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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(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 explained 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.

* * *

(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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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 matter provides the following pertinent facts and procedural history. The petitioner's birth certificate and Kenyan passport show that she is a national of Kenya born in Tanzania. The petitioner entered the United States on December 13, 1999 as a B-1/B-2 visitor. On May 9, 2001 she married H-L,¹ in the State of Tennessee. On July 23, 2003, the petitioner filed a Form I-589, Application for Asylum and for Withholding of Removal, listing her address as on [REDACTED]. In a letter dated August 21, 2003, the petitioner provided a change of address to United States Citizenship and Immigration Services (USCIS) indicating that her address had been changed to an address on [REDACTED]. On October 6, 2003, the petitioner's asylum application was denied and she was placed in immigration proceedings.² On August 24, 2004, H-L filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On January 12, 2007, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner stated on the Form I-360 that she had resided with H-L- from April 2000 to September 2001 and that she had last resided with H-L- on [REDACTED] from May 2001 to August 2004.

¹ Name withheld to protect the individual's identity.

² The initial Notice to Appear (NTA) in immigration court noted that the petitioner had indicated on her Form I-589 that she had last entered the United States on May 15, 2003. Subsequently, an amended NTA was issued charging that the petitioner was admitted into the United States on or about December 13, 1999 as a B-2 nonimmigrant visitor and had overstayed her authorized stay. The record includes information that the petitioner explained that she had not left the United States since she first entered in 1999 and did not know why her friend who filled out the Form I-589 had stated differently.

Good Faith

Regarding the issue of the petitioner's good faith in entering into the marriage, the AAO observes that the key factor in this determination is whether the petitioner intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter, the petitioner initially provided several general statements, dated May 3, 2006. The petitioner declared: that she entered into the marriage in good faith and not to circumvent immigration laws; that she met her ex-husband, H-L-, at his friend's party in May 2000; that they exchanged numerous telephone calls and started seeing each other and after a few months they started dating; and that after about a year they decided to get married. The petitioner noted that she loved H-L- and thought he loved her and that they would have a lasting and understanding relationship. The record also included an affidavit dated May 10, 2006, signed by [REDACTED] who declared: that she knew the petitioner married H-L- in good faith and not to circumvent immigration laws; that she knew that they lived together as husband and wife; and that she used to visit them once in a while in their home.

The initial record also included photographs allegedly of the couple. Several photographs depict H-L- and a woman with one of photographs labeled "H-L- and the petitioner's marriage." The record also included photographs labeled "the petitioner and H-L- at funeral of H-L-'s mother and uncle, July 2001." Two separate photographs bear this label; however, the woman standing next to H-L- in each of the photographs is not the same person.

In response to the director's request for further evidence (RFE) the petitioner provided unsigned statements from [REDACTED] Counsel for the petitioner provided these same statements with signatures and notarizations on appeal. In [REDACTED] affidavit she declared that the petitioner was her aunt who had lived with her family from May 2000 to September 2001 and that after the petitioner's marriage to H-L-, H-L- also moved in with them. In [REDACTED] affidavit, she confirmed: that she had known the petitioner for over eight years; that she and the petitioner met because they attended the same church; and that she met the petitioner's husband, H-L-, the same way. In [REDACTED] affidavit, she declared that she knew the petitioner and H-L- as wife and husband and that she used to visit them and they would to go eat out together. In the affidavit of [REDACTED], she indicated that she knew the petitioner and H-L- as a married couple and that she used to go to church with the petitioner. The record also included a residential lease dated April 29, 2000 for premises on [REDACTED] with a term beginning May 1, 2000 and ending on May 1, 2001 which is signed by the petitioner and H-L- and allows the stay of a third person, L-A-J-³, on the premises.

As observed above, the director denied the petition on March 9, 2009. On appeal, counsel asserts that the notarized affidavits, the lease agreement, the petitioner's detailed story of the abuse, and the photographs satisfy the burden of proving the bona fides of her marriage and that it was valid at its inception. Counsel contends that the couple did not have extensive marriage documents and that the petitioner found it difficult to acquire the types of documents one would normally have to reflect a valid

³ Name withheld to protect the individual's identity.

relationship.

