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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

B4

APR 24 2009

FILE:

EAC 07-079-50643

Office: VERMONT SERVICE CENTER

Date:

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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action.

The petitioner seeks classification as a special immigrant 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 having been battered or subjected to extreme cruelty by her U.S. citizen spouse. The director denied the petition finding that the petitioner failed to establish that she had been battered or subjected to extreme cruelty by her spouse during their marriage and that she entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

We concur with the director's determination that the petitioner has not established the requisite battery or extreme cruelty and that she entered into her marriage in good faith. Counsel's claims and additional evidence on appeal do not overcome the grounds for denial of the petition. Nonetheless, the case must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Eligibility for Immigrant Classification Under Section 204(a)(1)(A)(iii) of the Act

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner 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 regulation at 8 C.F.R. § 204.2(c)(1) provides the following guidance regarding relevant eligibility requirements:

(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.

* * * *

(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.

Procedural History and Pertinent Facts

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Grenada who entered the United States on July 16, 2000 with a B-2 nonimmigrant visitor visa. On August 4, 2005 the petitioner married G-S,¹ a U.S. citizen, in Virginia. On October 11, 2005 G-S- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed a Form I-485, Application to Adjust Status. They appeared together for an interview with U.S. Citizenship and Immigration Services (USCIS) on August 15, 2006, but G-S- failed to appear for a second interview on October 17, 2006. The petition and the application were denied on October 17, 2006, and the petitioner was placed in removal proceedings and charged with remaining in the United States beyond her authorized temporary stay. Immigration Court proceedings remain pending to date.

The petitioner, through counsel, filed the instant I-360 Petition on January 29, 2007. Documents submitted at that time included bank statements for May/June and August/September 2006 from Navy Federal Credit Union showing that the petitioner was a "joint owner" on G-S-'s checking account; and, as evidence that the petitioner had been abused by her spouse, the petitioner's statement, dated January 15, 2007; a statement from her grandmother, dated January 5, 2007; and a statement from her landlady, dated January 23, 2007.

Finding that the evidence was insufficient to establish the petitioner's eligibility, on February 2, 2007 USCIS issued a Request for Evidence (RFE) that the petitioner entered into her marriage in good faith. In response, on April 2, 2007 the petitioner submitted additional affidavits, an anniversary and birthday card, photographs and electronic mail. On July 23, 2007, USCIS issued a second RFE of a good faith marriage and of battery or extreme cruelty perpetrated against the petitioner by her husband. In response, the petitioner provided her own affidavit, dated October 15, 2007.

The director found that the petitioner had failed to establish her eligibility, noting that the statements of the petitioner and others described common marital incompatibilities, but that marital tensions and incompatibilities that place strains on a marriage do not, by themselves, constitute extreme cruelty. The director also found insufficient evidence of a good faith marriage. The director denied the petition accordingly.

The petitioner, through counsel, submits a timely appeal with a brief, copies of joint bank statements from the Navy Federal Credit Union for the same months previously submitted, May/June and August/September 2006; a copy of a November 26, 2007 psychological evaluation of the petitioner; and a copy of the petitioner's Divorce Complaint on the grounds of cruelty and

¹ Name withheld to protect individual's identity.

vicious conduct. We note that the copy of the Divorce Complaint is undated and there is no indication that it was filed with the court. In his brief, counsel asserts that the director erred by failing to consider all of the evidence submitted. While we note that the director failed to initially consider the evidence of a joint bank account, upon review of all of the evidence in the record we concur with the director's finding that the petitioner failed to establish her eligibility by a preponderance of the evidence.

Battery or Extreme Cruelty

As evidence that she was subjected to battery or extreme cruelty by her husband, the petitioner submitted two of her own statements, a statement from her landlady, [REDACTED] a statement from the petitioner's grandmother, and statements from two friends, [REDACTED] and [REDACTED]

On appeal, she submitted a psychological evaluation based on an interview with her conducted on November 20, 2007.

