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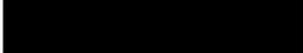
U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: JAN - 2 2009

EAC 05 056 52766

IN RE:

Petitioner:



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

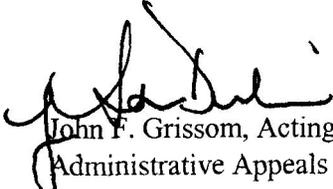
ON BEHALF OF PETITIONER:



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, 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 classification as an immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her United States lawful permanent resident spouse.

On October 3, 2006, the director denied the petition, finding that the petitioner failed to establish that she was living in the United States or if living abroad the lawful permanent resident is an employee of the United States government or a member of the uniformed services or the lawful permanent resident subjected the petitioner to battery or extreme cruelty in the United States. On appeal counsel asserts that the petitioner's petition has been carelessly handled and points to the fact that the director erroneously referenced the eligibility requirement requiring the petitioner's residence in the United States as the sole ground for denial when this has not been an issue, but rather the issue has been the petitioner's qualifying relationship with a lawful permanent resident. Counsel further asserts that the petitioner was unaware of a Form I-589, Application for Asylum and Withholding of Removal, listing her as a spouse of another individual, and that the director failed to adequately consider the evidence the petitioner submitted regarding the "erroneous asylum application that [the petitioner] never filed and for which she was never interviewed." Counsel submits copies of documents previously submitted.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a United States lawful permanent resident may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful permanent resident 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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 also explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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.

* * *

(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, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Republic of Cote-d'Ivoire (sometimes referred to as the Ivory Coast). She states she married S-Y-,¹ a lawful permanent resident, on March 20,² 2000, in the State of Minnesota. The petitioner filed the instant Form I-360 on December 17, 2004. The director issued a request for further evidence (RFE) on November 21, 2005, indicating that a previous RFE had been sent on May 12, 2005 and a response had been received on May, 31, 2005, but that these documents had not been incorporated into the record. The director requested that the response to the RFE be resent. The record now includes those documents. On April 10, 2006, the director issued a Notice of Intent to Deny (NOID) the petition. The director notified the petitioner that the record included information that she had been listed on a Form I-589, Application for Asylum and Withholding of Removal, as the spouse of [REDACTED] and that the marriage certificate included in the asylum application showed that she married [REDACTED] on January 1, 2000 in the Republic of Cote-d'Ivoire.³ The director noted that the record did not include evidence of the legal termination of the petitioner's marriage to [REDACTED] and requested evidence of divorce, death, or annulment terminating the petitioner's marriage to [REDACTED]. Upon review of the response to the NOID, the director denied the petition on October 3, 2006 finding that the petitioner's statements and the affidavits and information submitted on the petitioner's behalf did not establish her eligibility for the immigration classification requested.

Relationship

The petitioner indicates on the Form I-360 that she had been married one time, that the marriage occurred on March 20, 2000 in Minneapolis, Minnesota, and that she had resided with S-Y-, the man she married, from December 1998 to December 2002. The petitioner also indicates that she has one child born June 24, 1986 in Cote-d'Ivoire. As noted above, the petitioner's administrative record also includes a Form I-589, filed May 26, 2004, wherein she is named as the spouse of [REDACTED], a citizen of Togo. The record includes a marriage certificate and the translation of the marriage certificate showing that the petitioner married [REDACTED] on January 1, 2000 in Lome, Togo. The untranslated marriage certificate includes the signatures of the spouses, but none of the signatures are similar to the petitioner's signature on her passport, the Form I-360, her April 20, 2006 statement, or her November 14, 2006 statement.

When presented with the information regarding a marriage prior to her marriage to S-Y-, the petitioner submitted an affidavit dated April 20, 2006 explaining that her relationship with S-Y- had been in turmoil because she could not be employed with authorization and could not obtain a social security card. The petitioner declared that in early 2004 she was informed that a fellow from Togo

¹ Name withheld to protect individual's identity.

² The marriage certificate provided indicates the marriage took place March 23, 2000 in Minneapolis, Minnesota.

³ The translated marriage declaration indicates that the marriage occurred in Lome and that both the petitioner and [REDACTED] were residents of Lome, Togo.

could obtain a social security and work authorization card for her. She stated that she paid \$2000 to this individual and traveled to Maryland for this transaction. In a November 14, 2006 affidavit, the petitioner declared that she was put in contact with a man named [REDACTED] from Virginia who claimed to be an immigration interpreter and who said he could help her with her immigration papers. The petitioner stated: “[u]nbeknowst to me, [REDACTED]’s plan included falsely adding me to another person’s asylum application as a spouse.”⁴ The petitioner indicated that sometime in 2004 she went to an immigration office with [REDACTED] and first met [REDACTED] the man on the asylum application, but that she thought she was at the immigration office for her own case. She noted that [REDACTED] was interviewed by an immigration officer(s) and then the three of them (the petitioner, [REDACTED], and [REDACTED]) left. She declared that she thought it strange that she was not interviewed regarding her work papers but went along. The petitioner further declared that she was not aware that she had been added to an asylum application and has since learned that [REDACTED] has perpetrated similar frauds on other immigrants. The petitioner has also provided affidavits from [REDACTED], and her daughter. The petitioner noted that the affiants attest that she was in the United States on January 1, 2000, the date of the alleged marriage between the petitioner and [REDACTED]. However, only Ms. [REDACTED] declared that she personally saw the petitioner on December 31, 1999 at a New Year’s Eve party in the United States. The petitioner also provided a document issued from the Cote-d’Ivoire civil records that show the petitioner is not enrolled in the marriage registers. The AAO observes, however, such a document would not appear to include marriages that occurred outside of the Cote-d’Ivoire. Although the director mistakenly identified the place of the petitioner’s first marriage as Cote-d’Ivoire, the petitioner’s record includes a marriage certificate between the petitioner and [REDACTED] which shows that their marriage occurred in Togo on January 1, 2000.

The AAO observes that the petitioner attempted to obtain immigration benefits, a work authorization, through the frivolous filing of a Form I-589 asylum application. The record does not include information other than the petitioner’s declaration that she was unaware of the plan to include her illegally on the Form I-589 application. The record does include a notice to appear issued July 6, 2004 indicating that the petitioner did not appear to receive the news of the outcome of the asylum application. The AAO further observes that the record does not include documents, other testimony, or other evidence showing that the petitioner continued the pursuit of her work authorization or social security card, after she appeared at an immigration office with Nico Koffi. The AAO notes that such information would tend to support the petitioner’s statement that she did not know that her attempt to obtain work authorization was illegal. Instead, the petitioner does not include information regarding this incident until April and then November of 2006 after being confronted with the information in her administrative record. The chronology of the record suggests that the petitioner knew she had been unsuccessful in obtaining her work authorization and social

⁴ The Form I-589 also lists the petitioner’s daughter, born June 24, 1986 in Cote-d’Ivoire, as the child of the asylum applicant. The petitioner’s daughter’s birth certificate identifies [REDACTED] as her father.

security card by illegal methods and shortly thereafter filed the Form I-360, the petition that is the subject of this appeal. The AAO also notes that the petitioner stated on the Form I-360 that she resided with S-Y- only until December 2002 and confirmed the length of her residence with S-Y- in her statement in support of the Form I-360, and with other affidavits. Thus, the petitioner's underlying explanation in her April 20, 2006 statement that she paid \$2000 to a third party to get her papers because of the turmoil in her relationship with S-Y- because she could not get a job is at odds with her statements that she had left S-Y- more than a year and a half prior to this claimed attempt to clarify her status.

Although the AAO does not determine that the petitioner has been found to have knowingly filed a frivolous application for asylum, we note that should this determination be made in the future, the petitioner would be permanently ineligible for any benefits under the Act, including immigrant classification as an abused spouse under section 204(a)(1)(A)(iii) of the Act.

The AAO finds in this matter that the information provided in the Form I-589 application regarding the petitioner's marriage to [REDACTED] and the subsequent discrepancies in the petitioner's statements when trying to clarify this matter is sufficient to question whether the petitioner was legally free to enter into marriage with S-Y-.⁵ Given the discrepant information, and the lack of documentary evidence other than the petitioner's statements and the affidavit of [REDACTED] who provides a general statement indicating the petitioner was in the United States on December 31, 1999, the AAO finds that the petitioner has failed to establish that she was legally unencumbered with a prior marriage or marriages when she married S-Y-. The petitioner has not established that she had a qualifying relationship as the spouse of a lawful permanent resident and that she was eligible for immigrant classification based upon that relationship, as required by section 204(a)(1)(B)(ii)(II)(aa)(AA), (cc) of the Act. For this reason, the petition will not be approved.

Battery or Extreme Cruelty

Beyond the decision of the director, the AAO also finds that the petitioner has not established the requisite battery or extreme cruelty perpetrated by S-Y- against her. In an undated statement appended to the petition, the petitioner declared that she first met S-Y- in the Cote-d'Ivoire in 1978 when she was 17 and in the early 1980s S-Y- left Cote-d'Ivoire for France and then the United States. The petitioner reported that in 1992, her relationship with her daughter's father ended and S-Y- encouraged her to join him in the United States. She indicated that she gave in to S-Y-'s advances and joined him in the United States in 1999, after a brief stay in France. The petitioner further reported that within two weeks of arriving she realized she had made a mistake as S-Y- was still together with the mother of his daughter and that S-Y- was not in legal status in the United States. The petitioner indicated that despite her misgivings she and S-Y- married in 2000. She

