



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **AUG 04 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)

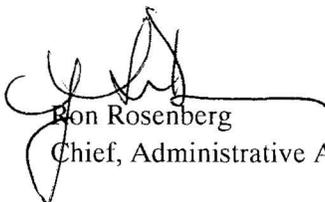
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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 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.

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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her husband in good faith and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief statement and additional 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.

* * *

(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.

* * *

(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.

Pertinent Facts and Procedural History

The record reflects that the petitioner is a citizen of Kenya who last entered the United States on December 4, 2001 as a nonimmigrant visitor. The petitioner married her second husband, S-B-, a U.S. citizen, in Maryland on November 10, 2003.¹ The petitioner filed the instant Form I-360 on

¹ Name withheld to protect the individual's identity.

April 9, 2012. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the petitioner's entry into the marriage in good faith and her husband's battery or extreme cruelty. The petitioner, through counsel, responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In response to the second RFE, the petitioner submitted a statement in which she briefly asserted that she was excited about her marriage to S-B- and they were both in love. She stated that after their separation she met S-B- in Philadelphia and they had lunch together. The petitioner recounted that she last saw S-B- in Trenton where she was informed that he is incarcerated in jail. The petitioner did not further describe how she met her husband, their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner submitted in response to the first RFE, a letter from her friend, [REDACTED] who briefly stated that he attended the petitioner and S-B-'s wedding and the couple came to his birthday party in December 2003. In response to the second RFE, the petitioner submitted a second statement from Mr. [REDACTED] in which he recounted that he twice drove S-B- to a bus station in Boston, Massachusetts and once drove the petitioner to Trenton, New Jersey to meet S-B-. Mr. [REDACTED] failed to provide any probative information on his interactions with the couple or his personal knowledge of the couple's relationship. In response to the second RFE, the petitioner also submitted a letter from her friend, [REDACTED] who briefly stated that in 2003 the petitioner informed her that she had fallen in love and would be moving to Baltimore, Maryland. Ms. [REDACTED] offers no probative information regarding her knowledge of the petitioner's good faith in entering the relationship.

The petitioner also provided in response to the second RFE the following relevant evidence: a cellular telephone bill; a letter from her former landlord, [REDACTED] airline and bus tickets; and one photograph of the couple. [REDACTED] stated that the petitioner and S-B- rented an apartment on [REDACTED] Massachusetts from February 2004 until April 2005. However, the petitioner provided on the Form I-360 that she only resided with S-B- from February 2004 until November 2004 and their last joint address was on [REDACTED] in Baltimore, Maryland. The cellular telephone bill is dated eight years after the petitioner separated from her husband. The airline and bus tickets show the petitioner and S-B-'s travel between Massachusetts and Maryland and the one photograph of the couple is undated and taken at an unspecified location.

On appeal, the petitioner submits another statement in which she recounted that during her courtship with S-B- they would go to parties, parks, dinners and shopping. She stated that she and S-B- did not have a joint bank account because S-B- was not good at managing finances. The petitioner, however,

did not describe how she met her husband, their wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

On appeal, the petitioner submits a statement from Dr. [REDACTED] pastor of the [REDACTED] [REDACTED] Dr. [REDACTED] stated that she met S-B- on two occasions when he attended her church. She stated that she has no doubt that the petitioner married S-B- in good faith. However, she did not describe her interactions with the couple, or otherwise detail her personal knowledge and observations of the relationship.

The director determined that the petitioner failed to provide sufficient details of her courtship or marriage and failed to submit evidence of commingling of finances. However, traditional forms of joint 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." 8 C.F.R. § 204.2(c)(2)(vii). The petitioner explained the reason she does not have shared finances with S-B-, but failed to provide any other credible, probative evidence of her good faith entry into the marriage. The relevant evidence shows that the petitioner and S-B- visited each other and were photographed together on one occasion. However, the petitioner in her statements does not describe how she first met S-B-, their wedding ceremony, joint residence or any of their other shared experiences, apart from the alleged abuse. The petitioner's friends and pastor also fail to discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

In her statement submitted in response to the second RFE, the petitioner recounted that S-B- called her names. The petitioner stated that she stayed in the marriage because she believed that S-B- would change. The petitioner's statements do not indicate that her husband 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).

The petitioner submitted in response to the second RFE a letter from [REDACTED] a social worker with the [REDACTED] Ms. [REDACTED] opined that the petitioner was suffering from emotional pain stemming from her past abusive relationships. She stated that the petitioner reported that S-B- was verbally abusive and he was involved in selling drugs. Ms. [REDACTED] however, fails to provide any probative information on the alleged verbal abuse. Nor does she discuss any other instances of battery or extreme cruelty.

[REDACTED] stated in his second letter that he could tell that the petitioner was not happy during her marriage. [REDACTED] stated that the petitioner told her that she moved with S-B- to [REDACTED] because things were not going well for them in Baltimore. Neither of the petitioner's friends describes having knowledge of any instances of battery or extreme cruelty in the petitioner's marriage.

The petitioner asserts in her statement submitted on appeal that her husband insulted her and threatened to kill her. She stated that her husband would “blame the pills” and refused to receive help from the reverend at her church. The petitioner stated that she is now taking medication for depression. The petitioner submitted a pharmacy record of her prescription medications. The petitioner, however, failed to proactively describe any specific incidents of threatened violence, battery, or other acts that constitute extreme cruelty, as that term is defined in the regulation. The petitioner’s medications do not alone show a causal relationship between the alleged abuse and her medical condition(s).

The letter the petitioner submitted on appeal from Dr. [REDACTED] also fails to provide a probative description of the alleged abuse. Dr. [REDACTED] recounted in a one-sentence statement that she learned about the petitioner’s “serious marital problems bordering on abuse.” This single statement does not provide any probative information to demonstrate battery or extreme cruelty in the petitioner’s marriage.

On the appeal notice, counsel briefly asserts the petitioner’s medications treat her depression due to her abusive marriage. Counsel, however, fails to articulate how the petitioner’s evidence demonstrates that she was subjected to battery or extreme cruelty. The petitioner fails to provide a probative description of any specific incidents of battery or extreme cruelty in either of her statements. The social worker letter states that the petitioner’s husband subjected her to verbal abuse, but also does not further detail the alleged abuse. The petitioner’s friends do not indicate that they have any knowledge of the claimed abuse. The letter from the petitioner’s pastor states that the petitioner had serious marital problems, but does not indicate that the petitioner was battered or subjected to extreme cruelty. 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.

Conclusion

On appeal, the petitioner has failed to establish that she entered into the marriage in good faith and her husband subjected her to battery or extreme cruelty. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The appeal is dismissed.