



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **OCT 30 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 Acting 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 was the subject of battery or extreme cruelty by her husband, and that she married her husband in good faith. On appeal, the petitioner submits a statement and additional 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). An alien who has divorced an abusive U.S. citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 petitioner, a citizen of Turkey, entered the United States on September 9, 1990 as a nonimmigrant visitor. She married D-A-¹, a U.S. citizen, on April [REDACTED] in [REDACTED], New Jersey. D-A- filed an immigrant visa petition on behalf of the petitioner, which he subsequently withdrew. The petitioner divorced D-A- on April 16, 2010 and filed a Form I-360 self-petition on April 26, 2010 based on the marriage. The director denied the petition on April 4, 2011 and the petitioner did not appeal the decision. The petitioner filed the instant Form I-360 self-petition on June 10, 2011. Upon review of the submission, the director issued a Request for Evidence of joint residence, battery and/or extreme cruelty and her good-faith entry into the marriage, among other issues. The petitioner responded with further evidence, which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner timely 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, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner did not establish that she married D-A- in good faith. In her May 31, 2011 affidavit, the petitioner stated that she met D-A- while helping out at her aunt's jewelry store. She indicated that she and D-A- were friends for several years before becoming romantically involved. The petitioner did not describe when their friendship evolved into a romance, or discuss their courtship, except to say that D-A- gave her flowers and stuffed animals on every date, and that they did not share physical intimacy. The petitioner stated that D-A- proposed in December 2008, but did not provide a description of the proposal. Although the petitioner stated that she and D-A- planned to have a wedding reception in summer 2009, the petitioner indicated that at the time of the immigration interview in November 2009, they had not had their wedding reception. In her "Addendum Affidavit," dated May 31, 2011, the petitioner referenced affidavits from [REDACTED] and the petitioner's mother, submitted in support of the petitioner's first Form I-360 self-petition. Neither affidavit provides probative information regarding the petitioner and D-A-'s courtship, wedding ceremony, or shared experiences.

In response to the RFE, and also in the petitioner's "Addendum Affidavit," dated May 31, 2011, the petitioner asserted that D-A- was in control of all of the couple's finances and bills and therefore she was unable to provide such joint documentation. However, as the petitioner represented in her May 31, 2011 initial affidavit that she did not reside with D-A-, it is not apparent to what bills or finances the petitioner was referring. Also in response to the RFE, the petitioner provided an affidavit from her

¹ Name withheld to protect the individual's identity.

friend, [REDACTED] In her affidavit, Ms. [REDACTED] claimed to have witnessed the petitioner's "religious ceremony" on April 28, 2009. She did not, however, describe the ceremony. Ms. [REDACTED] statement conflicts with the petitioner's assertions that she had a *civil* ceremony on April 28, 2009. The petitioner's marriage certificate lists Ms. [REDACTED] as a witness to her courthouse wedding. Thus it is not apparent why Ms. [REDACTED] would recall a religious ceremony. Ms. [REDACTED] also attested to observing D-A- and the petitioner interact in the apartment that they shared. However, in her May 31, 2011 affidavit, the petitioner represented that she did not reside with D-A-. The discrepancies between the petitioner's statements and Ms. [REDACTED] recollections detract from the credibility of the affidavit. The petitioner also provided an affidavit from her long-time family friend [REDACTED] In the affidavit, Mr. [REDACTED] stated that he was present at the petitioner's April 28, 2009 marriage and that the petitioner's family and friends thought that they had made the right choice and that the marriage seemed strong. However, in her May 31, 2011 initial affidavit, the petitioner described her April 2009 ceremony as a "secret wedding," and stated that she "did not tell anybody" about it because she did not want to upset her family, who believed that she was planning to marry in the summer. The record does not indicate that the petitioner and D-A- had a second wedding ceremony or reception with family and friends. Neither Mr. [REDACTED] affidavit nor Ms. [REDACTED] describes the wedding ceremony, the petitioner's and D-A-'s courtship or other shared experiences. Also in response to the RFE, the petitioner provided an extensive printout from D-A-'s [REDACTED] account. The printout does not contain any statements that address the petitioner's intent in marriage.