In her original statement, the petitioner claimed that she met her future husband in summer 2003 at a party when she was a college student and they became friends and began dating; G-S- joined the U.S. Navy in November 2004 and proposed to the petitioner in February 2005; they got married the following August and moved to Maryland; G-S- spent most of his time at the naval base in Virginia but would usually spend weekends with the petitioner at their home. She described the problems in their marriage, including that G-S- would deplete their joint bank account and would drink excessively and yell at her and call her names. She described several incidents: one weekend when he was visiting he went out with a friend and returned drunk, was outside yelling and pounding on the door at midnight, and a neighbor called the police, who came and took him to his mother's house; on December 31, 2005, they had an argument, she went out with her cousin, and when she returned he was asleep and she found broken dishes and other things around the house; in May 2006 they had another big argument and G-S- purposely spilled his drink on her lap. She claimed that G-S- left the Navy without permission and later had to serve time in San Diego before he was officially discharged; he returned to their home in July 2006, started drinking again in August, and continued to spend money in their joint bank account irresponsibly. She stated that when she confronted him about the money, he punched the wall and left the house, and he never came back; she said she saw him only one time after that, at his mother's house.

The petitioner's grandmother stated that she met G-S- when the couple was dating and that after they married "he started to abuse my granddaughter both economic and emotional" and she heard him call her "nasty names." The petitioner's landlady, [REDACTED] stated that on September 3, 2005, the petitioner and her husband went out together, later he went out by himself and after 2:00 a.m. he started calling the petitioner on her cell phone telling her to come outside and yelling and banging on the door. [REDACTED] claimed that she decided to call the police; the police took G-S-'s car keys and asked him to leave; he left, but came back later and started doing the same thing again.

The statement by [REDACTED] contradicts the petitioner's account of the same incident, as the

petitioner claimed that after one of her neighbors called the police, the police took her husband to his mother's house close by and he did not return until the next morning with his mother to apologize. The petitioner also provides inconsistent accounts. In her second statement, dated October 15, 2007, she repeated her account of the September 2005 incident where the police were called and provided a different account of the December 31, 2005 incident, claiming that when she returned with her cousin, her husband was drunk, not asleep as she originally claimed, and was screaming and called her an obscene name. In her second statement, the petitioner also repeated that she and her husband had financial problems, but did not refer to the other big arguments she originally described. When she did describe these incidents again, during her interview with the psychologist, she changed them significantly, reporting that her husband punched a hole in the wall right next to her because her cousin was visiting and her husband thought she spent too much time with that cousin; and reporting that G-S- emptied a beer can on her head in anger, rather than spilling his drink in her lap. Her grandmother does not provide any information based on personal knowledge other than she would help the petitioner when she had financial problems and that G-S- called the petitioner a nasty name. Other affidavits and the psychological evaluation are also based on the petitioner's accounts of abuse. Given the inconsistencies in these accounts, however, the information provided by the petitioner and others cannot be found credible.

Other inconsistencies in the record raise additional concerns regarding the credibility of the petitioner's claims. In her Divorce Complaint, the petitioner claims that the parties mutually and voluntarily separated on August 30, 2006; and in her initial statement she claims that she did not see her husband again, except for a brief encounter at his mother's house, after he left during an argument in July or August 2006. However, evidence in the record of proceedings related to the petitioner's application for permanent residence contains contradictory information. The couple appeared together at their USCIS interview on August 15, 2006; at a subsequent interview scheduled on October 17, 2006, the petitioner appeared alone and explained that her husband was not there because she and her husband were at home together that morning when he received a telephone call from his employer telling him he had to go to work. Her claim that they were together that morning is contradicted by her later claims that she did not see him after August.

The claims made by the petitioner and the general statements submitted on her behalf are not credible for the reasons noted above. No other evidence is included in the record to establish that the petitioner was abused by her husband.

Accordingly, the petitioner has failed to establish that she was battered or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

Evidence of good faith at the time of marriage may include 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 evidence include police, medical, or court documents providing

information about the relationship; and affidavits of persons with personal knowledge of the relationship. 8 C.F.R. § 204.2(c)(2)(vii).

