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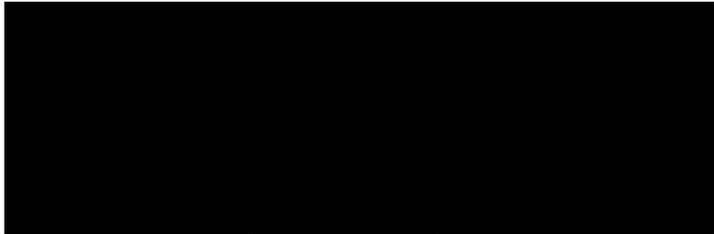
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090



U.S. Citizenship
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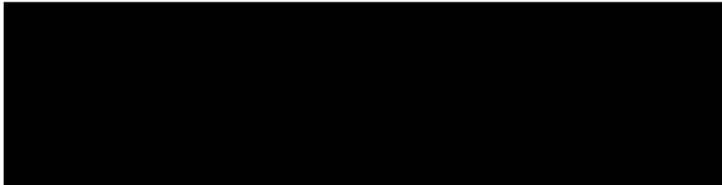
IN RE:

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

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 because the petitioner did not establish that she resided with her spouse, married him in good faith and that her spouse subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief.

Although we find that the petitioner has established extreme cruelty during the marriage, we concur with the director's determination that the petitioner has not established joint residence or entry into the qualifying relationship in good faith. 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).

The record in this case provides the following relevant facts and procedural history. The petitioner is a native and citizen of Bulgaria who entered the United States with a J-1 visa on June 17, 2003. On September 19, 2004, the petitioner married J-W-¹, a U.S. citizen, in Fitchburg, Wisconsin. J-W- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The director denied the Form I-130 because J-W- withdrew the Form I-130.

On March 29, 2007, the petitioner filed this Form I-360. On December 10, 2007 the director issued a Request for Evidence (RFE). The petitioner timely responded with further evidence. On March 22, 2008, the director denied the petition for failure to establish joint residence, entry into the qualifying relationship in good faith, or the requisite battery or extreme cruelty during the marriage and the petitioner, through counsel, timely appealed.

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).

¹ Name withheld to protect individual's identity.

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 filed 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.

On appeal, counsel explains or discounts certain factual inconsistencies and discrepancies cited by the director. Counsel's remaining claims and the evidence submitted on appeal fail to establish the petitioner's residence with her spouse, her good-faith entry into their marriage, and her being a victim of battery or extreme cruelty.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that she resided with her spouse:

- The petitioner's affidavit dated March 26, 2007;
- The petitioner's and J-W-'s Form G-325A, Biographic Information, on which both stated that they resided at [REDACTED] in Madison, Wisconsin from September 2004 until the date the form was signed, November 7, 2004;
- Copies of joint residential leases for [REDACTED] in Madison, Wisconsin for a lease term from April 1, 2005 to March 31, 2006 and from April 1, 2006 to May 31, 2006 signed by the petitioner and J-W-;
- A copy of a "Wisconsin Certification of Title for a Vehicle" dated September 20, 2004

indicating that the petitioner and J-W- are the registered owners and that their address on that date was at [REDACTED]

- A Madison Gas and Electric statement for May 2005 listing the petitioner's address as [REDACTED]
- A copy of a Madison Gas and Electric statement for June 2006 listing the petitioner's address as [REDACTED]
- A Charter Communications statement dated April 13, 2005 listing the petitioner's and J-W-'s address as [REDACTED]
- A copy of an Einstein Personal Communication invoice dated April 26, 2005 listing the petitioner's and J-W-'s address as [REDACTED]
- An Einstein Personal Communication invoice dated September 28, 2005 listing the petitioner's and J-W-'s address as [REDACTED]
- A copy of a Dell statement for April 2005 listing the petitioner's and J-W-'s address as [REDACTED]
- A copy of a Progressive car insurance policy summary dated January 9, 2007 listing the petitioner's address as [REDACTED]
- Copies of the petitioner's Wisconsin driver's licenses indicating that her address was [REDACTED] on September 20, 2004 and [REDACTED] on July 5, 2006;
- A copy of J-W-'s Wisconsin driver's license issued on September 17, 2003 listing his address as [REDACTED]
- A copy of the petitioner's pay stub from Trek Bicycle Corporation dated June 3, 2005 listing her address as [REDACTED];
- A copy of the petitioner's pay stub from Trek Bicycle Corporation dated December 17, 2004 listing her address as [REDACTED]
- A copy of J-W-'s Internal Revenue Service (IRS) Form 1040 signed on January 28, 2005 listing his address as [REDACTED]
- A copy of J-W-'s IRS Form W-2 for 2004 listing his address as [REDACTED]; and
- A copy of the petitioner's IRS Form W-2 for 2004 listing her address as [REDACTED]

On the Form I-360, the petitioner stated that she resided with her spouse beginning in September 2004 but did not indicate when she stopped living with J-W-. The petitioner also stated that she last lived with J-W- at [REDACTED] on August 1, 2005. However, the petitioner has submitted a lease for [REDACTED] signed by her and her spouse for term from April 1, 2006 to May 31, 2006, eight months after she states that she stopped living with her spouse at that address. In addition, the record of proceeding contains a statement from Madison Gas and Electric for June 2006 solely in the petitioner's name and listing her address as [REDACTED]. Finally, the record of proceeding contains a copy of the petitioner's Wisconsin driver's license issued on July 5, 2006 and listing her address as [REDACTED]. The record of proceeding contains no explanation for these inconsistencies. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582,

591-92 (BIA 1988). Furthermore, the residential leases for [REDACTED] are from April 1, 2006 to May 31, 2006. In the Form I-360, the petitioner states that she began living with her spouse in September 2004 but only provides leases from April 1, 2005 to May 31, 2006. While the petitioner is not required to have lived with her spouse for any specific amount of time, her statements on the Form I-360 regarding her address are inconsistent with other documents in the record of proceeding and detract from the credibility of her testimony.

