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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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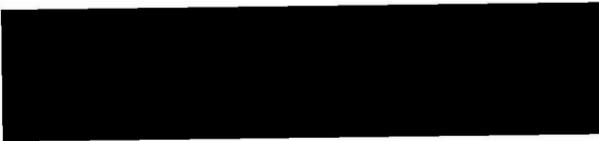
IN RE:

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the petition will be remanded to the director for further action.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 because the petitioner did not establish that she entered into marriage with her U.S. citizen husband in good faith.

On appeal, counsel submits a letter and additional evidence.

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, 8 U.S.C. § 1154(a)(1)(J) 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 . . . 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.

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Cameroon who entered the United States on September 5, 2004 as a nonimmigrant visitor (B-2) with authorization to remain in the United States until March 4, 2005. On September 24, 2004, the petitioner married F-S-¹, a U.S. citizen, in Maryland. That same day F-S- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied for abandonment on September 26, 2005. The petitioner's concurrently filed Form I-485, Application to Adjust Status, was denied the same day. The petitioner was subsequently charged as an alien present in the United States in violation of the Act. The petitioner remains in removal proceedings before the Baltimore Immigration Court and her next hearing is scheduled for April 7, 2009.

The petitioner filed this Form I-360 on October 31, 2005. On May 1, 2007, the director issued a Request for Evidence (RFE) of the petitioner's good-faith entry into her marriage and her spouse's battery or extreme cruelty. The petitioner timely responded with additional evidence. On November 21, 2007, the director denied the petition for failure to establish the requisite good-faith entry into the marriage. The petitioner timely appealed.

On appeal, counsel claims that the petitioner's prior counsel did not inform her of the need to address her good faith in entering the marriage and that the additional evidence submitted on appeal establishes the petitioner's eligibility. We concur with the director's determination. The evidence submitted on appeal does not overcome the ground for denial. In addition, beyond the decision of the director, the petitioner has not demonstrated that she resided with her husband and that he subjected her to battery or extreme cruelty during their marriage.² Nonetheless, the petition will be remanded because the director did not issue a Notice of Intent to Deny (NOID) the petition, as was required by the regulation in force at the time the petition was filed, 8 C.F.R. § 204.1(h) (2005).

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of marrying her husband in good faith:

¹ Name withheld to protect individual's identity.

² The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *See Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Manufacturing Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990).

- The petitioner's October 17, 2005 letter initially submitted with the Form I-360, her June 26, 2007 statement submitted in response to the RFE and her December 20, 2007 letter submitted on appeal;
- Letters of the petitioner's friends, [REDACTED], and submitted below and on appeal;
- Unsigned copy of the petitioner's 2005 federal income tax return marked as married filing separately and an unsigned and undated copy of a Maryland Income Tax Declaration for Electronic Filing listing the petitioner and her husband; and
- One undated photograph of the petitioner and her husband taken on an unspecified occasion.

In her first letter, the petitioner did not discuss how she met her husband, their courtship, wedding, shared residence and experiences, apart from the alleged abuse. In her June 25, 2007 statement, the petitioner reported that she met her husband in early September 2004 and they were married later that month, but she provided no further, relevant information. On appeal, the petitioner states that she met her husband "early in 2004," but she does not explain the discrepancy between her earlier statement that they did not meet until September 2004, a few weeks before their marriage. The petitioner recounts meeting her husband at a store, their first date and her physical attraction to her husband. She states that they had a small ceremony at her husband's church, moved into an apartment and took in a roommate in order to pay the rent. The petitioner did not further describe their wedding, shared residence or any of their shared experiences, apart from the purported abuse. The petitioner's brief statements are inconsistent regarding the date she met her husband and lack probative details sufficient to demonstrate her entry into the marriage in good faith.

The statements of the petitioner's friends are also insufficient to establish her claim. In his May 30, 2007 letter submitted below, [REDACTED] stated that he lived in the same building as the petitioner and her husband from the end of 2004 through 2006 on [REDACTED] in Baltimore, Maryland. Mr. [REDACTED] statement is inconsistent with the petitioner's statement on appeal that her husband did not begin residing with her at the [REDACTED] residence until the summer of 2005. On appeal, Mr. [REDACTED] states that he saw the petitioner and her husband at the grocery store and gas station, that they attended his uncle's wake in October 2004 and that he visited them numerous times. Yet [REDACTED] does not describe any of his visits in detail. [REDACTED] stated that she often went to the petitioner's apartment to study and saw the petitioner and her husband interacting "like most other married couples." [REDACTED] briefly described the behavior of the petitioner's husband on two occasions, but she does not discuss her observations of the petitioner's feelings for her husband. [REDACTED] stated that she once visited the petitioner and her husband and it "was obvious to [her] that they were married," but she provided no further, probative information. [REDACTED] stated that she used to drive the petitioner to church on Sunday mornings and would chat with the petitioner's husband while she waited for the petitioner to get ready, but [REDACTED] does not describe the petitioner's interaction with her husband, apart from the purported abuse, and she provides no further details.

The remaining, relevant evidence also fails to establish the petitioner's claim. The petitioner's unsigned 2005 tax return is marked married filing separately and the 2006 tax declaration is also not signed by the petitioner or her husband. The single photograph shows only that the petitioner and her husband were pictured together on one, unspecified occasion.

