

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **AUG 01 2014**

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

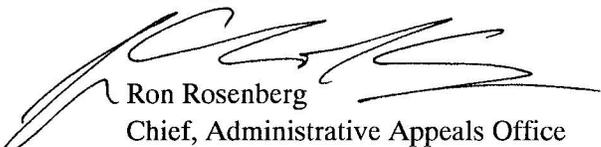
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (“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.

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 for failure to establish that the petitioner entered into the marriage with her spouse, a United States citizen, in good faith, and that he subjected her to battery or extreme cruelty during their marriage. On appeal, the petitioner, through counsel, submits a brief and supplemental evidence.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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 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)(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 or the self-petitioner's child, 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:

(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.

Facts and Procedural History

The petitioner, a citizen of the Philippines, entered the United States on October 2, 2007 as the nonimmigrant fiancée of J-D-¹, a United States citizen. On December 22, 2007, she married J-D- in Nevada. The petitioner filed the instant Form I-360 on December 2, 2011. The director subsequently issued Requests for Evidence (RFEs) of, among other things, the requisite battery or extreme

¹ Name withheld to protect the individual's identity.

cruelty and the petitioner's entry into the marriage in good faith. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's spouse did not subject her to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence submitted initially and in response to the RFE includes: two personal statements from the petitioner - one handwritten and the other emailed; a psychological evaluation; a shelter form; and letters from the petitioner's former sister-in-law and three friends. In her handwritten statement, the petitioner explained that after marrying, she and J-D- had three months of intimacy before he retreated to his computer for hours at a time, ignored her and moved out of the bedroom. The petitioner secured a part-time job and J-D- drove her to work each morning in exchange for \$50 weekly from her earnings. She recalled that J-D- did not keep his pantry stocked so she had to buy her own food, and on one occasion he said it was not his obligation to drive her to the grocery store. The petitioner explained that when they received an immigration interview notice, J-D- stated that he no longer wished to sponsor her but would provide a one-way airline ticket anywhere she wanted to go. Someone advised the petitioner to seek counseling from [REDACTED] shelter, which she recalled helped her decide to move forward with her life.

In her email statement, the petitioner added that J-D- was not interested in spending her first holidays in the United States together, and by late May 2008 there was a cold wall dividing them. She recounted that J-D- said he needed his "space," and spent significant time on the computer, sometimes viewing pornography. The petitioner explained that she walked two kilometers each Saturday to the supermarket and while she offered J-D- food she had purchased and prepared, he did not do the same nor offer to drive her. She recounted that J-D- drove her to church every Sunday until November 2008, after which she would take a bus or get rides from her friend [REDACTED]. On her second anniversary in the United States, J-D- asked whether the petitioner would prefer to return to Hong Kong or the Philippines and offered to purchase her ticket. He did not express sympathy when her father died in December 2008 and did not dine with her on Christmas or New Year's Day. Rather, on January 1, 2009 J-D- put the petitioner's belongings in the guest room but stated that he was not kicking her out. The petitioner explained that when it was clear J-D- would not support her for immigrant status, she stayed with a niece in California for one month and later moved in with a relative of her deceased former husband in Chicago. The petitioner's statements do not demonstrate that J-D- ever battered her, or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

In her psychological evaluation, [REDACTED] a licensed marital family therapist, wrote that results of a diagnostic interview revealed that the petitioner has adjustment disorder with mixed anxiety

and depressed mood. Ms. [REDACTED] further concluded that the petitioner experienced neglect and psychological abuse by her husband. While we do not question Ms. [REDACTED] professional opinion, her assessment conveys the petitioner's statements during a single one and a half hour interview and provides no further, probative information regarding the claimed abuse. The form submitted from [REDACTED] stated that the petitioner attended four group sessions during November and December 2008. The content of these sessions was not disclosed and the form noted there was "[n]ot enough info [sic] for more detailed response."