In her decision, the director reviewed the relevant evidence and found that it did not establish that the petitioner married D-A- in good faith. On appeal, counsel asserts that the petitioner's ethnicity is evidence of her good-faith marriage, because as a Muslim Turkish woman she would not want to suffer the stigma of divorce. In support of her assertion, counsel submits articles from the Internet regarding the treatment of women in Turkey. The petitioner stated that she was afraid to mention divorce to her family. However, the petitioner also stated that her wedding was secret. Thus, it is not apparent that the petitioner's family was aware of her marriage during the relevant time frame. In her affidavit submitted in response to the RFE, the petitioner referenced her religious background with respect to her lack of joint documentation. The petitioner stated:

Coming from a Muslim family, growing up, my father always took care of the household financials. My mother never opened a bill or took care of any payments. She had a weekly allowance [and] so did my sister and I. My mother's duties included: cleaning, cooking, and taking care of her children. Therefore, I followed my mother's steps and let my husband to take care of our finances so in return I would cook, clean, run errands, and take care of laundry for D-A-. I felt it was only right and we shared a life together.

The petitioner's statements regarding the impact of her religious and ethnic background lack credibility as the description of her childhood directly contradicts her mother's November 14, 2010 affidavit in which she asserts that she brought the petitioner to the U.S. when she was three years old and "raised [her] children as a single mother working hard to give them the best life [she] possibly could." The petitioner's mother further indicated that the petitioner "did not have a father or any other father figure in her entire life." The affidavit from [REDACTED] dated December 3, 2010, states that the petitioner

supported herself while going to school. In her affidavit dated December 1, 2010, the petitioner herself stated that her mother raised her and her sister alone by working hard in the United States without any assistance from her father. Further, the psychological evaluation dated November 8, 2010 indicated that the petitioner is not familiar with the traditions and customs of women in Turkey. It is not apparent from the record that the petitioner's ethnic heritage is relevant to the issue of whether she married D-A- in good faith.

Counsel also asserts that the petitioner's former spouse took all supporting documents regarding joint residence and shared accounts at the time of separation. As previously discussed, the relevant credible evidence does not indicate that the petitioner and D-A- shared a residence or accounts. Section 204(a)(1)(A)(iii) of the Act does not require traditional forms of joint documentation 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 determination of what evidence is credible and the weight to be given that evidence is within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act. Here, neither the petitioner's affidavit nor those of her friends provide probative information regarding the petitioner's and D-A-'s courtship, wedding ceremony, shared residence and experiences. Further, they contain discrepancies, discussed above, that diminish their credibility. The record contains undated photographs of the petitioner and D-A- on various occasions. However, the petitioner stated that she and D-A- were friends for several years before they became romantically involved. Thus, the photographs of the petitioner and D-A- spending time together do not establish the petitioner's intent in marriage.

As discussed, the petitioner's evidence lacks probative details regarding her good-faith intent, and the inconsistencies and diminished credibility of the relevant evidence have not been acknowledged or resolved. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with D-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The preponderance of the relevant credible evidence does not establish that D-A- battered the petitioner or subjected her to extreme cruelty. In her initial personal affidavit, dated May 31, 2011, the petitioner stated that D-A- began verbally abusing her about two months after their marriage, but did not describe specific instances of such abuse. The petitioner indicated that D-A- had mood swings, and began drinking excessively. The petitioner recounted that when D-A- drank he would scream at her and throw and break things, but did not describe a specific incident when this occurred. It is not apparent from the record where these incidents may have happened since the petitioner indicated that she and D-A- did not reside together. The petitioner stated that after she separated from D-A-, she was distraught to learn from a friend that D-A- was bisexual and had a relationship with a male co-worker. The petitioner stated that she was afraid to share food and drinks with D-A- for fear of becoming HIV positive.