Upon review of the petitioner's statements, the AAO finds that the petitioner provides no specific information regarding her intent in marrying her spouse other than to state that she did not marry him to circumvent the immigration laws. The AAO acknowledges that the petitioner's marriage certificate and Form I-130 filed by her husband confirm their marital relationship, but these documents do not establish the petitioner's own good faith in entering into the marriage. The record lacks any detail that would assist in demonstrating the petitioner's intent in entering into the marriage. For example, the petitioner marries her spouse in Tennessee although professing to live in Georgia but does not provide any information or detail regarding the reasoning for the marriage in Tennessee. The petitioner does not describe the circumstances and events surrounding her introduction to, dating, and eventually marrying H-L-. The petitioner's statements are void of any probative testimony regarding her good faith in entering into the marriage.

The AAO has reviewed the affidavits provided by the petitioner's friends and finds that the affiants provide no probative details regarding their observations of the petitioner's allegedly good faith entry into marriage. They do not describe any particular incidents where they witnessed the alleged bona fides of the couple's marital relationship. Other than indicating that they knew the petitioner and her husband and had visited the couple, the affiants provide no probative details regarding their observations of the petitioner's allegedly good faith entry into marriage with her husband. It is the generality and bareness of detail included in the affidavits that fail to establish the affiants' actual knowledge of the petitioner's intent in marrying H-L-.

The photographs show that the petitioner and her husband were together on their wedding day. The photographs allegedly showing that the petitioner and H-L- attended a funeral together contain no probative value as they depict different individuals as H-L-'s spouse. Similarly, the lease provided is for a single family home that is not the claimed marital home and is for a term ending prior to the petitioner and H-L-'s marriage. These documents raise questions regarding the veracity of the petitioner's testimony and do not establish that the petitioner entered into the marriage in good faith.

The AAO finds that while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf fail to support a finding that she entered into this marriage in good faith. The AAO finds the information in the record insufficient to demonstrate that the couple commingled assets and otherwise intended to establish a life together. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Residence

The AAO also finds that the petitioner has not submitted probative evidence establishing that she and H-L- resided together. The AAO notes that on the Form I-360, the petitioner indicated that she resided with H-L- from April 2000 to September 2001 and that she had last resided with H-L- on [REDACTED]

██████████ from May 2001 to August 2004. These statements confuse the petitioner's claim. As observed above, the lease entered into with H-L- is for a time period beginning May 1, 2000 and ending May 1, 2001 but is not for the Delk Road premises. In addition, the petitioner claims that she first met H-L- in May of 2000 at a friend's party, again a time period that is inconsistent with the information on the residential lease. Further, the record includes a photocopy of the petitioner's Form I-94 departure record indicating that the petitioner's B-2 status is valid from December 13, 2000 to November 30, 2001 and lists the petitioner's address as on ██████████. Finally, the petitioner acknowledged that she filed a Form I-589 and the Form I-589 in the record lists the petitioner's address as on ██████████. The record also included a change of address notification dated August 21, 2003, that shows that the petitioner's address had been changed to an address on ██████████ effective August 21, 2003. The record does not include any documentary evidence establishing that the petitioner and H-L- resided together and the petitioner's testimonial representations to USCIS provide inconsistent information regarding her residence. Although the AAO has also reviewed the affidavits submitted by the petitioner's family and friends, these documents also lack probative value because of their lack of detail and specificity regarding the petitioner's actual address and also because they conflict with other information in the record. The record does not establish that the petitioner and H-L- resided together.

Abuse

In support of the petition, the petitioner submitted her personal statements. In her May 3, 2006 statement the petitioner declared generally: that her husband pressured her to have a baby although she had told him she could not have children; that after a few months of marriage he started to change and began to isolate her from his family and friends; that after their marriage he told her he had a child with another woman; that he would stay days and nights away from her without informing her; that he drank, smoked, and verbally abused her; that he called her derogatory names; that he refused to eat the food she prepared; and that he demanded money for alcohol and if she refused he would shove furniture, threaten her with deportation and tell her not to use his name anymore. The petitioner noted that finally he disappeared completely and that she has not seen or heard from him since August 2004.

In the petitioner's March 20, 2008 statement, she added: that after September 2001, H-L- spent most of the time outside the marital home; that he called her specific derogatory names; that he demanded money; that when they rented the basement from her family members, H-L- would humiliate her in their presence; that one day he shoved and slapped her and her dental filling came out; that he would not socialize with her family; and that she ceased going to church because she was too ashamed. The petitioner also noted that she did not dare inform the authorities because even if she got a restraining order she still feared she would end up dead or maimed.

The record on appeal includes the affidavits of a family member and friends. In ██████████ affidavit she noted that when H-L- and the petitioner lived in her home, she would hear H-L- shouting and cursing at the petitioner, and that she on one occasion she saw H-L- slap the petitioner and her dental filling came out. ██████████ and ██████████ reported that the petitioner

stopped going to church and when they got in touch with the petitioner, the petitioner told them H-L- had abandoned her. [REDACTED] declared that the petitioner told her "what was happening" and she encouraged the petitioner to seek help but that the petitioner was afraid because her husband had threatened her.

