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U.S. Citizenship
and Immigration
Services

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FILE:



EAC 06 154 51887

Office: VERMONT SERVICE CENTER

Date:

FEB 10 2009

IN RE:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The service center 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 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 on the basis of his determination that the petitioner had failed to establish: (1) that she had resided with her husband; (2) that her husband subjected her to battery or extreme cruelty; and (3) that she entered into marriage with her husband in good faith.

Counsel submitted a timely appeal on June 4, 2007.

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .
- (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 of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of the Dominican Republic who entered the United States, without inspection, on or around August 22, 1995. She married A-A-¹ a United States citizen, on December 14, 1996. A-A- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on September 30, 1997. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date. The Form I-130 was denied on August 31, 2001, and the Form I-485 was denied on November 21, 2001.

The petitioner filed the instant Form I-360 on April 25, 2006. On September 29, 2006, the director issued a request for additional evidence, and requested additional evidence to establish whether the petitioner had a qualifying relationship with A-A-; whether she had shared a joint residence with A-A-; whether she had been subjected to battery and/or extreme cruelty by A-A-; whether she is a person of good moral character; and whether she entered into marriage with A-A- in good faith. The petitioner responded on November 24, 2006, and submitted additional evidence. The director issued a notice of intent to deny (NOID) the petition on January 23, 2007, which notified the petitioner of deficiencies in the record and afforded her the opportunity to submit further evidence to establish that she had shared a joint residence with A-A-; that she had been subjected to battery and/or extreme cruelty by A-A-; and that she entered into marriage with A-A- in good faith. The petitioner responded on March 20, 2007, and submitted additional evidence.

After considering the evidence of record, the director denied the petition on May 9, 2007.

¹ Name withheld to protect individual's identity.

On appeal, counsel submits a brief and additional supporting documentation. Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition.

Joint Residence

The first issue on appeal is whether the petitioner has established that she shared a joint residence with A-A-. On the Form I-360, the petitioner stated that she and A-A- shared a residence between 1996 and 1999. However, the only evidence of record which indicates that A-A- lived with the petitioner are the 1998 joint tax return and the November 7, 2006 affidavit of [REDACTED]. As noted by the director in his January 23, 2007 NOID, while the evidence of record establishes that the petitioner lived at [REDACTED] in Camden, New Jersey, there is no evidence indicating that A-A- lived there with her. Counsel and the petitioner elected not to respond to this portion of the NOID and, on appeal, have again elected not to respond to the director's finding with regard to A-A-'s residence. Accordingly, the petitioner has not established by a preponderance of the evidence that she shared a joint residence with A-A-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The AAO agrees with the director's determination that the petitioner failed to establish that A-A- subjected her to battery and/or extreme cruelty.

The record contains three self-affidavits from the petitioner. In her March 19, 2007 affidavit, the petitioner states that she was not able to stay with A-A- because he was abusive; that she stayed in the marriage for as long as she did due to her immigration status; and that had she stayed with A-A- she would have possibly been killed.

In her undated affidavit, the petitioner stated that A-A- physically abused her by hitting her, and verbally abused her by calling her a "stupid illegal" and "mentally retarded." She stated that A-A- used her for money; that he did not allow her to access her own paycheck; that a girlfriend told her A-A- was "always on the streets doing drugs"; that A-A- treated her like a slave and beat her, scratched her, raped her, hit her face, and tore her clothing; and that A-A- left the residence on December 28, 1999 after she told him she did not want to live with him any longer.

In her affidavit submitted on appeal, the petitioner states that she realized A-A- snorted cocaine on her wedding day, but did not recognize the white powder as cocaine at that point; that she was raped and mistreated by A-A-; that A-A- spent all of his time outside the home; that A-A- did not work; that A-A- has done everything he can to destroy her; that she did not stay with A-A- because he was going to have her deported; that she was so terrified that, when A-A- hit her in the forehead, she did not call a doctor or call the police; that she has been treated like a delinquent; and that she is not seeking a divorce.

In her November 7, 2006 affidavit, [REDACTED] states that she "was a witness to the ill treatment and the beatings that her husband would give her." [REDACTED] stated that the

petitioner was unable to call the police because A-A- threatened to call immigration authorities, and that he teased the petitioner about her lack of immigration status. She stated that when A-A- came home, "he would start breaking everything in the house." She also stated that the petitioner "took her daughter and left." In her June 14, 2007 affidavit, [REDACTED] repeated her assertion that she witnessed A-A- abusing the petitioner. She also stated that, on Fridays, the days on which the petitioner was paid, A-A- would take her money for his "vice," hit her, and come home late. She also stated that she had to change jobs so that she could care for the petitioner's daughter so that A-A- would not mistreat the daughter as well.

However, [REDACTED] statement that the petitioner "took her daughter and left" conflicts directly with the petitioner's own statement that A-A- was the one who left the residence. According to the petitioner, on December 28, 1999, she told A-A- that she did not wish to live with him any longer, and that when she returned home from work she did not want to see him there. According to the petitioner, when she returned from work that evening everything was gone. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). This unexplained inconsistency diminishes the evidentiary weight of testimony. Further, her testimony continues to lack probative, detailed information regarding the abuse she allegedly witnessed.

In her March 16, 2007 affidavit, [REDACTED] states that the petitioner "put up with beatings and verbal abuse." In her June 14, 2007 affidavit, she states that she "always saw [the petitioner] with a lot of bruises." However, [REDACTED] offers no specific examples of such bruises, and her generalized statement about always seeing the petitioner with bruises is insufficient. Further, and as noted by the director, it is not clear whether [REDACTED] witnessed any abuse personally, or whether her affidavit is based upon conversations with the petitioner. Her testimony, therefore, provides little probative value. For the same reason, the AAO will also discount the testimony of [REDACTED].

