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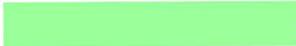


U.S. Citizenship  
and Immigration  
Services



Date: **OCT 30 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. 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 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 was subjected to battery or extreme cruelty by her husband during their marriage, resided with her husband, and married him 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:

(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 . . . 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.

*Facts and Procedural History*

The petitioner is a citizen of Zambia who entered the United States as a B-2 nonimmigrant visitor on December 30, 2002. The petitioner married R-H-<sup>1</sup>, a U.S. citizen, on April [REDACTED]. The petitioner filed the instant Form I-360 on January 23, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's joint residence, entry into the marriage in good faith, and the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence, which the director found insufficient and the director denied the petition on those grounds.

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.

*Entry into the Marriage in Good Faith*

The director correctly determined that the petitioner failed to demonstrate that she married her husband in good faith. In her initial letter, the petitioner provided no discussion regarding how she met R-H-, their dating and subsequent engagement, her decision to get married, or further discuss her relationship with R-H- apart from the abuse. In her second letter, the petitioner stated that in 2002, she came to the United States to visit her cousin, and upon her arrival she met R-H- who was her cousin's family friend. The petitioner mentioned that R-H- "showed a great interest" in her. She stated that on April 29, 2003, R-H- proposed to marry her and she accepted. The petitioner did not further describe meeting R-H- for the first time, their subsequent courtship and engagement, wedding ceremony, joint residence, and residential routines.

The petitioner also submitted a letter from her friend, [REDACTED] who stated that his friendship with the petitioner began in 2006 several years after the petitioner's marriage to R-H-. He further stated that the petitioner sometimes talked to him about her husband, and introduced him to R-H- at a party in September 2009. Although Mr. [REDACTED] claimed that the petitioner and R-H- "looked like a normal loving couple," he did not indicate that he did not know the petitioner or R-H- at the time of their marriage and provided no further probative information of the petitioner's good-faith marriage.

The director pointed out in the RFE that the petitioner did not claim R-H- as her husband in Part A. II. of her Application for Asylum and for Withholding of Removal (Form I-589). Although the petitioner claimed that the omission was the fault of an unnamed acquaintance who filled out the asylum application for her, only the petitioner's name appears in the signature section of the form. The space allotted for the signature of the individual other than the applicant filling out the form is left blank.

On appeal, the petitioner asserts that she fell in love with R-H-, and did not use her marriage as a fraudulent scheme to gain an immigration benefit. The petitioner further explains that due to her husband's controlling behavior she was not able to provide the evidence described at 8 C.F.R.

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<sup>1</sup> Name withheld to protect the individual's identity.

§ 204.2(c)(2)(vii) of the regulations to demonstrate her good-faith intent, and that Mr. [REDACTED] is “the only person who can attest to the marriage.” Traditional forms of joint documentation such as joint bank accounts are not required to demonstrate a self-petitioner’s entry into the marriage in good faith. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). 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.” See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner has not provided a detailed description of her relationship with R-H-. Her cursory statements do not probatively describe in detail her first meeting with R-H-, their courtship and engagement, wedding ceremony, joint residence, and shared experiences. Although the petitioner states that Mr. [REDACTED] is “the only person who can attest to the marriage,” Mr. [REDACTED] letter is general, and does not indicate that he knew the petitioner or R-H- at the time of their marriage or provide substantive information to establish the petitioner’s relationship with R-H- and good-faith intent.

When viewed in the totality, the relevant evidence in this case does not demonstrate 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.

#### *Joint Residence*

The director correctly determined that the record failed to demonstrate that the petitioner resided with her husband. The petitioner stated on her Form I-360 that she resided with R-H- from April 2003 until September 2009, and their last residence together was in Orlando, Florida. In her initial letter, the petitioner does not identify or discuss her marital residence. In her second letter, the petitioner stated that due to her husband’s controlling behavior her marriage certificate is the only documentation of joint residence that she has. The petitioner’s marriage certificate reflects that she married R-H-, but does not establish that they, in fact, shared a joint residence. Although the petitioner explained why she is not able to provide documentary evidence of joint residence, she does not provide any probative information of a shared residence with her husband. She did not identify their residence or provide a detailed, probative description of their home, their shared belongings, and their common residential routines.

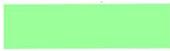
On appeal, the petitioner submits a new letter to explain why she lacks documentation of joint residence, and correctly states that the regulations provide that evidence of joint residency includes traditional forms of joint documentation and “any other type of relevant credible evidence of residency.” 8 C.F.R. section 204(c)(2)(iii)(D). The petitioner indicates that her letters explaining why she lacks evidence of joint residency are credible evidence demonstrating that she lived with R-H-. Although the petitioner’s letters explain why she is not able to provide any evidence of joint residency, they do not provide any probative information of a shared residence with her husband such as a description of their home, their shared belongings, and their residential routines. Therefore, the preponderance of the relevant evidence fails to demonstrate that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

In her statements, the petitioner claimed that the first two years of her marriage were normal, “like any other marriage,” but after that R-H- used profanities, made fun of her, and told her that if she reported him to the authorities they would not help her. The petitioner indicated that she “endured this kind of living” until she separated from R-H- in January 2005 after he made disrespectful and insulting statements during an argument about the roles and expectations of a wife. The petitioner stated that she and R-H- reconciled in 2008, and that she told R-H- that he needed to live with her in Florida. She indicated that in 2009 she filed her immigration paperwork to adjust status. However, two weeks prior to her scheduled interview, R-H- went to Maryland to visit a friend and since then he has not contacted her or returned to Florida. The petitioner stated that R-H- called her his African Queen, and told her that he married her because he believed she would be a submissive wife and would not tell him what to do. The petitioner indicated that her husband engaged in “increasingly repeated physical and verbal abuse,” but she failed to provide any further probative description of his behavior. The petitioner stated that during her marriage, her husband had financial problems and that his mother was the cosigner for most of his possessions. The petitioner stated that R-H- would not allow her to retrieve her personal belongings, and that she relocated to Florida to temporarily live with her cousin’s friend.

The petitioner also submitted a psychosocial evaluation from [REDACTED] Ms. [REDACTED] provided additional allegations not contained in the petitioner’s letter. For instance, Ms. [REDACTED] stated that the petitioner reported that R-H- would leave their home for three days at a time, and when he returned home to change his clothes, told the petitioner that he had been at work. Ms. [REDACTED] also reported that the petitioner was sexually abused and stated that the petitioner claimed when R-H- came home drunk he was demanding and manipulated the petitioner into having sex with him. Ms. [REDACTED] provides no probative, detailed information regarding the petitioner’s claims. Ms. [REDACTED] indicated that the petitioner left R-H- after he was sexually intimate with another woman in their home. Although Ms. [REDACTED] stated that the petitioner continues to suffer from the effects of severe emotional and extreme emotional trauma as a result of her marriage to R-H-, she has not discussed any alleged incident in detail and the petitioner’s general statements do not probatively establish that R-H- battered or subjected her to sexual abuse, psychological abuse, or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1).

On appeal, the petitioner asserts that R-H- sexually abused her, but provides no further probative details regarding her allegation. The petitioner also states that R-H- called her names, made her financially dependent on him, and limited her social contacts, but has not established that his actions are equivalent to battery or extreme cruelty, as that term is defined by the regulation. The preponderance of the evidence fails to demonstrate that the petitioner’s 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*

The petitioner has failed to establish that she resided with her husband, married him in good faith, and was battered or subjected to extreme cruelty by him during their marriage.

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); *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.