

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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

PUBLIC COPY



U.S. Citizenship  
and Immigration  
Services

B9



FILE: [REDACTED]  
EAC 05 228 51902

Office: VERMONT SERVICE CENTER

Date: JUN 25 2009

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.

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 petitioner filed a motion to reopen. The director granted the motion, but affirmed the denial of the petition. 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 initially denied the petition because the petitioner did not establish that she entered into marriage with her former spouse in good faith, that she resided with him and that he subjected her to battery or extreme cruelty during their marriage. On motion, the director reaffirmed the denial of the petition on these same grounds.

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.

*Pertinent Facts and Procedural History*

The petitioner married H-M-, <sup>1</sup> a U.S. citizen, on August 5, 2003 in Ethiopia. The petitioner entered the United States on April 19, 2004 as the nonimmigrant spouse (K-3) of H-M-. On July 8, 2005, U.S. Citizenship and Immigration Services (USCIS) revoked the approval of the Form I-130, Petition for Alien Relative, filed by H-M- on the petitioner's behalf, due to H-M-'s withdrawal of the petition. On July 26, 2005, the petitioner was served with a Notice to Appear for removal proceedings. The petitioner remains in proceedings before the Immigration Court in Arlington, Virginia and her next hearing is scheduled for July 30, 2009.

The petitioner filed the instant Form I-360 on August 15, 2005. On October 17, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's entry into the marriage in good faith, her residence with H-M- and his battery or extreme cruelty. On December 21, 2005, the petitioner, through prior counsel, requested and was granted additional time to respond to the RFE. On January 11, 2006, prior counsel submitted further evidence, which the director found insufficient to establish the petitioner's eligibility.

On February 24, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good-faith entry into the marriage, joint residence and battery or extreme cruelty. The director granted the petitioner 30 days to respond to the NOID. On March 25, 2006, former counsel requested additional time to respond to the NOID. Former counsel asserted that additional documentation had "been collected" but he needed more time to "prepare the best response." Former counsel provided no further explanation to support his extension request. Accordingly, on May 5, 2006, the director denied former counsel's request and denied the petition on the grounds cited in the NOID.

Former counsel timely filed a "motion to reconsider" with additional evidence. The director determined that former counsel's submission did not meet the requirements of a motion to reconsider, but did constitute a motion to reopen. On July 24, 2006, the director granted the motion, considered the additional evidence, but found it insufficient to demonstrate the petitioner's eligibility. Accordingly, the director reaffirmed the denial of the petition on the grounds cited in his May 5, 2006 decision. The petitioner and H-M- were divorced on May 8, 2006.<sup>2</sup>

---

<sup>1</sup> Name withheld to protect individual's identity.

<sup>2</sup> Circuit Court of Prince Georges County, Maryland, [REDACTED]

The matter is presently before the AAO on appeal of the director's July 24, 2006 decision. On appeal, present counsel claims that the petitioner submitted "substantial evidence" of her good faith in marrying her former spouse and their joint residence and that the petitioner submitted "legally sufficient evidence that she was battered."

Counsel also asserts that the AAO should review the evidence submitted below and on appeal de novo. The AAO regularly reviews each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). See also *Maka v. INS*, 904 F.2d 1351, 1356 (9<sup>th</sup> Cir. 1990); *Mester Manufacturing Co. v. INS*, 900 F.2d 201, 203-04 (9<sup>th</sup> Cir. 1990).

Counsel's claims and the evidence submitted on appeal fail to overcome the grounds for denial and the appeal will be dismissed for the following reasons.