In sum, the relevant evidence provides intermittent documentation and contains unresolved discrepancies regarding the petitioner's alleged residence with her spouse. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In her March 26, 2007 affidavit the petitioner stated that she first met her spouse during her birthday party at a club and spoke for hours that day. The petitioner states that she and J-W- began dating. She states that J-W- visited her often at her apartment and that she went to his place which was his parents' home. The petitioner states that she met J-W-'s children and "fel[l] in love." Later, the petitioner met J-W-'s parents. The petitioner states that she and J-W- had a civil ceremony and that her father-in-law did not attend because he was in the hospital after suffering from a heart attack. In her affidavit, the petitioner provides some information about her relationship with J-W- prior to the wedding but she does not further describe how she met her spouse, their courtship, decision to marry, their wedding or any of their shared experiences, apart from the alleged abuse.

The petitioner claims that she and her spouse began living together in September 2004. According to the Form G-325, the petitioner and J-W- lived at [REDACTED] in Madison Wisconsin. The record of proceeding contains no lease for [REDACTED] or an affidavit from an acquaintance or property manager verifying that both the petitioner and J-W- lived at that address together. However, as discussed by the director in his denial, the record contains only intermittent joint documentation, nearly all of which is dated shortly before the former couple's interviews with immigration officers. In her statement on appeal, the petitioner states that she was unable to provide further documentation because she could only take a few items when she left her husband and she was not concerned about proving that she and J-W- lived together.

While the AAO understands that the petitioner might not have been able to take certain documents when she left her husband, the petitioner does not provide an explanation as to why she was unable to obtain more complete information directly from her creditors. On appeal, the petitioner states that J-W- was unable to obtain a joint checking account because J-W- had bad credit. The AAO notes that the petitioner submitted a copy of credit cards from The Home Depot, Harlem Furniture the Roomplace, Dodge Chrysler Financial, and a Chase check card. Given that the petitioner was able to obtain credit in her name and some of the bills submitted include J-W-'s, the petitioner's statement on appeal does not adequately explain why J-W- could not be added to those accounts.

On appeal, counsel argues that when “viewed as a whole,” the evidence previously submitted establishes that the petitioner entered the qualifying relationship in good faith and resided with J-W-. As stated above, several of the documents in the record of proceeding are inconsistent with each other and neither counsel nor the petitioner provides an explanation for the inconsistencies. Although the lack of documentary evidence of a good faith marriage is not automatically disqualifying, as discussed above, the testimonial evidence submitted by the petitioner does not establish that she entered into the marriage in good faith. Accordingly, the petitioner failed to demonstrate 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.

Battery or Extreme Cruelty

We agree with the director and find that the petitioner has failed established battery or extreme cruelty during the marriage. The record contains the following, relevant evidence:

- The petitioner’s affidavit dated March 26, 2007;
- An letter from [REDACTED], the petitioner’s mother;
- A letter from the [REDACTED];
- A letter from [REDACTED]; and
- A psychological report from [REDACTED] dated March 18, 2007.

In her affidavit dated March 26, 2007, the petitioner describes how J-W- threatened her and how he would force her to “play” sleep-deprivation and prisoner “games.” The psychological report prepared by [REDACTED] concludes that the petitioner suffers from major depressive disorder but the report does not mention the sleep-deprivation or prisoner games or other incidents mentioned in the petitioner’s affidavit. [REDACTED] also mentions that the petitioner is “unlikely” to receive adequate medical attention for her condition. [REDACTED] references the Department of State’s Consular Information Sheet in his report regarding the availability of medical care in Bulgaria. [REDACTED] provides general information about medical care in Bulgaria, but does not provide information regarding the petitioner’s specific circumstances. For example, the report mentions that certain medical care might be difficult to find in a village, but [REDACTED] does not state where the petitioner would live if she returned to Bulgaria.

The statement submitted by [REDACTED] fails to provide sufficient information to establish the petitioner’s claim. [REDACTED] states that she and her husband had to take turns caring for the petitioner, that the petitioner would cry a few times a day for no reason, and that the petitioner lost about 40 pounds. In her statement, [REDACTED] claims that she was not aware of the alleged abuse suffered by the petitioner because the petitioner did not tell her. [REDACTED] does not have personal knowledge of the alleged abuse.

The AAO agrees with the director that the letters from the [REDACTED] and [REDACTED] do not provide details or specific incidents about the purported extreme cruelty.

We concur with the director’s determination that the petitioner has not demonstrated the requisite

battery or extreme cruelty. Counsel's claims on appeal do not overcome this ground for denial of the petition. Accordingly, based on the present record, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In addition, the petitioner has not demonstrated that she resided with spouse or that she entered into their marriage in good faith. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

Despite the petitioner's ineligibility based on the present record, this case must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

As always in visa petition proceedings, the burden of proving eligibility for the benefit sought 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 unapprovable 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 Administrative Appeals Office for review.