In her "Addendum Affidavit," also dated May 31, 2011, the petitioner claimed that D-A- controlled all aspects of her life, that he gave her an allowance each week, and would tell her to go home and do chores. The petitioner's statements lack credibility as she claimed that she did not reside with D-A-. Further, in her initial affidavit, the petitioner stated that she only saw D-A- a few times a week. Her claims that D-A- kept her isolated for fear that she would divulge his sexual orientation to others is inconsistent with her statement that she learned that D-A- was bisexual from a friend after they had separated. In addition, in her December 1, 2012 statement, the petitioner indicated that she isolated herself out of embarrassment once she learned of her husband's sexual orientation. In her "Addendum Affidavit," the petitioner briefly mentioned an incident where D-A- locked in her a room, but did not provide a probative description of the event.

In response to the RFE, the petitioner briefly stated that D-A- pushed her down the stairs when she confronted him regarding his sexual orientation, but did not provide further information regarding the incident. She also briefly stated that D-A- forced her to perform oral sex on him while they were out of the house, but did not provide probative information regarding the incident. The petitioner previously claimed that D-A- was not interested in intimate relations with her. In her statement provided in response to the RFE, the petitioner referenced a psychological evaluation submitted with her first Form I-360 self-petition. The evaluation, prepared by [REDACTED] cites a statement prepared by the petitioner in which she claimed to have learned of her husband's sexual orientation shortly after they married. In the brief evaluation, Dr. [REDACTED] diagnosed the petitioner with depression. Dr. [REDACTED] did not describe any incidents of battery or extreme cruelty.

Also in response to the RFE, the petitioner submitted an affidavit from her friend [REDACTED] who attested to the petitioner telling her that D-A- treated her poorly, and that on one occasion she went to the petitioner's apartment and heard an argument between the petitioner and D-A-. She stated that she saw the petitioner crying when D-A- opened the door "with an angry look on his face" and indicated that it was not a good time for a visit. The affidavit does not describe either an incident of battery or extreme cruelty. The petitioner also provided an affidavit from longtime family friend [REDACTED]. In the affidavit, Mr. [REDACTED] laments the failure of the petitioner's marriage; however, he does not attest to knowledge of the problems she experienced.

The petitioner's claims of abuse in the instant Form I-360 self-petition are substantially different from those in her first self-petition. In her first self-petition, in an affidavit dated December 1, 2010, submitted in response to the RFE in that proceeding, the bulk of the petitioner's claim of abuse revolved around her personal fear that she had contracted HIV from her spouse because of his sexual orientation. In that affidavit and as reported to Dr. [REDACTED] the petitioner indicated that she learned of D-A-'s relationships with men as soon as she and D-A- got married. In the instant self-petition, the petitioner now claims incidents of physical abuse but has not provided probative information regarding these incidents. In contrast to statements made in support of her first self-petition, in her May 31, 2011 affidavit, the petitioner indicated that she learned of D-A-'s sexual orientation after the couple had already separated. The petitioner has not acknowledged or addressed the substantial inconsistencies in her claims.

De novo review of the relevant evidence shows that the director correctly concluded that the petitioner did not establish that her former U.S. citizen spouse battered her or subjected her to extreme cruelty.

The petitioner's statements regarding the alleged abuse that she suffered contain numerous discrepancies, described above, that diminish their credibility. The third party affidavits provided in support of the petition to do not attest to incidents of battery or extreme cruelty. On appeal, counsel asserts that the petitioner's claim of physical abuse "was itemized . . . through evidentiary documents and the psychological report." However, *de novo* review of the relevant evidence does not reveal documentation of the petitioner's claims of physical abuse, beyond her discrepant personal affidavits. Counsel also asserts on appeal that the petitioner's claims of spousal infidelity amount to extreme cruelty. The definition 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." 8 C.F.R. § 204.2(c)(1). A negative reaction to spousal infidelity is not encompassed by this definition, nor is self-isolation in response to a spouse's disclosure of his sexual orientation.