On appeal, counsel asserts that part of the abuse of the petitioner's husband "was keeping [the petitioner] financially crippled" and that he refused to add her name to documents and open a joint bank account with her. The petitioner herself does not mention such refusals in any of her three statements and the record does not support counsel's claims. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Considered in the aggregate, the relevant evidence fails to 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

Beyond the director's decision, the petitioner has also not demonstrated that she resided with her husband. The evidence listed in the preceding section is also relevant to this issue. On the Form I-360, the petitioner stated that she lived with her husband from September 2004 until June 2005 and that they last resided together on [REDACTED] in Annapolis, Maryland. However, in her June 25, 2007 letter, the petitioner stated that she and her husband were evicted from the [REDACTED] apartment at the end of 2004 and she moved to an apartment on [REDACTED] in Baltimore "where he would sometimes come to harass [her]." While she previously indicated that her husband did not reside with her after she moved to Baltimore, on appeal, the petitioner states that her husband began to live with her at the [REDACTED] apartment in the summer of 2005. The petitioner's brief and inconsistent statements do not demonstrate that she resided with her husband.

The petitioner's friends' statements also fail to establish her claim. As previously noted, [REDACTED] stated that he lived in the same building as the petitioner and her husband from the end of 2004 through 2006 on [REDACTED], but his assertion is inconsistent with the petitioner's statement on appeal that her husband did not begin residing with her at the [REDACTED] residence until the summer of 2005. [REDACTED], [REDACTED] and [REDACTED] briefly describe their visits to the petitioner's home where they saw her husband, but they do not state the petitioner's address or provide any further, probative details regarding their marital residence.

The unsigned tax forms are dated after the petitioner states that she separated from her husband and the single photograph does not picture the petitioner and her husband in any residential setting.

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

Beyond the director's decision, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage. The record contains the following evidence relevant to this issue:

- The petitioner's October 17, 2005 letter initially submitted with the Form I-360, her June 26, 2007 statement submitted in response to the RFE and her December 20, 2007 letter submitted on appeal;
- Letters of the petitioner's friends, [REDACTED] and [REDACTED] submitted below and on appeal; and Letter of [REDACTED] counseling intern at the [REDACTED] domestic violence counseling program.

In her first letter, the petitioner briefly stated that her husband threatened to have her deported if she did not submit to him, kicked her out of the house at night, threatened to physically harm her and destroy her life and hid her passport. The petitioner did not describe any particular incident of abuse in detail. In her response to the RFE, the petitioner added that her husband threatened to destroy her life by sending her back to Africa, called her derogatory names, slapped her around and that she felt forced to comply with his sexual demands to avoid further danger. Again, the petitioner did not describe any particular incident of abuse in detail. On appeal, the petitioner describes one incident when her husband became angry because she told his brother about his drinking problem and her husband locked her out of the house. The petitioner also states that her husband's behavior changed drastically after their marriage and he "started to treat [her] very rudely with contempt." The petitioner's brief statements fail to discuss the alleged abuse in probative detail and her testimony is insufficient to establish the requisite battery or extreme cruelty.

The statements of the petitioner's friends confirm that the petitioner's husband abused alcohol and drugs and that the petitioner was evicted from her apartment after his incarceration. However, their testimony does not establish that the petitioner's husband subjected her to battery or extreme cruelty.

[REDACTED] stated that the petitioner's marriage "was characterized with fighting, querelling [sic] orchestrated by [her husband] as he attacked [her] on trivia [sic] issues periodically." [REDACTED] described the petitioner and her husband as having "a cat and dog lifestyle," but he does not describe any incident of abuse in detail. [REDACTED] stated that she once found the petitioner sitting outside of her residence and crying because her husband had locked her out of their apartment. She recounted that she brought the petitioner home that evening and her husband had been drinking, but she does not provide any further, probative information. [REDACTED] stated that he attended pastoral counseling with the petitioner and that the petitioner was in great distress because her husband was incarcerated and she was later evicted from her home, but [REDACTED] does not indicate that the behavior of the petitioner's husband involved physical abuse or extreme cruelty. [REDACTED] stated that the petitioner stayed with her after she was evicted and that her husband was "involved with drugs and

crimes.” also reported that the petitioner suffered from stress and sought counseling, but had improved “very much” over the last year.

reported that the petitioner began counseling at the on September 21, 2005 and had attended 10 sessions. recounted that the petitioner stated that her husband was verbally, physically and sexually abusive. also stated that the petitioner’s anxiety, depression and self-blame were consistent with having been a victim of domestic violence. While we do not question expertise, her brief letter does not provide any further, probative information and does not describe any particular incident of abuse in detail.

In sum, the relevant evidence indicates that the petitioner’s husband abused alcohol and controlled substances and was incarcerated. Yet the record does not demonstrate that the petitioner’s husband battered her or that his substance abuse and other actions constituted psychological or sexual abuse, were aimed at controlling the petitioner, or were part of an overall pattern of violence. Consequently, the petitioner has failed to establish 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.

The petitioner has not demonstrated that she entered into marriage with F-S- in good faith, resided with him and that he subjected her to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The former regulation at 8 C.F.R. § 204.2(c)(3)(ii)(2005) required U.S. Citizenship and Immigration Services (USCIS) to provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision was made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director’s decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.