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U.S. Citizenship
and Immigration
Services

B9

FILE:

[REDACTED]
EAC 06 067 52581

Office: VERMONT SERVICE CENTER

Date: FEB 25 2009

IN RE:

Petitioner: [REDACTED]

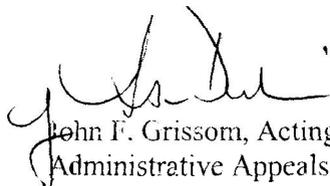
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 Director, Vermont Service Center, 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 because the petitioner did not establish that she entered into marriage with her husband in good faith and that he battered or subjected her to extreme cruelty during their marriage.

On appeal, counsel submits a brief 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 Peru who entered the United States (U.S.) on November 18, 1999 as a nonimmigrant visitor (B-2). On December 16, 2002, the petitioner married V-M-¹, a U.S. citizen, in Florida. V-M- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on December 9, 2005, as was the petitioner's concurrently filed Form I-485, Application to Adjust Status.

On December 30, 2005, the petitioner filed this Form I-360. On February 28, 2006, the director issued a Request for Evidence (RFE) of the petitioner's entry into marriage with V-M- in good faith and his battery or extreme cruelty. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish her eligibility. Consequently, the director denied the petition on July 9, 2007 for lack of the requisite entry into the marriage in good faith and battery or extreme cruelty. The petitioner, through counsel, timely appealed.

On appeal, counsel submits additional evidence and asserts that the petitioner established that she was battered by her husband and that she married him in good faith. Counsel's claims and the evidence submitted on appeal do not overcome the grounds for denial and the appeal will be dismissed.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with V-M- in good faith:

- The petitioner's December 17, 2005 statement and her April 30, 2006 statement submitted in response to the RFE;
- Affidavits of the petitioner's friends, [REDACTED] and her pastor, [REDACTED];
- Affidavits of the petitioner's friends, [REDACTED] and [REDACTED], submitted in response to the RFE; and
- Copies of the criminal record of the petitioner's husband in Florida;
- Printout of the petitioner's bank account information with a handwritten notation that the petitioner's husband could not be added to her account "due to charge off;"
- July 19, 2007 letter from the petitioner's automobile insurance company explaining why the petitioner's husband was not covered by her policy;
- The petitioner's July 29, 2005 to July 29, 2006 automobile insurance policy statement listing her husband as an excluded driver;

¹ Name withheld to protect individual's identity.

- Copies of the front of two credit cards with the name of the petitioner on one and the name of her husband on the other;
- Copy of a Home Depot charge account bill with a due date of August 18, 2007 jointly addressed to the petitioner and her husband;
- Copy of an Internal Revenue Service (IRS) Form 2848, which was signed by the petitioner and her husband on September 28, 2005 and grants the petitioner power of attorney over her husband's tax records;
- Copies of the petitioner's 2003 and 2004 IRS Forms 1040A signed by the petitioner on March 5, 2005 and submitted as married filing separately;
- Copies of the petitioner's 2005 and 2006 IRS Forms 1040A submitted as married filing separately; and
- Copies of photographs of the petitioner and her husband on their wedding day.

In her 2005 statement submitted initially, the petitioner described how she met her husband at a party. She states that the former couple married six months after they met because she was "wrapped in that charm magic of 'Love.'" The petitioner explained that they had a small wedding celebration for economic reasons. The petitioner also stated that the former couple obtained joint credit and savings accounts. The petitioner did not further describe the former couple's marriage, shared residence and experiences, apart from the alleged abuse. In her 2006 statement, the petitioner stated that her husband was a nice person at the beginning of their marriage, but she did not further describe how they met, their courtship, wedding, marriage, shared residence and experiences, apart from the purported abuse. The petitioner's testimony lacks detailed and probative information sufficient to establish her good faith in entering the marriage.

The remaining relevant evidence also fails to demonstrate the petitioner's good-faith entry into the marriage. The affidavits of the petitioner's friends and pastor state that the petitioner suffered from depression as a result of her husband's behavior, but they do not discuss the former couple's relationship or the petitioner's intentions in entering the marriage. The bank letter, automobile insurance letter and statement and the criminal record of the petitioner's husband show that he was not included on her bank account and automobile insurance due to his criminal offenses. However, the banking documents contradict the petitioner's statement that she and her husband had a joint account. The photocopies of the credit cards have the cards' account numbers blacked out so it is impossible to tell if the cards were issued on a joint account. The petitioner also submitted no statements from the credit account to show that both she and her husband actually used the cards. The IRS Form 2848 was signed by the former couple the day before the petitioner states that they separated. The petitioner's income tax returns were all submitted as married filing separately. The single jointly addressed Home Depot bill is dated nearly two years after the petitioner states that she and her husband separated. The relevant evidence does not demonstrate that the petitioner and her husband shared financial assets and liabilities.

