



U.S. Citizenship
and Immigration
Services

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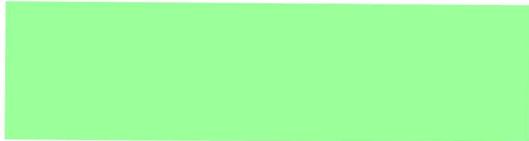
Date: **SEP 12 2014**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

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

ON BEHALF OF PETITIONER:

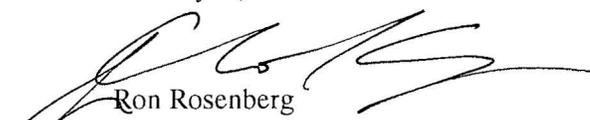


INSTRUCTIONS:

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 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 pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her lawful permanent resident spouse.

The director denied the petition based on the petitioner's failure to establish that she was battered or subjected to extreme cruelty by her lawful permanent resident spouse, and that she entered into the marriage with him in good faith.

On appeal, the petitioner, through counsel, submits a brief and additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii)(I) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under . . . clause (ii) or (iii) of subparagraph (B), 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)(B)(ii) 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 . . . lawful permanent resident 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)(B)(ii) 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 Colombia, entered the United States on January 1, 2007 as a nonimmigrant visitor. The petitioner married J-C-¹, a lawful permanent resident, on May 20, 2010 in Miami, Florida. She filed the instant Form I-360 self-petition on October 6, 2011. Upon review of the initial submission, the director issued a Request for Evidence (RFE) of battery or extreme cruelty and good faith entry into marriage, among other issues. The petitioner timely responded with additional evidence. Based on a review of the entire record of proceeding, the director found that the evidence did not establish eligibility for the benefit sought and denied the petition. Counsel timely submitted a Form I-290B (Notice of Appeal), and a brief.

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, including the arguments presented on appeal, we find that the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The director correctly determined that the petitioner did not establish that her husband subjected her to battery or extreme cruelty, and the arguments submitted on appeal do not overcome this ground for denial. In her first affidavit, dated August 17, 2011, the petitioner stated that after she and J-C- moved in together, their relationship began to change. The petitioner indicated that J-C- brought other women to the home and attended social functions without her. He began drinking heavily, and became critical of the petitioner. The petitioner stated that J-C- was mistreating her son, but did not provide any specifics. The petitioner recounted that in February 2011, she told J-C- that she wanted a separation and he became physically aggressive. In support of her statement, the petitioner provided a police report dated February 18, 2011. The police report states that the petitioner informed the responding officer that during a heated dispute over a mailbox key, J-C- pushed her into a wall and then fled. A neighbor witnessed the incident.

The petitioner also provided a Petition for Injunction for Protection Against Domestic Violence, in which she asserted that on February 18, 2011 there was a verbal altercation between her and her husband in front of their apartment building when she requested that he move out of the apartment. The Petition for Injunction states that the petitioner's husband pulled her inside the apartment and threatened to cause her further harm before the petitioner called the police, and her husband left the premises. The statement does not indicate that J-C- pushed the petitioner. The court issued a three-week temporary injunction without prior notice to J-C-, and set a hearing for March 11, 2011. The petitioner submitted no evidence that the court issued a final injunction on that date, or otherwise ruled in the matter in her favor.

The petitioner also provided a psychological report from [REDACTED] dated March 27, 2011. In her report, Ms. [REDACTED] indicated that according to the petitioner, J-C- had engaged in extramarital

¹ Name withheld to protect the individual's identity.

sexual relations in the petitioner's home, and that he drank heavily at times. Ms. [REDACTED] further stated that J-C- preferred to spend time with his mother over the petitioner after J-C-'s mother arrived from Cuba to live with the couple in September 2010. The petitioner told Ms. [REDACTED] that J-C- verbally mistreated her son. The petitioner advised Ms. [REDACTED] that in February 2011, she requested a separation from her husband, and in response he began to yell and pushed her before she called the police. No further details regarding the incident were provided. Ms. [REDACTED] stated that the petitioner's request for a permanent restraining order was denied.

In the RFE, the director noted the various versions of the February 2011 incident as discussed in the petitioner's August 17, 2011 affidavit, the police report, the Petition for Injunction, and the psychologist's report. In response, the petitioner submitted an affidavit, dated April 2, 2013, in which she briefly described the incident. The petitioner stated that when she requested the separation, J-C- demanded the mailbox key, and when she refused to give it to him, he pushed her into a wall and then he left. She further asserted that she told the court clerk in Spanish that J-C- had pushed her against a wall; however, the clerk prepared the affidavit in English and the petitioner signed it without review.

Also in response to the RFE, the petitioner submitted a brief affidavit dated April 22, 2011 from former neighbor [REDACTED] who is listed as a witness on the police report regarding the February 2011 incident. In the affidavit, Ms. [REDACTED] attested to the petitioner and J-C-'s shared residence at the apartment building, and described J-C- as sometimes aggressive. Ms. [REDACTED] did not mention the February 2011 incident.