In her June 14, 2007 affidavit [REDACTED] states that she witnessed A-A- abusing the petitioner. However, she fails to describe any particular incident of abuse or mistreatment. Nor does she provide any further details regarding specific events claimed by the petitioner. Her affidavit is insufficiently vague and lacking in detail to serve as evidence of battery and/or extreme cruelty.

Nor does the "confidential psycho-social report" from [REDACTED] a licensed clinical social worker, satisfy the petitioner's burden of proof in establishing that the petitioner was the victim of battery or extreme cruelty. First, the AAO notes that [REDACTED] makes several unsupported assertions. She states that the petitioner has been diligent in working through her trauma through therapy and treatment, yet the record contains no evidence regarding such therapy. She states her opinion that the petitioner "seems" to be suffering from post-traumatic stress disorder, but makes provides no evidence regarding her qualifications to opine on such matters. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of

proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, the AAO notes that [REDACTED] testimony conflicts with other information contained in the record of proceeding, which diminishes her credibility. [REDACTED] states that the petitioner and A-A- met in 1996; the petitioner claims they met on September 19, 1995. [REDACTED] states that the early years of the relationship were tranquil and blissful, yet the petitioner claims she saw him snorting cocaine on their wedding night (although she did not yet know it was cocaine). [REDACTED] states that the petitioner is seeking a divorce; the petitioner stated that she was not seeking a divorce. [REDACTED] states that the petitioner was treated for depression at Our Lady of Lourdes Medical Center in 1998; the evidence of record indicates that such treatment occurred on October 1, 1997. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Further, the AAO notes that [REDACTED] testimony is based upon a single interview with the petitioner, which occurred on July 2, 2005. The conclusions reached by [REDACTED] being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship, thereby rendering her findings speculative and diminishing the evidentiary value of her report.

Nor do the medical records referenced by [REDACTED] establish that the petitioner was subjected to battery and/or extreme cruelty. The records indicate that the petitioner was admitted to Our Lady of Lourdes Medical Center on October 1, 1997 at 3:42 P.M., and released at 4:30 P.M. that same day. Although the handwriting in the "clinical impression" portion of the report is very difficult to read, the petitioner's claim that it states "depression" appears reasonable to the AAO. However, even if the AAO accepts the petitioner's claim that her visit to the hospital was for depression, there is no evidence in the record to link this depression to any abuse suffered at the hands of A-A-. Further, as it is unclear from the record when the alleged abuse actually began, it is unclear whether this depression would have occurred before or after the depression began. According to [REDACTED] the early years of the relationship were tranquil and blissful, and this trip to the hospital occurred less than one year after the marriage. Moreover, the AAO notes that there is no evidence of any ongoing treatment for the depression referenced in the medical report. Finally, the fact that the petitioner was willing to go to the hospital in 1997 due to depression conflicts with her assertion that she was unwilling to seek medical treatment for the physical abuse. For all of these reasons, the medical records fail to establish that the petitioner was the victim of battery and/or extreme cruelty perpetuated by A-A-.

On appeal, counsel asserts that "USCIS has not used the any credible evidence standard" in the instant case, and that such standard should be applied to the case.

Counsel's interpretation of the "any credible evidence" standard is mistaken. Section 204(a)(1)(J) of the Act requires USCIS to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "Other forms of relevant credible evidence will also be considered." 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, 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 Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

USCIS has indeed applied the "any credible evidence" standard to this case. It has considered all credible evidence relevant to the case. The deficiencies in the petitioner's evidence, as well as the inconsistencies and discrepancies, were set forth previously and, while it finds some of the petitioner's evidence credible, the AAO does not find it sufficient to satisfy the petitioner's burden of proof to establish that she was the victim of battery and/or extreme cruelty perpetuated by A-A-. 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.

Good Faith Entry into Marriage

The director also found that the petitioner had failed to establish that she married A-A- in good faith. The AAO agrees. Although the record does contain several photographs, they are undated and unexplained. Further, the record contains conflicting information regarding the date of the couple's first meeting, and there is little documentary evidence of a shared life together, such as utility bills in both of their names or joint financial accounts. While the petitioner states that A-A- ripped apart such evidence so that she would not be able to demonstrate a life together, she does not explain why he did not rip apart the pictures or 1998 joint tax return. Further, the AAO notes that the pictures and joint tax return from 1998 do not speak to the petitioner's intentions prior to entering the marriage. There is little information regarding the couple's courtship, their engagement, activities they shared together, or their decision to marry.

The only information submitted on appeal regarding this ground of the director's denial is a repetition of her earlier assertion that A-A- "ripped everything so that [she] would never be able to

prove that he and I had a marriage.” However, she fails to fully explain this assertion. For example, she fails to indicate whether he ripped apart paperwork as an ongoing type of abuse or whether he ripped it all apart when he left, etc., which would allow the AAO to accept such a statement at face value. Moreover, as noted previously, the record lacks probative, detailed information regarding the couple’s early history to establish the petitioner’s intentions upon entering the marriage. The record as it currently stands, without further clarification, lacks sufficient documentation to establish that the petitioner married A-A- in good faith. The evidence of record fails to demonstrate that the petitioner entered into marriage with A-A- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The AAO agrees with the director’s determination that the petitioner has failed to establish that she and her husband shared a joint residence; that her husband subjected her to battery or extreme cruelty; and that she entered into marriage with her husband in good faith. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.