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



U.S. Citizenship
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Services

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FILE:

[REDACTED]
EAC 06 189 52417

Office: VERMONT SERVICE CENTER

Date:

MAR 17 2009

IN RE:

Petitioner: [REDACTED]

PETITION:

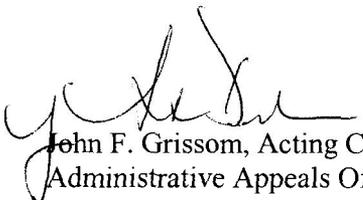
Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[REDACTED]
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 U.S. citizen spouse in good faith and that he subjected her or her child to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits additional statements from herself, family and friends.

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 or the self-petitioner's child, 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 Jamaica who states on the Form I-360 that she entered the United States on April 9, 2004. On January 26, 2005, the petitioner married M-S-¹, a U.S. citizen, in Florida. M-S- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on May 3, 2006.

The petitioner filed this Form I-360 on June 5, 2006. On December 11, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish the requisite joint residence, entry into the marriage in good faith and battery or extreme cruelty. The petitioner responded to the NOID with additional evidence, which the director found sufficient to establish that the petitioner resided with her husband, but insufficient to demonstrate the requisite good-faith entry into the marriage and battery or extreme cruelty. The director denied the petition on the latter two grounds on March 15, 2007 and the petitioner timely appealed.

On appeal, the petitioner asserts that she was abused by her husband, although she still loves him. She submits additional statements from her relatives and friends. The testimony submitted on appeal establishes that the petitioner's husband subjected her to battery and extreme cruelty. The evidence does not, however, demonstrate that the petitioner married her husband in good faith and resided with him.

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). The AAO maintains plenary power to review 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 *Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Manufacturing Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990).

Battery and Extreme Cruelty

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

¹ Name withheld to protect individual's identity

- The petitioner's May 2, 2006 statement submitted below and her April 12, 2007 statement submitted on appeal;
 - Two letters of the petitioner's aunt, [REDACTED] one submitted below and the other on appeal;
 - Two letters of the petitioner's friend, [REDACTED], one submitted below and one on appeal;
 - Two letters of the petitioner's friend, [REDACTED], one submitted below and the other on appeal;
- Letter of the petitioner's husband, submitted on appeal;
- Letter of the petitioner's brother-in-law submitted on appeal;
- Letter of the petitioner's friend, [REDACTED] submitted on appeal;
- Letter of the petitioner's friend, [REDACTED] submitted on appeal; and
- April 13, 2007 letter from Unity Health and Rehabilitation Center confirming that the petitioner's husband is a resident at the Center and requires 24-hour nursing care.

In her first statement, the petitioner reported that her husband cursed her in front of his brother and his pastor, forced her to have sex which caused her to bleed and threatened to shoot her if she did not leave his house. The petitioner explained that after her husband threatened to shoot her, she was so frightened she left their home to stay with a friend. On appeal, the petitioner explains that she did not call the police when her husband abused her because she loved him and never wanted him to go to jail.

The testimony of the petitioner's friends and relatives is consistent with the petitioner's statements. In her letters, the petitioner's aunt confirmed that the petitioner often called her during her marriage when she was crying and told her aunt of her husband's threats, including his threat to shoot the petitioner if she did not leave. In her letters, [REDACTED] confirms that the petitioner left her husband after he threatened to harm her. Although he did not meet the petitioner until after she had left her husband, [REDACTED] relates the petitioner's fears and her husband's abuse as conveyed to him by the petitioner and his statements are consistent with her testimony. Ms. [REDACTED] confirms that the petitioner called her several times in September 2005 and told [REDACTED] of her husband's abuse.

[REDACTED] describes one call during which she overheard the petitioner's husband threaten to shoot her if she did not leave. Ms. [REDACTED] confirms that she spoke to the petitioner the next day after the petitioner fled to a friend's home. Ms. [REDACTED] confirms that she sheltered the petitioner in her home after the petitioner called saying that her husband had threatened to shoot her. Ms. [REDACTED] confirms that the petitioner had previously called her and recounted her husband's verbal and sexual abuse.

The petitioner's brother-in-law states that the petitioner moved in with him and her husband after their marriage. He states that he witnessed the petitioner's husband come home drunk on Fridays and verbally abuse the petitioner. He also describes in detail the incident where the petitioner's husband threatened to shoot the petitioner if she did not leave. The petitioner's husband, in his letter written to the petitioner after he was hospitalized, asks the petitioner to forgive him for hurting her, specifically, he states, "Please forgive me for threatening you with my gun that night." The petitioner's husband expresses remorse for his actions and tells the petitioner he plans to seek "counseling and help for my abusive ways." The letter from the Unity Health and Rehabilitation Center confirms that the petitioner's husband was hospitalized.