*Entry into the Marriage in Good Faith*

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with her former husband in good faith:

- The petitioner's December 19, 2005 and April 10, 2006 affidavits;
- Printout of an electronic mail message from the petitioner to her former husband dated October 23, 2002;
- Affidavit of the petitioner's sister, [REDACTED], submitted on appeal;
- Affidavits of the petitioner's cousin, [REDACTED], and friend, [REDACTED];
- Health insurance statement listing the petitioner as a dependent on her former husband's policy and listing charges for the petitioner on December 9, 2005, submitted on appeal;
- Copies of receipts of money and packages sent to the petitioner in Ethiopia from her former husband;
- Copies of telephone bills listing calls made by the petitioner to the United States in April and May 2003;
- Copy of an unsigned anniversary card, two greeting cards signed by the petitioner's former husband and a postmarked wedding card addressed to the former couple;
- Copies of two mailing receipts for unidentified items sent by the petitioner to her former husband in May and November 2003;
- Copies of hotel receipts for the petitioner and her former husband dated between August 6 and 13, 2003; and
- Four photographs of the petitioner and her former husband with captions stating that the pictures were taken on the former couple's first anniversary.

In her first affidavit, the petitioner stated that after her sister showed H-M- her picture, he wanted to meet her and he went to Ethiopia in 2003. The petitioner briefly recounted that she and H-M- dated, he met her family and they got married on August 5, 2003. The petitioner explained that H-M- returned to

the United States in September 2003 and they continued their “newlywed correspondence.” The petitioner reported that she lived with H-M- after she arrived in the United States in April 2004, but he soon became abusive and refused to open joint bank or utilities accounts with her. The petitioner did not further describe how she met her former husband, their courtship, wedding, shared residence and experiences, apart from the alleged abuse.

In her second affidavit, the petitioner asserted that she fell in love with her former husband and he brought her to the United States, but she provided no further, probative information. In her electronic mail message, the petitioner wrote a few, preliminary endearments to H-M-, but the majority of her message focuses on how much money H-M- would have to pay for various expenses during his trip to Ethiopia. The petitioner’s affidavits and electronic mail message provide no detailed, substantive and probative account of her relationship with her former husband and her intentions in marrying him. Consequently, her testimony alone does not demonstrate that she entered their marriage in good faith.

The petitioner’s relatives and friend also fail to provide probative information sufficient to establish her claim. [REDACTED], the petitioner’s cousin, stated that he twice visited the petitioner and her former husband at their home in Maryland where “they appeared to be genuinely married.” Mr. [REDACTED] does not describe either visit in detail. The petitioner’s friend, [REDACTED], also reported visiting the former couple on two occasions. [REDACTED] stated that the petitioner and her husband “interacted as a married couple” on her first visit, but “seemed a little tense” on her second visit. Ms. [REDACTED] provided no further, detailed information. The petitioner’s sister similarly failed to provide any insight into the petitioner’s relationship with her former husband. The petitioner’s sister stated that she knew H-M- before he met the petitioner, but she did not describe the former couple’s initial acquaintance in any detail and she indicated that she was not present when H-M- went to Ethiopia to meet and marry the petitioner. The petitioner’s sister recounted visiting the former couple an unspecified number of times where she observed them dining and socializing together, but she does not describe any of her visits or the former couple’s interactions in probative detail.

The remaining, relevant evidence also fails to demonstrate that the petitioner married H-M- in good faith. The health insurance documents show that the petitioner was covered by H-M-’s policy beginning on January 25, 2004, but the evidence indicates that she did not receive treatment under the policy until after she and H-M- were separated. Accordingly, the health insurance documents are of little probative value.

The greeting cards, money transfer and package receipts are evidence of H-M-’s feelings for the petitioner, but they do not demonstrate the petitioner’s intent in entering their marriage. The hotel bills indicate that the petitioner and H-M- spent one week together in Ethiopia after they were married. Yet the petitioner does not describe their wedding in any detail and she does not mention any honeymoon or trip that the former couple took in Ethiopia after their marriage. The mailing receipts, photographs and wedding card show that the petitioner sent two unspecified packages to H-M- in 2003, that she and H-M- were pictured together on one occasion and that one person, who had not yet met the petitioner, sent them a wedding card. The petitioner’s telephone bills list 28 calls, only five of which were made to an

area code in Maryland, where the petitioner's former husband resided at the time. Accordingly, this evidence is of little probative value.