The petitioner also provided an affidavit from her teenaged son, F-Z-², who resided with the couple. F-Z- indicated that J-C- became inappropriate and offensive when he drank. He stated that J-C- did not spend much time at home until his mother arrived from Cuba to live with them. F-Z- described an incident when J-C- verbally berated his (J-C-'s) mother for accidentally changing the cable television settings. F-Z- stated that once while the petitioner was out of town, J-C- engaged in extramarital relations while he was in the house. However, F-Z- asserted that J-C- and the petitioner "seemed to have fixed their problems" after this incident. F-Z- indicated that the outcome of the couple's immigration interview outraged J-C-, but did not provide details. F-Z- stated that he believes that the stress from the relationship may have contributed to the onset of his mother's cancer. The petitioner also submitted a letter from psychologist Ms. [REDACTED] dated March 18, 2013, which describes the petitioner's emotional state but does not contain information regarding instances of abuse.

A preponderance of the relevant evidence does not establish that the petitioner or her son F-Z- was the subject of battery or extreme cruelty by her lawful permanent resident spouse. The petitioner must demonstrate that her spouse battered or threatened her or any of her children with violence, psychologically or sexually abused her or any of her children, or otherwise subjected her or any of her children to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, counsel asserts that the petitioner was pushed into a wall by J-C-, and is therefore the victim of a battery. As noted by the director in the RFE, the relevant evidence presents inconsistent accounts

² Name withheld to protect the individual's identity.

of the February 2011 event. In her initial affidavit, the petitioner stated that J-C- pushed her against a wall and then continued to argue with her inside the apartment. The police report states that J-C- pushed her "and then fled." The Petition for Injunction for Protection Against Domestic Violence indicates that that J-C- pulled the petitioner inside the home and threatened her, but does not indicate that she was pushed. In response to the RFE, the petitioner provided an affidavit which only briefly referenced the incident stating that when she refused to give J-C- the mailbox key, he pushed her into a wall and walked away. This description is inconsistent with her prior account of the incident where J-C- pulled her into the apartment and threatened her after pushing her against the wall. The petitioner provided an affidavit from the neighbor listed on the police report as a witness; however, the affidavit does not mention this incident. The petitioner asserted in her April 2, 2013 affidavit that she was unaware that her statement in the Petition for Injunction for Protection Against Domestic Violence did not mention that J-C- pushed her. However, given the inconsistencies in the other evidence, and the lack of detail in the petitioner's affidavits regarding the incident, the preponderance of the relevant evidence does not establish that a battery occurred.

In her affidavits, the petitioner described J-C-'s infidelity and alcohol usage. The psychologist's report and the petitioner's son's affidavit also note J-C-'s extramarital affairs and alcohol consumption, and reference difficulties in the marriage stemming from these behaviors. However, none of the relevant evidence demonstrates that J-C-'s behavior involved threats of violence, psychological or sexual abuse, or other actions constituting extreme cruelty as defined by the regulations. Accordingly, the petitioner has not shown that her spouse subjected her or any of her children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner did not marry J-C- in good faith and counsel's claims on appeal fail to overcome this ground for denial. The petitioner initially provided a personal affidavit with a limited discussion of her relationship with J-C- prior to marriage; her August 2010 lease and bills indicating that she and J-C- resided at the same address; school records that show that J-C- picked up her son early on one occasion; copies of rent checks drawn on the petitioner's personal account; and joint checking account statements reflecting usage of only one debit card. In response to the RFE, the petitioner provided an additional affidavit; copies of her 2009 lease, signed prior to meeting the petitioner; an additional copy of the August 2010 lease; and affidavits from her son and former neighbor that provide little insight into the petitioner's entry into her marriage.

In her decision, the director emphasized the lack of evidence of commingled finances in finding that the petitioner did not enter the marriage in good faith. The director referenced the RFE, in which she advised the petitioner that the rent checks demonstrated she paid the rent from a personal account at a different bank, that the joint bank account reflected usage of only one debit card, and that the car insurance policy listed her as unlicensed. The director concluded that commingling of resources and shared financial responsibilities had not been established.

While the evidence does not establish commingling of finances, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good

faith for petitions submitted pursuant to section 204(a)(1)(A)(iii) of the Act. *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). However, even upon consideration of all relevant evidence, the petitioner has not established that she entered into the marriage in good faith. In her August 17, 2011 affidavit, the petitioner stated that she met her husband in line at a bank on her birthday, June 13, 2009. The petitioner stated that she went out to dinner with him the same night, and celebrated his birthday at the same restaurant the following month. The petitioner vaguely asserted that they took part in each other's lives, spent time with her children, and attended social events. However, the petitioner did not provide a probative account of their courtship, wedding ceremony, shared residence, or shared experiences beyond the claimed abuse. In support of the initial submission, the petitioner provided photographs of her and J-C- at their wedding and on four other unspecified occasions the significance of which she does not discuss.

Although the petitioner indicated that she dated J-C- for approximately eleven months before they got married, in her response to the RFE, the petitioner restated the limited information from her first affidavit regarding where and when she met J-C-, and did not elaborate on their courtship or wedding except to briefly say that she married J-C- because she thought he was a decent man and they loved each other. The petitioner's son's affidavit, also submitted in response to the RFE, referenced "the couple of occasions" that J-C- spent time with the petitioner's family prior to marrying the petitioner, although he did not describe either occasion. The affidavit of the former neighbor attests to the couple's joint residence, but does not provide 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 marriage with J-C- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The record does not demonstrate by a preponderance of the evidence that the petitioner or any of her children was subjected to battery or extreme cruelty by her spouse or that she entered into their marriage in good faith. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(B)(ii) 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.