[REDACTED] the petitioner's deceased former husband's sister, indicated that according to the petitioner, J-D-'s demeanor changed after three months of marriage and she "became the object of mental cruelty" for the next eleven months before leaving. [REDACTED] wrote that he met the petitioner when she came home with his wife after church and asked him for advice concerning her marriage. Neither Ms. [REDACTED] nor Mr. [REDACTED] provided probative details in their brief statements. [REDACTED] wife, explained that after church on October 5, 2008, she first met the petitioner who confided that J-D- did not treat her as a wife and did not want to prepare documents for their upcoming immigration interview. Ms. [REDACTED] explained that she helped the petitioner get a social security number, gave her rides to and from church and the grocery store when J-D- would not, and they sometimes went out together and with friends until the petitioner moved away. [REDACTED] wrote that she lives in California and the petitioner often called and told her about her married life including that J-D- did not drive her places or share his food, requested \$50 weekly from her salary, and later no longer wished to sponsor her for immigration benefits. Ms. [REDACTED] stated that she and her husband surprised the petitioner and J-D- in 2008, went to lunch together and toured the city, but observed that J-D- was not very friendly. None of the four letters submitted indicated that J-D- battered the petitioner, threatened her with violence, or subjected her to psychological or sexual abuse, or other conduct constituting extreme cruelty as defined in the regulation.

The relevant evidence submitted on appeal includes the petitioner's declaration, a psychological evaluation, and a letter from a friend. The declaration is nearly identical to the petitioner's earlier email statement with the following additions: (1) the petitioner asserts that on July 4, 2008, J-D- came home and said he was going to divorce her; (2) on July 10, 2008, she overheard him say on the telephone that he is not in love with her; (3) on September 10, 2008, J-D- came home in a bad mood, yelled at her and called her a name, and when she dressed nicely for church or work he commented that she was not going to a party; and (4) the \$50 per week she paid J-D- for transportation expenses was needed by her adult son in the Philippines for school. [REDACTED] writes that she called the petitioner nearly daily from Hong Kong and learned she was estranged from J-D-, buying her own food, they had separate bedrooms, and did not share meals or conversation to avoid arguing. Neither the petitioner's supplemental declaration nor Ms. [REDACTED] letter provide additional probative details or demonstrate that J-D- battered the petitioner, threatened her with violence, or subjected her to psychological or sexual abuse, or other conduct constituting extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi).

In his psychological evaluation, [REDACTED], a licensed clinical psychologist, relayed from the petitioner that J-D- had lived alone for many years prior to their marriage and he probably was overwhelmed by the realization that he would have to share his life with someone else. The petitioner

also reported that while J-D- never physically harmed her, she felt that being shunned, ignored, and isolated in his home constitutes a kind of extreme mental cruelty. Dr. [REDACTED] diagnosed the petitioner with dysthymic disorder, late onset, and generalized anxiety disorder. He further concluded that the petitioner has no close friends in the United States and her social frustration and distress can be attributed to J-D-'s "extremely cruel and rejecting treatment." While we do not question Dr. [REDACTED] professional opinion, his assessment conveys the petitioner's statements during a single interview with him, and contradicts the prior statements of the petitioner and her friends that demonstrate that the petitioner was not isolated during her marriage to J-D-, but rather enjoyed friendships and visited the homes of others, attended church regularly, went grocery shopping independently, maintained employment, and engaged in frequent social activities including going out to restaurants, picnics and the movies. Dr. [REDACTED] evaluation provides no further, probative information regarding the claimed abuse and does not demonstrate that J-D- ever subjected the petitioner to battery, violent threats, psychological or sexual abuse, or other acts constituting extreme cruelty as defined by the regulation.