The evidence submitted on appeal, combined with the relevant evidence submitted below, provides consistent and detailed accounts of the life-threatening behavior of the petitioner's husband and his verbal and sexual abuse of her during their marriage. Accordingly, the petitioner has overcome this ground for denial and established the requisite battery and extreme cruelty pursuant to section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

The evidence submitted on appeal does not, however, demonstrate that the petitioner entered into marriage with her husband in good faith. The record contains the following evidence relevant to this issue:

- The petitioner's May 2, 2006 statement submitted below and her April 12, 2007 statement submitted on appeal;
- Two letters of the petitioner's aunt, [REDACTED], one submitted below and the other on appeal;
- Two letters of the petitioner's friend, [REDACTED] one submitted below and the other on appeal;
- Letter of the petitioner's sister-in-law submitted below;
- Letter of the petitioner's husband submitted on appeal;
- Letter of the petitioner's brother-in-law submitted on appeal;
- January 18, 2007 statement of the petitioner's bank account held in trust for her husband;
- Correspondence addressed to the petitioner and her husband individually at an apartment on [REDACTED] in Miami; and
- Nine photographs of the petitioner and her husband at their wedding and four photographs of other, unidentified individuals taken on unspecified occasions.

In her first statement, the petitioner briefly conveyed that she met her husband in early 2004 through his sister, that they began dating and that she did not hesitate when he asked her to marry him in January 2005 because he "was the perfect gentleman." The petitioner did not further describe how she met her husband, their courtship, wedding and shared residence and experiences (apart from the abuse) except to note that the "marriage was good, everything was going fine." On appeal, the petitioner explains that she never called the police when her husband abused her because she loved him and did not want him to go to jail. She reiterates her enduring love for her husband and expresses her wish that her husband will get counseling after he gets out of rehabilitation. The petitioner's brief statements do not describe her intentions in marrying her husband or their relationship in any probative detail and are insufficient to establish that she entered the marriage in good faith.

The testimony of the petitioner's relatives and friends also lacks detailed, substantive information sufficient to establish her claim. The petitioner's aunt merely states that the petitioner called to tell her how nice her husband was before their marriage. Ms. [REDACTED] states that the petitioner was very happy after she met her husband and he asked her to move in with him. Ms. [REDACTED] also states that she used to

spend weekends with the former couple, but she does not describe any such visits in detail. The petitioner's sister-in-law praises the petitioner's "nice and honest" character and confirms that the petitioner is married to her brother, but she provides no insight into their relationship or the petitioner's intentions in marrying her brother. The petitioner's brother-in-law states that after the marriage, everything seemed to be fine for a while and the petitioner would clean and cook while his brother was at work and the former couple would go to church together on Sundays. The petitioner's husband expresses gratitude to the petitioner for visiting him in the hospital, but his letter focuses on his remorse and does not provide further insight into the petitioner's feelings for her husband or her intentions in marrying him.

The remaining, relevant evidence also fails to demonstrate that the petitioner entered the marriage in good faith. The petitioner's bank statement is dated a year and a half after she states that she separated from her husband and the account was not jointly held. Although the remaining correspondence lists the same address for the petitioner and her husband, none of the documents are jointly addressed to the former couple and none of the statements reflect shared accounts, assets, liabilities or similar marital responsibilities. Finally, the photographs only picture the petitioner and her husband at their wedding and do not demonstrate the petitioner's good faith in entering the marriage. The remaining photographs are unidentified and the petitioner does not explain their significance.

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

Joint Residence

Although the director determined that the petitioner had established the requisite joint residence, further review of the record shows that the petitioner did not meet her burden of proof on this element. The evidence listed in the preceding section is also relevant to the petitioner's alleged residence with her husband.

On the Form I-360, the petitioner stated that she resided with her husband from January to September 2005 and that their last shared address was an apartment on [REDACTED] in Miami, but the petitioner did not describe their shared residence in any detail. As previously noted, [REDACTED] stated that she used to visit the petitioner and her husband on the weekends, but she did not describe their home or any of her visits in detail. The petitioner's brother-in-law indicates that he lived with the petitioner and her husband and generally states that at the beginning of their marriage, the petitioner would clean and cook at home while her husband was at work. Apart from describing one incident of abuse that took place in their home, the petitioner's brother-in-law does not describe the former couple's shared residence in any probative detail. The petitioner's husband, aunt and other friends do not discuss her residence with her husband.

The correspondence addressed to the petitioner and her husband at the [REDACTED] apartment is of little probative value. First, all of the documents are addressed to the petitioner and her husband

individually and none of the letters or statements indicates that the petitioner and her husband shared, for example, utility or other accounts related to their home. Second, only one of the 25 documents is dated within the time that the petitioner states she lived with her husband. Five documents are addressed to the petitioner individually and dated between September 2005 and January 2007. Apart from a single notice dated February 25, 2005, the remaining ten documents addressed to the petitioner's husband individually are dated between October 2005 and October 2006. Five documents are undated or have an illegible postmark.

In her first statement, the petitioner explained that her husband destroyed all their family pictures and her mail. The petitioner did not, however, explain why she was unable to obtain documentation or detailed, probative testimony regarding the former couple's shared residence from third parties or provide such testimony herself.

The petitioner and her relatives and friends fail to describe her residence with her husband in any probative detail. The majority of the remaining, relevant evidence is dated after the petitioner states that she and her husband separated. Consequently, the petitioner has not demonstrated that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

Although the petitioner established that her husband subjected her to battery and extreme cruelty on appeal, she has failed to demonstrate that she entered into their marriage in good faith and that she resided with her husband. She is consequently ineligible for immigrant classification under 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.