The photocopied photographs picture the petitioner and her husband together on their wedding day, but the photographs alone do not establish that the petitioner entered into their marriage in good faith.

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with V-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that V-M- battered and subjected her to extreme cruelty:

- The petitioner's December 17, 2005 statement and her April 30, 2006 statement submitted in response to the RFE;
Affidavits of the petitioner's friends, [REDACTED] and her pastor, [REDACTED]
- Affidavits of the petitioner's friends, [REDACTED] and [REDACTED] submitted in response to the RFE;
- Copies of the criminal record of the petitioner's husband in Florida;
- Copies of two photographs of a leg with a bruise under the knee;
- Copy of an unidentified photograph of a broken window; and
- Copies of photographs of the petitioner and her husband on their wedding day.

In her 2005 statement submitted initially, the petitioner explained that her marital problems began when her husband disappeared for three months. After his return, the petitioner states that her husband told her he was imprisoned because the police found cocaine in his friend's car. The petitioner reports that her husband was no longer a loving man and did not help her pay the bills. The petitioner explains that she obtained her husband's criminal record and was surprised and depressed when she found out that he had committed felony offenses. The petitioner did not explain any particular incident of abuse in probative detail. In her 2006 statement submitted in response to the RFE, however, the petitioner reported that her husband once forced her to have sexual relations against her will, hit and gave her a black eye when her friend, [REDACTED] was at their home; once locked her in a room; once declined to take her to the hospital when she had a nosebleed; and threatened that if she contacted the police, he would withdraw her immigrant visa petition. As noted by the director, the petitioner did not explain why she did not mention these actions in her prior statement.

[REDACTED]'s testimony is not consistent with the petitioner's statements. Ms. [REDACTED] states that on one occasion when the former couple was at her home, the petitioner's husband screamed that the petitioner was an illegal immigrant, called her a derogatory name and threw a drink in her face. [REDACTED] does not state, as the petitioner claims, that her husband hit the petitioner in her face when they were at their home, not [REDACTED]'s home.

[REDACTED] states that she once saw the petitioner's husband yell at her and threaten that the petitioner would not get "the residency." She also states that the petitioner's husband hit the petitioner in front of

her, but she does not describe any particular incident of battery in probative detail. In her own statements, the petitioner does not mention that _____ ever witnessed her husband's battery.

The statements of the petitioner's friends, _____ and _____ and her pastor, Father _____ do not provide detailed, probative testimony sufficient to support her claim. _____ states that the petitioner "is having a deep depression" due to her familial situation, but he does not describe any incidents of abuse or provide any further, relevant information. Ms. _____ and Mr. _____ state that the petitioner "felt in a harsh depression" after "she discovered who really is her husband." They do not, however, describe any incidents of abuse. In addition, much of the text of the affidavits of _____ and _____ is repeated verbatim, which indicates that the language of the affidavits is not their own, further detracting from the probative value of their testimony.

The photocopied photographs do not establish the petitioner's claim. The picture of a broken window is of no probative value as it is not identified or discussed in the record. The pictures of a left leg with a bruise beneath the knee do not support the petitioner's claim as they are unidentified and undated and the petitioner does not mention having been injured by her husband on her left leg. Some of the pictures of the petitioner's wedding show a patch of discoloration on her right leg, which is consistent with the petitioner's statement that her husband bruised her right leg the night before their wedding. However, qualifying abuse must take place during the marriage. 8 C.F.R. § 204.2(c)(1)(vii). Documentation of non-qualifying abuse may be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred. 8 C.F.R. § 204.2(c)(2)(iv). Yet in this case, as discussed above, the remaining, relevant evidence fails to establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage.

The criminal record of the petitioner's husband does not indicate that the petitioner was a victim of or otherwise adversely affected by any of his offenses.

In her first statement, the petitioner did not mention any incidents of battery and did not describe behavior of her husband that amounted to extreme cruelty. In her second statement, the petitioner discusses incidents of abuse, but fails to explain why she did not mention these incidents in her first statement. The petitioner's account of her husband's battery is also inconsistent with the accounts of _____ and _____. Although physical abuse is not required, the inconsistencies detract from the credibility of the petitioner's statements and those of her two friends. In sum, the relevant evidence fails to establish that V-M- battered the petitioner or subjected her to 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 her husband in good faith and that he battered or subjected her to extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.