The petitioner submitted the following documents as evidence of her claim that she entered into her marriage with her U.S. citizen spouse in good faith: The affidavits noted in the previous section; several photographs showing the couple together at unspecified times; an undated birthday card and anniversary card, with no addressees; a lease signed by the petitioner, her husband and their landlady, [REDACTED], for the year beginning August 2005 and a statement from [REDACTED] indicating that the couple rented a room and bathroom in her house at [REDACTED] and bank statements addressed to G-S- at [REDACTED] from Navy Federal Credit Union showing that the petitioner was a “joint owner” on G-S-’s checking account in 2006.

In her affidavit of January 15, 2007, the petitioner claims that her relationship with G-S- began when she met him in summer 2003 at a party, they became friends and began dating, and she later introduced him to her grandmother. She stated that he was very nice and sweet to her and she liked him a lot; that G-S- joined the Navy in November 2004 and they saw each other almost every weekend, and after dating for almost two years, G-S- proposed to her and they continued to see each other on weekends. She then states that they got married on August 4, 2005, it was a small wedding with two of G-S-’s friends, and then they moved together to an apartment in Maryland. In her second affidavit, of October 15, 2007, she adds only that when they were dating, G-S- became her best friend, and she could talk to him about anything. In the affidavits from her friends, [REDACTED] states that he knew them both prior to their marriage and that they were introduced through a mutual friend of theirs and he knows that they married in good faith; and [REDACTED] states that the couple seemed to be happy and compatible and the petitioner was overjoyed to be starting the new venture of being married. Her grandmother states only that she met G-S- when the couple was dating, they had their ups and downs and entered their marriage in good faith.

Other than the affidavits described above, the record lacks any description or reference to the couple’s relationship, either before or during their marriage, as evidence that the petitioner entered into her marriage in good faith; the affidavits offer no details regarding the petitioner’s intent when she entered into her marriage. While the petitioner provided an account of the couple’s meeting and relationship for purposes of her psychological evaluation, her account as reported lacks credibility because of inconsistencies with her prior accounts. Her explanation of how she met G-S-, at a party given by the Caribbean Students Association of Lincoln College in the spring of 2003, is inconsistent with [REDACTED] statement that they were introduced through a mutual friend; and the details reported to the psychologist, including that G-S- proposed on Valentine’s Day 2005 with flowers and a ring, were not provided by the petitioner in her own statements. While the petitioner and others describe the problems in the couple’s relationship, neither she nor others provide any credible details regarding her feelings for her husband or her plans for a future with her husband, her courtship or wedding.

The photographs show that the couple was together at unknown times and places; the cards and

electronic mail messages have no relevance as they contain no information linking the couple and no information regarding a good faith marriage. The property lease shows that they signed an agreement to rent a bedroom and bathroom in a residence in Maryland in August 2005, but the petitioner and others indicate that G-S- was in the Navy at that time and required to live on the base. The bank statements noted above are addressed to G-S- at their claimed joint address and show that the petitioner was included as a "joint owner" on her husband's account for a few months in 2006; however, other documentary evidence of a good faith marriage is lacking, such as proof that one spouse has been listed as the other's spouse on insurance policies or income tax forms, medical, or court documents providing information about the relationship, or relevant affidavits of persons with personal knowledge of the relationship.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the lack of probative detail and substantive information in the petitioner's and others' testimony regarding the couple's engagement and shared experiences and the inconsistencies in the record significantly detract from the credibility of her claim.

Accordingly, the petitioner has failed to establish that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

For the reasons noted above, the AAO concurs with the director's decision that the petitioner has failed to establish by a preponderance of the evidence that she was battered or subjected to extreme cruelty by her U.S. citizen spouse and that she entered into her marriage in good faith. Consequently, she is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The petition is not approvable for the above stated reasons, with each considered as an independent and alternative bar to approval.

Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID as required under former 8 C.F.R. § 204.2(c)(3)(ii)(2007). While it is no longer a regulatory requirement for petitions filed on or after June 18, 2007, a NOID is required in this case, as it was filed on January 29, 2007.

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; however, the petition is currently not approvable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new decision which, if adverse to the petitioner, is to be certified to the AAO for review.