



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 16 2013 Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: [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)

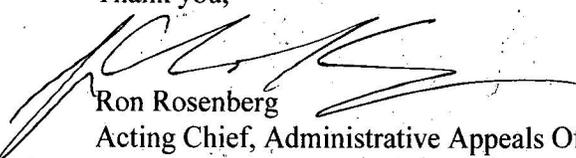
ON BEHALF OF PETITIONER:
[REDACTED]

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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center (the director), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain 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.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief and copies of previously submitted evidence.

Relevant Law and Regulations

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 further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

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

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner

... and must have taken place during the self-petitioner's marriage to the abuser.

* * *

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. . . . A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. . . .

* * *

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

Evidence for a spousal self-petition –

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

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of Kenya who entered the United States on September 8, 2003, as a nonimmigrant visitor. The petitioner married [REDACTED] a U.S. citizen, on November 26, 2007, in Massachusetts. The petitioner filed the instant Form I-360 on November 18, 2010. The director subsequently issued a request for additional evidence (RFE) of her husband's battery or extreme cruelty and the petitioner's good moral character. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite battery or extreme cruelty.

On appeal, counsel submits a brief in which he asserts that the petitioner has submitted sufficient credible evidence to support that the petitioner was battered and subject to extreme cruelty by her husband, and that the decision goes against Congressional intent.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. On appeal, the petitioner has failed to establish that she was subjected to battery or extreme cruelty by her husband during their marriage. Counsel's claims on appeal do not overcome the director's ground for denial. Furthermore, the director's finding that the petitioner established that she is a person of good moral character will be withdrawn. A full review of the record fails to demonstrate the petitioner's eligibility for the following reasons:

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty and counsel's assertions on appeal fail to overcome this ground for denial. In her first affidavit, the petitioner stated that her husband drank alcohol, pushed a plate of food she had prepared for him away, yelled at her and gave her dirty looks. The petitioner described an incident where her husband pushed past her and spit in her face after he told her he was having an affair. She stated that on one occasion in November 2009, her husband slapped her and put his hand on her neck but she started to scream and he quickly took his hands off her and ran out of the house. However, in her second affidavit, the petitioner stated that she used all the strength she had to get his hands off her neck but that her husband was too strong. The petitioner later discovered that her husband had children with another woman while they were married. The petitioner's mother's affidavits also indicate that the petitioner's husband had an extramarital affair, yelled at the petitioner, and that the petitioner told her that her husband once spit in her face and slapped and choked her during the November 2009 incident. The petitioner's statements and the relevant evidence do not indicate that her husband's

¹ Name withheld to protect individual's identity.

behavior involved psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

When considered in the aggregate, the relevant evidence also fails to establish that the petitioner's husband subjected her to battery during their marriage. The petitioner recounted that on one occasion her husband slapped her and another time he spit in her face. The petitioner's mother stated that the petitioner told her that her husband slapped her and spit in her face. Although the petitioner stated that she had seen Dr. [REDACTED] regularly for counseling, no documentation was provided to substantiate that claim. The medical documentation submitted shows that the petitioner's husband had mental health issues, but does not show that he subjected her to battery or extreme cruelty. Furthermore, contrary to counsel's assertion, the director did not make a specific finding as to the petitioner and her mother's credibility, but rather found that the testimonial evidence provided was insufficient to meet the petitioner's burden of proof. The petitioner and her mother's brief descriptions of battery are not sufficient as the petitioner's statements are inconsistent, both she and her mother's descriptions lack probative details and her mother attests that she "never saw any of the altercations."

On appeal, counsel contends that the petitioner submitted sufficient credible evidence below to substantiate his claims of abuse, and that the director's decision goes against Congressional intent and is an abuse of discretion. We find no such error. Counsel cites no provision of the statute or legislative history to demonstrate that the director's decision misapplied the law or violated Congressional intent to protect victims of domestic violence. While counsel asserts that the evidence submitted shows that the petitioner was abused, he fails to articulate how the relevant evidence demonstrates that any specific behaviors of the petitioner's husband constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Counsel also fails to address the above-noted deficiencies in the relevant evidence regarding the claimed battery and the contradiction in the petitioner's two affidavits regarding the November 2009 incident. Accordingly, the petitioner has not established that her husband 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

Beyond the decision of the director,² the record also fails to demonstrate that the petitioner is a person of good moral character. The petitioner has not provided any evidence of her good moral character. The petitioner failed to describe her good moral character in her affidavits, and failed to provide 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 three-year period immediately preceding the filing of the self-petition as required under 8 C.F.R.

² A 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).

§ 204.2(c)(2)(v). She also failed to provide an explanation of why said background checks were not provided. *Id.* As such, the petitioner has failed to demonstrate that she is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage. Beyond the director's decision, the petitioner also has not established that she is a person of good moral character. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.