



U.S. Citizenship
and Immigration
Services

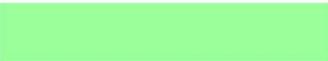
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Date: **AUG 13 2014**

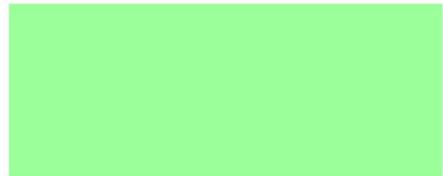
Office: VERMONT SERVICE CENTER

File: 

IN RE: Self-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:

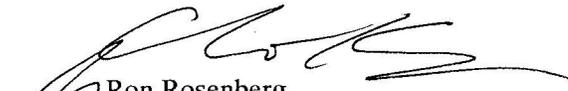


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center Acting 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 sustained.

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 was subjected to battery or extreme cruelty by her husband during their marriage, and married her husband in good faith.

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 is a citizen of Mexico who states that she entered the United States in 1999 without inspection. The petitioner married R-L¹, a U.S. citizen, on November 30, 2009. The petitioner filed the instant Form I-360 on May 21, 2012. The director subsequently issued Requests for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty and the petitioner's entry into the marriage in good faith. The petitioner timely responded with additional evidence, which the director found insufficient and denied the petition.

¹ Name withheld to protect the individual's identity.

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, the petitioner has overcome the director's grounds for denial.

Battery or Extreme Cruelty

The relevant evidence demonstrates that the petitioner was subjected to battery and extreme cruelty by her husband. The petitioner submitted five personal declarations; letters from patient care advocate [REDACTED] and a Licensed Marriage and Family Therapist (LMFT) [REDACTED] at [REDACTED] [REDACTED] letters from friends; a doctor's progress note about an infection; and a letter from LMFT therapist [REDACTED]. In her declarations the petitioner stated that her husband became abusive after they started to live together in May 2010. She stated that they got their food at a food bank, and that her husband had money, but he never gave her any to buy food and necessities for herself like toothpaste and bath soap. She recounted that her husband bought food only for himself and had her cook his meals, and that he would insult her by giving her the scraps from his meal. She reported that her husband took the money she earned cleaning houses, and would tell her that she was lazy and should look for a job as a prostitute. The petitioner stated that she was afraid of her husband because he had a knife that he often sharpened and while doing so would tell her his knife could make a small cut in the neck and the person would die very fast. The petitioner recounted that once, when her husband was preparing to leave their home at two in the morning, she asked where he was going, and he insulted her and attacked her, trying to get at her neck to choke her. She stated that she was able to defend herself and escape, and after that incident for two nights she slept on the floor near the kitchen because she was afraid of her husband. She recounted that he insulted her when she was sick and that in December 2010 they had an argument and he squeezed and pushed her ribs so hard that she fell on the bed. She stated that she was in pain for days and went to [REDACTED] to ask for help because her husband told her to leave their home. She stated that she thought he was going to calm down, but in January 2011 he kicked her out of their home again. The petitioner explained that she was afraid to stay in a shelter and went to live with her friend, [REDACTED].

[REDACTED], the petitioner's patient care advocate at [REDACTED] stated she knew the petitioner and her husband since December 2009 because they came to her clinic for community services. Ms. [REDACTED] stated that on December 23, 2010 the petitioner came to the clinic looking confused and scared and told her that her husband hurt her right shoulder and right waist area, and that Ms. [REDACTED] advised the petitioner to make a police report and provide information to receive counseling services.

Letters from the petitioner's friends further support her claim. Enriqueta [REDACTED] confirmed that the petitioner stayed with her after she was kicked out her home by her husband. [REDACTED] stated that she has known the petitioner for more than three years and would give her money for food and medications when the petitioner was being abused by her husband. [REDACTED] and [REDACTED] stated that on December 23, 2010 they saw bruises on the petitioner's shoulder and abdomen. Her friends explained that the petitioner was afraid to report her injury to the police because she was afraid of her husband.

Therapist [REDACTED] stated that she met with the petitioner on two separate occasions and provided more detailed information about incidents of abuse described in the petitioner's declarations. Ms. [REDACTED] also reported that the petitioner told her she was afraid to call the police about the abuse because she feared she would be deported and was intimidated by her husband. Ms. [REDACTED] conveyed that the petitioner was depressed, lost weight after her separation, and often excused her husband's behavior. Ms. [REDACTED] opined that the petitioner continued to suffer symptoms consistent with a diagnosis of depression due to the effects of the domestic violence she experienced during her marriage.