On appeal, counsel asserts that the approval of the petitioner's K-3 visa application "goes a long way to determining the good faith of this marriage." While relevant, the petitioner's admission to the United States as the nonimmigrant spouse of H-M- is not prima facie evidence of her good faith in entering their marriage, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The fact that a visa petition or application based on the marriage in question was previously approved does not automatically entitle the beneficiary or applicant to subsequent immigrant status. *See INS v. Chadha*, 462 U.S. 919, 937 (1983); *Agyeman v. I.N.S.*, 296 F.3d 871, 879 n.2 (9<sup>th</sup> Cir. 2002) (In subsequent proceedings, "the approved petition might not *standing alone* prove by a preponderance of the evidence that the marriage was bona fide and not entered into to evade immigration laws."). In this case, the petitioner provided only a cursory description of her marriage and the remaining, relevant evidence lacks probative information sufficient to meet her burden of proof. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with H-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Joint Residence*

The evidence listed in the preceding section is also relevant to the petitioner's alleged residence with her former husband. On the Form I-360, the petitioner stated that she lived with H-M- from April 2004 to April 2005 at his home in Maryland. However, in her first affidavit, the petitioner stated that she left her former husband in February 2005. In her second affidavit, the petitioner did not clarify the duration of her claimed residence with her former husband other than to state that she briefly stayed with her sister after their brother died. The petitioner did not describe the former couple's home or their shared living routines in any detail. While the petitioner's sister, cousin and friend all claimed to have visited the former couple at their home, none of them described any particular visit in detail or provided other, probative information about the marital residence.

The remaining, relevant evidence also fails to establish that the petitioner resided with her former husband. As previously noted, the health insurance documents are of little probative value as they indicate that the petitioner did not use the insurance until after the former couple separated. The money transfers and receipts are all dated before the former couple's marriage or before the petitioner arrived in the United States. The photographs do not picture the former couple in any residential setting and the single postmarked wedding card is insufficient to establish their joint residence. The hotel receipts indicate that the petitioner and her former husband spent one week together after their marriage in Ethiopia. However, as previously discussed, the petitioner does not even mention that time in her affidavits. In addition, although the statute prescribes no minimum period for joint residence, the former couple's brief vacation or honeymoon in Ethiopia does not meet the statutory definition of residence as "the place of general abode," which means a person's "principal, actual dwelling place in fact, without regard to intent." Section 101(a)(33) of the Act, 8 U.S.C. § 1101(a)(33).

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with her former husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim that her former husband battered or subjected her to extreme cruelty during their marriage:

- The petitioner's December 19, 2005 and April 10, 2006 affidavits;
- Affidavit of the petitioner's sister, [REDACTED], submitted on appeal;
- Affidavits of the petitioner's cousin, [REDACTED], and friend, [REDACTED];
- Temporary Protective Order<sup>3</sup> issued for the petitioner against her former husband on April 7, 2005 and extended to April 22, 2005, when the petitioner dismissed the order;
- A receipt dated October 21, 2004 from Ayuda, Inc. Legal Aid for unspecified services; and
- A letter from [REDACTED]

In her initial affidavit, the petitioner stated that soon after she joined her former husband in the United States, he became possessive and jealous. The petitioner reported that her former husband began to "verbally and physically abuse" her, but she described no particular incident of physical abuse. The petitioner recounted that on one unspecified occasion, her former husband pointed a gun at her, called her father and told him she would be sent back dead. The petitioner stated that she went to stay with her sister and contacted an unspecified organization for help and counseling. The petitioner reported that she returned to her former husband for about three days, but left because he was "completely unpleasant" toward her and she was afraid. The petitioner did not discuss her former husband's unpleasant behavior in detail nor explain the basis for her fear. The petitioner stated that she obtained a restraining order against her former husband on two occasions, but she did not describe the circumstances that led to the orders or provide any further details.