Counsel asserts on appeal that the actions of J-D- amounted to extreme cruelty because he knew that the petitioner gave up her job in Hong Kong to live with him in the United States, which left the petitioner abandoned because of his indifference to her. Counsel further contends that J-D- abused the petitioner emotionally and economically. Counsel cites a 1996 legacy Immigration and Naturalization Service policy memorandum to assert that there is no exhaustive list of acts that constitute battery or extreme cruelty. While the latter is true, the acts described by counsel and in the relevant evidence submitted, do not demonstrate that J-D- battered or threatened the petitioner with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as defined in the regulation. Viewed in the totality, the preponderance of the evidence does not establish that the petitioner's spouse 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 Faith Entry into the Marriage

The director correctly determined that the petitioner failed to establish that she entered into her marriage with J-D- in good faith. In addition to her two personal statements and letters from her former sister-in-law and Ms. [REDACTED] the relevant evidence submitted below and in response to the RFE includes emails between the petitioner and J-D-, notes from J-D-, photographs and wire transfer receipts. In her handwritten statement, the petitioner wrote that beginning in February 2004, J-D- called her daily in Hong Kong and they corresponded by video every Sunday. She recalled that he visited her once, made her believe his intentions were sincere and filed a fiancée visa petition on her behalf. The petitioner arrived in Las Vegas in October 2007, married in December, and was happy while trying to adjust to her new life. In her supplemental email statement, the petitioner added that she first met J-D- by email in February 2004 after she joined the "Ladies' Club" pen-pal service. She recounted that their loving relationship developed through email correspondence, daily telephone conversations, and weekly online chatting, and in August 2006 J-D- visited her in Hong Kong. The petitioner did not describe in detail her courtship with J-D-, their first in-person meeting, their engagement, wedding, shared residence, or shared experiences apart from the claimed abuse.

The petitioner submitted three photographs of herself and J-D-. Wire transfer receipts demonstrate that J-D- sent money to the petitioner, and email correspondence and notes from J-D- reflect his interest in her. The photographs and J-D-'s receipts and correspondence are not probative of whether the petitioner entered into the marriage in good faith. [REDACTED] explained how she befriended the petitioner during her marriage, but Ms. [REDACTED] did not indicate that she had personal knowledge of whether the petitioner married J-D- in good faith. [REDACTED] the petitioner's former sister-in-law, wrote that J-D- befriended the petitioner and courted her long-distance for three years before visiting her in Hong Kong and proposing marriage. Ms. [REDACTED] did not indicate that she ever observed the petitioner with J-D- or had personal knowledge of the relationship between the former couple and she provided no insight into whether the petitioner married J-D- in good faith.

The relevant evidence submitted by the petitioner on appeal includes: a personal declaration; a letter from a friend; originals of pictures submitted below; and a birthday card. Neither the original photographs nor a card signed by J-D- provide probative evidence that the petitioner entered into the marriage in good faith. On appeal, counsel contends that the petitioner and J-D- had a "bona fide marriage," and states that when the petitioner left the marital home she did not stop to think about taking good-faith related documents. Counsel does not identify the documents to which she refers and requests that we apply the "any credible evidence standard." Traditional forms of documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). All such evidence has been considered in the present matter, both that submitted below and on appeal. However, the preponderance of the credible relevant affidavits, statements, and supporting letters is insufficient, for the reasons discussed, to establish that the petitioner entered into her marriage with J-D- in good faith.

In her declaration on appeal, the petitioner states that she and J-D- interacted for three and a half years before marrying, and she briefly summarizes their interactions in list form by date. The list contains no additional details of the petitioner's courtship, engagement, wedding, or shared experiences with J-D-. In her letter submitted on appeal, [REDACTED] writes that she and the petitioner have been best friends since 1995. She recounts that the petitioner wanted the company of a life partner as she grew older, believed J-D-'s intentions, and decided to give up her life in Hong Kong and marry him in the United States, but her brief statements do not provide further, sufficient information regarding the petitioner's marital intentions. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not established that she was subjected to battery or extreme cruelty by her spouse during their marriage or that she entered into the marriage in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.