The record further included a January 15, 2006 evaluation prepared by [REDACTED] based on a January 6, 2006 interview of unspecified length. [REDACTED] indicated that the petitioner reported that H-L- called her names, that he demanded money for alcohol, that he frequently threatened the petitioner with deportation, and that he finally abandoned her. [REDACTED] indicated that H-L- had abused the petitioner physically, emotionally, sexually, and financially and also exhibited covert aggression by sneaking off, keeping his whereabouts hidden, refusing to answer the petitioner's phone calls, and eventually abandoning the petitioner. [REDACTED] opined that the petitioner suffered from Major Depressive Disorder due to the continual abuse she suffered from H-L- and continues to have reactive depression which is frequently associated with domestic abuse.

Upon review of the petitioner's statements, the AAO does not find sufficient evidence to establish that the petitioner has been subjected to battery or extreme cruelty by her United States citizen spouse. The petitioner initially provided general testimony regarding H-L-'s behavior of drinking, calling her names, verbally abusing her, demanding money and threatening her with deportation. Although the petitioner indicated that H-L- shoved furniture, she does not indicate in detail that she suffered any form of battery. In her second statement she adds that one day H-L- shoved and slapped her and her dental filling came out. Although she also provided a statement from a relative who alleged saw the incident, as observed above, the petitioner and her husband's residence at this location is in question. Moreover, the lack of detail regarding the incident, both from the petitioner and her claimed witness, including the timing of the incident, the circumstances of the incident, the treatment received for the incident, if any, fails to establish that the petitioner was the victim of the claimed battery. The AAO also finds that this addition of a claim of battery, in response to the director's RFE, is inconsistent with the petitioner's initial testimony that fails to describe incidents of battery.

The AAO has also reviewed the petitioner's statements regarding her claim that she suffered verbal abuse and threats that she would be deported. Again, the petitioner provides only general statements and does not provide detail regarding the timing of the threats or verbal abuse, how many times she was subjected to such claimed abuse, or other details that would assist in understanding the circumstances of her relationship with H-L-. Similarly, the affiants who provided statements on the petitioner's behalf speak only generally of verbal abuse, threats, or of H-L-'s abandonment of the petitioner.

Upon review of the evaluation prepared by [REDACTED] the AAO notes that [REDACTED] interviewed the petitioner almost five years after the petitioner indicated that H-L- resided mostly outside the marital home. The AAO finds that [REDACTED] evaluation fails to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering her findings speculative and diminishing the value of her evaluation. The AAO further observes that [REDACTED] does not offer examples and analysis of the causal relationship of specific abuse that is

consistently detailed to her opinion that the petitioner suffers from major depressive disorder. The AAO does not find [REDACTED] evaluation probative in establishing that the petitioner was subjected to battery or extreme cruelty.

Upon review, the petitioner has not provided any probative credible testimony regarding her spouse's behavior which rises 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. The record does not include probative testimony that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that H-L-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. When evaluating the record as a whole, the AAO finds the record lacks information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The AAO does not accept generic information with little chronological timeline to establish eligibility for this benefit. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that she has been subjected to battery or extreme cruelty perpetrated by her spouse in order to meet her burden of proof. In this matter, she has failed to do so.

Good Moral Character

The record in this matter contains a local police clearance dated as of May 10, 2006 from the City of Chamblee, Georgia and a local police clearance from the sheriff's office in Cobb County, Georgia dated June 4, 2004. Although both clearances indicate that the petitioner does not have a criminal record, these clearances are out of date. The AAO acknowledges that the petitioner has provided her own personal statement and the affidavits of friends attesting to her good moral character; however, as the record includes a significant number of inconsistencies including the petitioner's filing of a Form I-589 in California, the AAO finds the petitioner's statement and those of her friends insufficient without updated local police clearances for all locations she in which she resided or adequate explanations why such police clearances are unavailable.

Qualifying Relationship

The petitioner in this matter indicated on the Form I-589 filed July 21, 2003 that she was not married. The petitioner also refers to her claimed abusive spouse, H-L-, as her ex-husband in an affidavit dated May 3, 2006. Upon remand, the director should inquire further regarding the petitioner's current marital status.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) in effect when the petition was filed. On remand, the director should address all grounds for the intended denial of the petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely