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U.S. Citizenship
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FILE:

EAC 07 228 51972

Office: VERMONT SERVICE CENTER

Date: JUL 17 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.


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 The director's decision will be withdrawn and the matter remanded for further action.

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 that she entered into marriage with her husband in good faith.

Counsel submitted a timely appeal on November 14, 2008.

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:

- (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.

* * *

- (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 petitioner is a citizen of Russia who entered the United States as a K-1 fiancée on November 22, 2006. She married F-R-¹ a citizen of the United States, on February 10, 2007 in Santa Clara, California. According to the petitioner, they lived together from November 22, 2006 until March 18, 2007.

The petitioner filed the instant Form I-360 on July 26, 2007. The director issued a request for additional evidence on April 25, 2008, and requested additional evidence to establish that the petitioner married F-R- in good faith. The petitioner responded on June 5, 2008. After considering the evidence of record, the director denied the petition on October 15, 2008.

Good Faith Entry into Marriage

The sole issue on appeal is whether the petitioner has established that she married F-R- in good faith. In finding the evidence of record insufficient to establish that petitioner had married F-R- in good faith, the director stated, incorrectly, that the petitioner had failed to submit a self-affidavit. According to the director, because the petitioner had not submitted a self-affidavit, it was unclear how she and F-R- had met or how long they had dated and, as such, he was unable to make a determination. In the absence of testimony from the petitioner, the director found the other evidence of record, such as the e-mails between the petitioner and F-R-, the pictures submitted by the petitioner, and the testimony from friends of the petitioner insufficient to establish the petitioner's good faith entry into the marriage.

On appeal, counsel states, correctly, that the petitioner did in fact submit a self-affidavit. The record of proceeding supports counsel's assertion, as it contains an eight-page self-affidavit executed by the petitioner on July 16, 2007. In that self-affidavit, the petitioner explained that she met F-R-, online, in February 2005. They began exchanging e-mails, and were soon e-mailing each other on a daily basis. After two months of e-mail exchanges, they began discussing meeting each other. They tried to meet in Italy in September 2005, but F-R- had to undergo medical treatment, which delayed the trip. They decided to meet in Italy in May 2006, as F-R- had already been planning a trip to Naples during that month for a family reunion. However, they eventually decided not to wait that long, so they met in Italy in March 2006. F-R- filed the fiancé visa in May 2006, and she had her interview in Moscow in October 2006. During this time period, they continued e-mailing each other every day. The petitioner also testified that F-R- told her that he would accept her daughter as his own daughter, and that he insisted she come to the United States with the

¹ Name withheld to protect individual's identity.

petitioner. The petitioner and her daughter entered the United States on November 22, 2006. The petitioner provided probative, detailed information in her testimony. The AAO finds that the petitioner's testimony, when considered together with the voluminous e-mail correspondence of record between F-R- and the petitioner; the testimony of the petitioner's friends regarding the couple's courtship; the testimony of the petitioner's daughter; the documentary evidence of the couple's meeting in Italy; and the pictures submitted into the record; establishes by a preponderance of the evidence that she entered into the marriage in good faith.

The regulations contain no specific formula for determining whether a petitioner has entered into his or her marriage in good faith. Rather, pursuant to the statute and regulation, the determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of USCIS. *See* Section 204(a)(1)(J) of the Act, 8 U.S.C. §1154(a)(1)(J); 8 C.F.R. § 204.2(2)(i). In this particular case, the AAO finds that the combination of the evidence of record and the petitioner's testimony sufficiently establishes that she entered into the marriage in good faith. The petitioner, therefore, has established that she entered into marriage with F-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. However, the petition may not be approved, as the record, as presently constituted, fails to establish that the petitioner was subjected to battery or extreme cruelty by F-R-.

Battery or Extreme Cruelty

Beyond the decision of the director, the AAO finds that although she has overcome the director's concerns over her intentions upon entering into the marriage, the petitioner has nonetheless failed to establish that she was subjected to battery or extreme cruelty by F-R- during their marriage.

The petitioner described the abuse to which she was allegedly subjected in her July 16, 2007 self-affidavit. With regard to qualifying abuse that occurred after their February 10, 2007 marriage, the petitioner stated that F-R- "would be crazy and angry and yelling at me one day and normal the next." The petitioner stated that F-R- yelled at her, and called her names. She stated that, at one point, F-R- was fixated on the idea that the petitioner and her daughter were using him. Later, he became angry because, in his opinion, her daughter stayed in her bedroom for too long; slept too much; used the computer too much; showered too long; spent too much time in the bathroom; and used too much toilet paper. The petitioner also stated that F-R- was controlling: he limited telephone conversations; monitored her letters and e-mail; refused to allow her to meet with friends; made her and her daughter stay home on weekends; forbade them to speak Russian in the home, yet refused to allow them to take English classes; and refused to allow them to eat anything between lunch and dinner. Finally, on March 11, 2007, one month after the wedding, F-R- told the petitioner that her daughter had to return to Russia, because he did not want her in his house. According to the petitioner, he told her that if her daughter's presence in her life was necessary, she should return to Russia. One week later, F-R- ordered the petitioner and her daughter to remove their possessions from his home. The petitioner stated that she was eventually diagnosed with depression, and that her daughter was diagnosed with post-traumatic stress disorder.

In her July 16, 2007 affidavit, the petitioner's daughter stated that after the marriage F-R- was controlling; that he yelled at her and the petitioner for any reason, or for no reason at all; that he often ordered her and the petitioner to leave the house; that he threatened to beat her and the petitioner; that he would not give the petitioner any money; that she and the petitioner were required to eat based upon a schedule set by F-R-; that F-R- forbade them to speak Russian; that F-R- refused to allow them to socialize with the Russian women they met at school; that she and the petitioner had to ask permission to use the telephone; and that, like hostages, she and the petitioner were always inside the house.

The petitioner also submitted an affidavit from [REDACTED] dated April 9, 2007. With regard to abuse that she personally witnessed during the couple's marriage, [REDACTED] stated that she visited the couple on March 17, 2006. She stated that the petitioner had made a pie, but F-R- refused to sit at the table. [REDACTED] testified that on that same evening, F-R- told her that although he loved the petitioner, it was unpleasant having her daughter in the home.

In her April 17, 2007 letter, [REDACTED] stated that she met the petitioner and her daughter in February 2007, when they attended English classes together, and that she saw F-R- bringing the two of them to and from school on numerous occasions.

Upon review of the entire record of proceeding, the AAO finds the testimony of record insufficient to establish that the petitioner was subjected to battery or extreme cruelty. The AAO notes that although the petitioner testified that F-R- "wouldn't allow us to go to evening English classes because he didn't want to spend the money on gasoline," and her daughter testified that F-R- "refused to take us to evening classes at school," [REDACTED] testified in her affidavit that she met the petitioner and her daughter while attending English classes with them, and that she personally "observed [F-R-] bringing her and her daughter to school and picking them up on numerous occasions." These inconsistencies undermine the credibility of the testimony of the petitioner and her daughter.

Nor is it clear to the AAO how F-R- and the petitioner were able to communicate with one another. For example, the petitioner discusses writing e-mails to F-R-, which were translated electronically, after they were married. However, she also states that F-R- interrogated her about her intentions upon entering into the marriage; and discussed how he called her on one occasion from a hospital. It is unclear why they had to utilize the e-mail translation service to resolve differences if they were able to communicate with one another over the telephone.

Even if the inconsistencies of record are ignored, the testimony of the petitioner with regard to the alleged abuse is too vague and generalized to support a finding that she was subjected to battery and/or extreme cruelty. Generalized statements that she was the victim of abuse, that she was controlled, or that F-R- yelled and called her names are insufficiently vague. The record lacks detailed, specific, and probative information regarding specific instances of abuse.

Nor does the other testimonial evidence of record establish abuse. The testimony of [REDACTED] indicates a deteriorating marital relationship rather than an abusive one. The letters from the petitioner's classmates are not useful in establishing that she was subjected to battery or extreme cruelty, as their testimony is based solely upon the petitioner's account of events; it does not appear as though they personally witnessed any instances of abuse. Although the letters from the shelter indicate that the petitioner and her daughter stayed there for six days, they did not discuss any allegations of abuse in any detail.

The petitioner has failed to establish that F-R- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

Upon review of the entire record of proceeding, the AAO finds that the petitioner has established that she married F-R- in good faith, and the AAO withdraws the director's decision finding otherwise. However, the AAO finds that record as presently constituted fails to establish that she was subjected to battery or extreme cruelty. As the director did not address this issue, the petition will be remanded to the director for entry of a new decision. The director may afford the petitioner reasonable time to provide evidence pertinent to the issue of whether she was subjected to battery or extreme cruelty during the marriage. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's October 15, 2008 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.