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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

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FILE:

Office: VERMONT SERVICE CENTER

Date:

JAN 07 2011

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 \$630. 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reconsider. The motion will be granted. The previous decision of the AAO, dated May 25, 2010, will be affirmed and the petition will be denied.

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.

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:

(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 filed under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

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

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated May 25, 2010, only certain facts will be repeated as necessary here. In this case, the petitioner is a native of Liberia and a citizen of Canada. On July 10, 2003, the petitioner married her

first husband, G-J-¹, her divorce from whom was on October 5, 2004, and finalized on January 4, 2005. On January 28, 2005, the petitioner married her second husband, A-R-², the claimed abusive spouse. On December 24, 2007, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, and indicated that she resided with A-R- from December 2004 to March 2005. The director denied the petition on October 23, 2009, finding that the petitioner failed to establish that she was eligible for immigrant classification under sections 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act, that her husband subjected her to battery or extreme cruelty during their marriage, and that she married him in good faith. In its May 25, 2010 decision on appeal, the AAO withdrew the director's finding that the petitioner failed to establish that she was eligible for immigrant classification under sections 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act. The AAO, however, concurred with the director's determination that the petitioner failed to establish that her husband subjected her to battery or extreme cruelty during their marriage and that she married him in good faith.

On motion, the petitioner states, in part, that she suffered serious abuses from her spouse and that she married her spouse in good faith. As supporting documentation, she submits a personal statement dated June 21, 2010.

Battery or Extreme Cruelty

In its May 25, 2010 decision, the AAO found the evidence submitted by the petitioner and on the petitioner's behalf insufficient to establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. The AAO found that the petitioner provided only general statements regarding the breakdown of her marriage and eventual abandonment by her spouse, and that the petitioner's testimony over the course of the petition was inconsistent and undermined her credibility. The AAO also found that the affidavits submitted on the petitioner's behalf contained the same general information and were lacking in detail regarding the circumstances of any claimed abuse. The AAO also found that, in her evaluation, Dr. [REDACTED] did not provide examples of the causal relationship of specific abuse that was consistently detailed to the petitioner's post traumatic stress disorder, and she also did not recommend that the petitioner seek medical help for her stress disorder. The AAO concluded that the relevant evidence failed to demonstrate that the petitioner was subjected to battery or extreme cruelty by her spouse.

On motion, the petitioner primarily reiterates the information from her prior three statements dated December 19, 2007, August 20, 2009, and November 21, 2009, respectively, all of which were discussed in the AAO's May 25, 2010 decision and need not be repeated in detail here. The petitioner again asserts that she reported to Dr. [REDACTED] that she had not been physically or sexually abused by her spouse because she did not understand Dr. [REDACTED] questions. As found by the AAO in its May 25, 2010 decision, however, the petitioner's explanation is unsatisfactory because Dr. [REDACTED] noted in her evaluation that the petitioner was forthcoming and reliably answered the questions over a six-hour period. As stated by the AAO in its May 25, 2010 decision, the

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

petitioner's inconsistent testimony undermines the credibility of her testimony. The petitioner also states on motion that she submitted affidavits from various individuals who witnessed or were told of her husband's abusive tendencies toward her. Again, the AAO found that these affiants did not declare that they had witnessed any abuse but rather were told of the circumstances of the petitioner's marriage, and that the affidavits provided only general information and were lacking in detail of the circumstances of any claimed abuse.

The affidavit from Dr. [REDACTED] is also adequately discussed by the AAO in its May 25, 2010 decision and need not be repeated in detail here. The AAO found that Dr. [REDACTED] did not provide examples of the causal relationship of specific abuse that was consistently detailed to the petitioner's post traumatic stress disorder, and did not recommend that the petitioner seek medical help for her stress disorder. The petitioner, however, does not address these issues in her June 21, 2010 statement submitted on motion.

As stated by the AAO, the actions by the petitioner's husband do not rise 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 claims made by the petitioner and on her behalf fail to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty, that her husband'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. As discussed above, the petitioner has not resolved the inconsistencies and deficiencies in the record that diminish the evidentiary value of her statements. The petitioner's statements and the statements on her behalf do not establish that her husband subjected her to psychological, sexual abuse or exploitation, or that his actions were part of an overall pattern of violence. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In its May 25, 2010 decision, the AAO found the record contains insufficient evidence to support a finding that the petitioner married A-R- in good faith. Again, the petitioner's evidence related to good-faith marriage, including her three statements dated December 19, 2007, August 20, 2009, and November 21, 2009, respectively, and the affidavits submitted on her behalf, is adequately discussed by the AAO in its May 25, 2010 decision and need not be repeated in detail here. On motion, the petitioner states, in part, that she and her spouse did not live together long enough to jointly own property and to open joint bank accounts. The petitioner also states on the I-290B form that the numerous supporting affidavits from friends and family members document the strong bond and emotional ties between herself and her spouse.

The AAO acknowledges the documentation, listed above, which was submitted by the petitioner as evidence of her entry into the marriage in good faith. The AAO also acknowledges the petitioner's assertion on motion that “[she] truly enter[ed] this marriage in good faith and with a lot of love for [her] husband . . .” As stated by the AAO in its May 25, 2010 decision, however, the statements and

affidavits provide only general information and do not provide probative, consistent details about the petitioner's initial relationship with her spouse. Accordingly, the petitioner has not established that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Upon review of totality of the evidence, the petitioner has not demonstrated that she was battered or subjected to extreme cruelty by her spouse during their marriage and that she entered into their marriage in good faith. Moreover, the unresolved inconsistencies and/or deficiencies, discussed herein and in the AAO's May 25, 2010 decision, significantly detract from the credibility of her claim. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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 previous decision of the AAO, dated May 25, 2010, will be affirmed and the petition will be denied.

ORDER: The decision of the AAO, dated May 25, 2010, is affirmed. The petition is denied.