In denying the petition, the director found an inconsistency in the petitioner's statements in her initial declaration and her statements provided in response to the RFE about the location her injury in December 2010. The director concluded that the inconsistency called into question the reliability of the petitioner's statements and diminished their weight as probative evidence as well as the weight of other evidence that was based on her statements.

On appeal, counsel asserts that the inconsistency in the petitioner's statements is due to the translator's error in the initial statement, which mistakenly stated that the petitioner was hit by her husband on her left rib rather than her right rib. Counsel further states that the petitioner's declaration in response to the RFE provided a more detailed description of the petitioner's physical injuries.

Upon a full review of all the relevant and credible evidence, the petitioner has demonstrated that she was subjected to battery and extreme cruelty during her marriage. The record shows that there is an error in the translation of the petitioner's first statement regarding her injury. The petitioner is consistent in describing her physical injuries from her husband in December 2010, and her response to the RFE provided further information about the events surrounding the incident. The petitioner also provided statements from two friends and an advocate at [REDACTED] that credibly described her emotional state and injuries. The petitioner's own declarations describe in probative detail her husband's battery and extreme cruelty, and she has provided a probative letter from a therapist who substantively discusses how the petitioner continues to suffer symptoms of depression due to her husband's abuse. The preponderance of the evidence demonstrates that the petitioner's husband subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence also demonstrates that the petitioner's entry into her marriage was in good faith. In her declarations, the petitioner described in detail how she first met her husband at a food pantry, their going out on dates and to churches, her feelings for him, why they decided to get married and their joint residence. The therapist, [REDACTED] provided further detailed information that is consistent with how the petitioner described meeting her husband and her feelings towards him prior to their marriage.

The petitioner also submitted a copy of their 2009 joint federal income tax return, a letter from [REDACTED] showing a joint account for a residence on [REDACTED] from May 24, 2010 until November 8, 2010, , photographs of the petitioner and her husband, and a bank account

statement for her husband. In her response to the RFE, the petitioner explained that they did not have any joint insurance and did not have a joint bank account because her husband refused to give her any money. She stated that few pictures were taken of them together, that they did not go to parties or social events and that her husband excluded her from holiday celebrations with his family. The petitioner explained that they did not move in together until May 2010 because their landlords would not accept couples, they could not find a cheap place to live, and her husband went to Mexico for a month in early 2010. The petitioner stated that water and electricity were included in the rent of their last home so they did not have additional joint utilities accounts. [REDACTED] and [REDACTED] both of whom resided with the petitioner, confirmed the petitioner's explanation regarding her marital homes.

In denying the petition, the director discredited the 2009 tax return because the petitioner and her husband were not married until November 2009 and were not residing together at the time it was filed. The director also determined that the bank statements were in her husband's name only and that there were no details in the petitioner's declarations about her courtship, wedding ceremony, or shared experiences with her husband.

On appeal, counsel contends that the petitioner provided a detailed declaration about her good faith marriage to R-L-. Counsel also states that the letter from [REDACTED] verifies the couple had a joint account for their residence at [REDACTED] and that the bank statement for R-L- was submitted to show the couple's cohabitation, not joint finances. Counsel asserts that the petitioner was subjected to manipulation by her husband that included limiting her access to their finances and financial documents. Counsel claims that the petitioner credibly explained why she did not provide additional pictures of herself and R-L-. Counsel also asserts that even though the couple was not residing together at the time their joint 2009 federal tax return was filed, it nonetheless still shows the comingling of their finances.

Regardless of the deficiency of the 2009 tax return and the petitioner's husband's bank statement, 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." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's statements about how she met her husband, their courtship, her decision to marry and their joint residence are credible, detailed and consistent with her account to the therapist and the letters of her acquaintances. The petitioner also credibly explained why she lacked additional joint documentation with her husband given their economic circumstances and his abusive behavior. When viewed in the totality, the preponderance of the evidence demonstrates that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has overcome the director's determinations and established that her husband subjected her to battery and extreme cruelty during their marriage and that she entered their

marriage in good faith. She is consequently eligible for immigrant classification based on her marriage to R-L- 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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has now been met. The appeal will be sustained.

ORDER: The appeal is sustained.