In her second affidavit, the petitioner repeated her brief assertions and added that her former husband was disrespectful, controlling and called her unspecified derogatory names. The petitioner did not describe any abusive action of her former husband in probative detail. The petitioner explained that she never attended the hearing on her temporary restraining order because an attorney advised her to dismiss the case.

In her April 5, 2005 petition for a protection order, the petitioner stated that her former husband took out his gun and called her father in January 2005. The petitioner also stated that on two occasions in March 2005, her former husband called her to say he was contemplating suicide, incidents which the petitioner did not mention in her affidavits. The temporary protective order was issued ex parte on April 7 until April 14, 2005. As the petitioner stated, she never attended the subsequent hearing for a final order and the temporary order expired on April 22, 2005. The petitioner has not explained the

---

<sup>3</sup> Prince George's County, Maryland District Court, [REDACTED]

circumstances leading to the temporary protective order and her decision to dismiss the order in probative detail.

The affidavits of the petitioner's sister, cousin and friend also fail to demonstrate that the petitioner's former husband subjected her to battery or extreme cruelty. [REDACTED] stated that the petitioner confided in her about her former husband's abuse and that he threatened her and became possessive and jealous when young men looked at the petitioner. [REDACTED] does not, however, indicate that she witnessed any incidents of abuse or other troubled interactions between the petitioner and her former husband except that the former couple "seemed a little tense" when she visited them for the last time. [REDACTED] stated that he heard the petitioner's former husband shouting at her over her cellular telephone on several occasions, but he does not describe the content of any conversation he overheard or provide any further, probative information.

The petitioner's sister stated that the petitioner's former husband was "an above-average jealous man and . . . insecure" because he was over 30 years older than the petitioner. She asserted that the petitioner's former husband psychologically and physically abused the petitioner, but she did not describe any incident of abuse in probative detail. The petitioner's sister recounted that the petitioner's former husband kicked her out of his home, threw her clothes outside and threatened her. In contrast, the petitioner stated that she left her husband because he was unpleasant and she was afraid of him. Regardless of their different accounts of how the petitioner left her former husband, the petitioner and her sister both fail to describe his threats and the basis of the petitioner's fear in any probative detail.

The receipt from Ayuda Legal Aid is of no probative value as it does not specify what services the petitioner received or why it was issued. The letter from [REDACTED] also fails to support the petitioner's claims. [REDACTED] letter consists of three sentences in which he confirms that he conducted a psychological evaluation of the petitioner on October 26, 2004 that lasted two to three hours. [REDACTED] does not explain the results of his evaluation, describe the petitioner's mental health at the time, or provide any further, probative information.

In the aggregate, the relevant evidence does not establish that the petitioner's former husband battered her, that his actions were part of an overall pattern of violence or that his behavior otherwise constituted extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner briefly stated that her former husband once threatened her with a gun and told her father that he would kill her. In her affidavits, the petitioner did not state the approximate date of this incident, discuss the surrounding circumstances, or further describe her former husband's actions in any detail. In her second affidavit, the petitioner stated that she asked her father to send a letter confirming her former husband's threat by facsimile, but the record contains no statement from the petitioner's father and the petitioner has not explained her inability to obtain this evidence on appeal. The testimony of the petitioner's sister, cousin and friend contain no probative account of any incident of battery or extreme cruelty, or their observations of the effects of the alleged abuse on the petitioner's physical or mental health. While the petitioner received a temporary protective order against her

former husband, she did not pursue a final order and the petitioner did not indicate that her failure to do so was related to the alleged abuse or any enduring feelings that she had for her former husband. Finally, although the petitioner went to a legal aid office on one occasion and once saw a psychologist, the record contains no information regarding any services or treatment the petitioner received.

In sum, the relevant evidence fails to establish that the petitioner's former 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.

*Conclusion*

The petitioner has not demonstrated that she entered into marriage with her former husband in good faith, that she resided with him 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 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.