⁵ The AAO observes that the petitioner referenced a previous relationship with her daughter's father, [REDACTED] which ended abruptly in 1992. The petitioner does not provide further evidence regarding this relationship and its termination.

reported that as his wife, she was not supposed to have friends, could not take English courses, had to obey his orders, and had to turn over any money she had worked for. The petitioner reported that S-Y- took sides with his daughter, hurled verbal abuse at her, threatened to report her to the police and immigration, and forced physical intimacy. The petitioner stated: “[v]erbal abuse would lead to physical abuse, at times very violent. I cannot remember how many times that I have been beaten by [S-Y-] my husband.” The petitioner reported that she told S-Y- on November 30, 2002 that she was leaving him and he beat her and took all her money. She indicated that on December 7, 2002, she told S-Y- that she could survive without him and he put her belongings outside the house and she telephoned a friend to stay with until she could find a permanent place to live. The petitioner further reported that S-Y- continued to harass her at her job.

The record also includes the affidavit of [REDACTED] who indicated he met the petitioner in December 2002 and that soon after the marriage the petitioner felt like a slave and suffered emotional and physical abuse and that even after the petitioner left her husband he harassed her with phone calls and at her workplace. As [REDACTED] affidavit indicates he first met the petitioner in December 2002, he does not have personal knowledge of the circumstances of the petitioner’s relationship with her spouse prior to that time. In addition, he does not provide probative details in his testimony regarding S-Y-’s claimed harassment of the petitioner with phone calls and at her workplace. The record also includes an affidavit of [REDACTED] who declared that as far as she knows the petitioner’s troubles began when the petitioner found out that she could not go to school or work because of her immigration status. [REDACTED] indicated that both the petitioner and S-Y- told her this led to many fights and domestic abuse involving the police. [REDACTED] also failed to provide probative details of the petitioner’s treatment by S-Y- and seems to indicate that both the petitioner and S-Y- demonstrated “bad behaviors.” The testimony provided by these two individuals does not contribute toward a conclusion that the petitioner suffered battery or extreme cruelty perpetrated by S-Y-.

The record further includes a restraining order filed May 20, 2004 by the petitioner against S-Y-. The restraining order lists the grounds for the order as the respondent (S-Y-) made harassing phone calls, frightened the petitioner, and called the petitioner names. Although the restraining order includes other grounds that could be listed, such as physically and sexually assaulting the petitioner, these elements are not alleged. The record also contains a September 16, 2004 letter written by a legal advocate at the Cornerstone Advocacy Service who indicated that the petitioner had been a client since August 29, 2003 and that she had helped the petitioner prepare an Order for Protection because of being physically assaulted by S-Y-, but that the order was dismissed because the petitioner had to be out-of-town. In a separate letter, signed by the same legal advocate, the advocate indicated she attempted to get the first temporary restraining order against S-Y- (the one that was dismissed) because of the husband’s sexual abuse. The advocate also noted that the petitioner contacted her agency again in May 2004 because her husband had verbally attacked her and that the agency helped the petitioner get a protection order that expired in May 2006.

The record in this matter does not include a restraining order against S-Y- for physical or sexual

abuse. The petitioner has failed to provide any supporting evidence that she suffered battery perpetrated by S-Y-. The AAO acknowledges that forced intercourse generally takes place without witnesses to the behavior; however, in this matter the record only contains general statements regarding beatings and rape. The petitioner's statements are insufficiently detailed to substantiate the allegations that she was beaten and raped by S-Y-. The record does not include any documentation of hospitalizations or medical treatment relating to physical injuries. The vague statements the petitioner made in her statements regarding physical abuse diminish the evidentiary value of her statements.

Regarding the petitioner's allegations of verbal harassment with phone calls, at her work, and in one instance when she was at a mall, the petitioner's general information is also insufficient. These incidents do not establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty or that S-Y's non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. These acts as described do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

In this matter, the petitioner has provided general statements that in and of themselves do not establish credibility and are sufficiently vague as to not lend themselves to evaluations regarding credibility. In addition to the generality of most of the information in the record, the petitioner has also submitted inconsistent information. When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty. The AAO declines to accept generic information with little chronological timeline, no medical evaluations, and inherent inconsistencies to establish eligibility for this benefit. As referenced above, the AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that she has been subjected to battery or extreme cruelty perpetrated by her spouse in order to meet her burden of proof. In this matter, she has failed to do so.

As discussed above, the documentary evidence contained in the record is insufficient to establish the petitioner's claims of abuse. The petitioner's failure to describe in probative detail the verbal and physical abuse and the conflicting testimony diminish her claim. Accordingly, the petitioner has failed to establish that she was battered or subjected to extreme cruelty by S-Y- during her marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.