In addition, counsel asserts on appeal that the director failed to consider all credible evidence. *De novo* review of the entire record shows that the director correctly considered the relevant evidence. However, substantial discrepancies in the petitioner's claims detract from the credibility of her statements regarding the abuse, and the psychological report based on her statements. See section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i) (determination of what evidence is credible and the weight to be given that evidence is within USCIS's sole discretion). The evidence lacks probative information regarding the claimed incidents of abuse, and the inconsistencies in the petitioner's statements have not been acknowledged or resolved. When viewed in the aggregate, the preponderance of the relevant evidence does not show that the petitioner was battered or subjected to extreme cruelty by her former spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Joint Residence

Beyond the director's decision, the petitioner has not established by a preponderance of the relevant evidence that she resided with her former spouse.² On the Form I-360 self-petition, the petitioner stated that she resided with D-A- from April 1, 2009 to October 1, 2009. However, in her initial affidavit, dated May 31, 2011, the petitioner indicated that she did not reside with D-A-. The petitioner first recounted that they were planning to have a wedding after her graduation in summer 2009. She stated that D-A- suggested that they move up their civil wedding date so that they could adjust the petitioner's immigration status prior to their summer wedding to facilitate an international honeymoon. The record reflects that the couple married on April 28, 2009. Although the petitioner initially claimed that they married in April 2009 so that they could have an international honeymoon after their summer 2009 wedding reception, in her same May 31, 2011 affidavit she stated that she and D-A- thought it would be a year before they had their immigration interview and were thus shocked when they received the interview notice shortly after filing the visa petition. The petitioner

² An application or 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); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

stated that when she attended the November 16, 2009 interview she was concerned because they did not have many joint documents and "had not taken up joint residency together yet." The petitioner recounted visiting D-A- "at his apartment" after receiving the notice denying her adjustment of status application. She stated that D-A- told her that he admitted at the interview to lying about their joint residence. The petitioner indicated that she "left [D-A-'s] apartment and could not speak to him for days." She discussed D-A-'s attempts to apologize, but stated that she could not trust him and no longer wanted to be with him. She then described events that transpired "after [their] separation." The petitioner stated that she has not had any contact with D-A- since December 12, 2009. Thus, it is apparent from the petitioner's own representations that she did not reside with D-A- between April 1, 2009 and October 1, 2009, as she claimed on the Form I-360 self-petition, or at any other time.

In response to the RFE, in an affidavit dated November 15, 2012, the petitioner stated that she moved into D-A-'s fully furnished apartment, but did not indicate the date that this occurred. The statement conflicts with her previous representations that she never resided with D-A-. The petitioner also submitted a health record dated August 28, 2009 in which she provided D-A-'s address as her own. She also submitted an unsigned letter, purportedly written by D-A-, in which he stated that he had been supporting the petitioner for five months. D-A-'s statement in the unsigned letter directly contradicts the petitioner's own statement that at the time of her immigration interview in November 2009, the couple "had not taken up joint residency together."

The affidavit from [REDACTED] submitted in response to the RFE, is also inconsistent with the petitioner's statement regarding her lack of residency with D-A-. In her affidavit, Ms. [REDACTED] stated that the petitioner moved in with D-A- shortly after their wedding, and described the "feminine touch[es]" that the petitioner added to the apartment. In contrast, the petitioner stated in her May 31, 2011 initial affidavit that the wedding was secret, and that she did not tell her family, with whom she was residing at the time. She further stated that she did not reside with D-A-. Also in response to the RFE, the petitioner provided a police clearance dated March 22, 2010, which indicates that she represented to the [REDACTED] police department that she resided at her mother's address through September 2009. The petitioner's representations to the police department contradict Ms. [REDACTED]'s statement that the petitioner moved in to D-A-'s apartment shortly after her April 2009 wedding. The discrepancies between Ms. [REDACTED]'s statements and those of the petitioner diminish the credibility of these statements. The preponderance of the relevant evidence does not demonstrate that the petitioner resided with her former spouse during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The petitioner has failed to demonstrate by a preponderance of the evidence that she was subjected to battery or extreme cruelty by her former husband, and that she entered into their marriage in good faith. In addition, the petitioner has not established that she resided with her former husband during their marriage. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these three grounds.

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NON-PRECEDENT DECISION

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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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.