

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[REDACTED]

Ag

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:

MAY 19 2009

EAC 06 138 51554

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, 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 Immigration and Nationality Act (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: failed to establish that she resided with the claimed abuser spouse; failed to establish that she had been subjected to battery or extreme cruelty; and failed to establish that she entered into the marriage in good faith. The director also found that the petitioner was subject to section 204(g) of the Act.

On appeal, counsel submits a statement and two additional pieces of documentation.

The AAO concurs with the director's determination that the petitioner has not established that she resided with the claimed abuser spouse; that she had been subjected to battery or extreme cruelty; that she entered into the marriage in good faith, and that she is subject to section 204(g) of the Act.

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 explained 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 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.

* * *

(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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Honduras. The petitioner claims she entered the United States on December 31, 1999 without inspection. The record includes a Notice of Intent to Appear, for removal proceedings dated November 7, 1999 that indicates that the petitioner entered the United States on November 6, 1999 without inspection. The record also includes a September 18, 2001 decision of the immigration judge finding that the petitioner does not qualify for withholding of removal and ordering the petitioner removed to her native country of Honduras. The record further includes a Form G-325A, Biographical Information sheet, signed by the petitioner and attached to a Form I-130, Petition for Alien Relative, filed on her behalf. The Form G-325A indicates that the petitioner lived on: United in Houston, Texas from December 1999 to February 2001 and on Park Terrace in Houston, Texas from February 2001 to the present time. The Form I-130 was filed April 30, 2001.

The petitioner has provided a copy of a marriage certificate showing she married F-A-¹ on April 25, 2001 in Houston, Texas. The petitioner filed a Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on March 30, 2006. The petitioner indicated on the Form I-360 that she resided with F-A- from September 2000 to December 2001. The director issued a Notice of Intent to Deny (NOID) the petition on October 31, 2006 noting the deficiencies and inconsistencies in the record. Upon review of the evidence in the record, including the response to the NOID, the director denied the petition on March 21, 2007, for the reasons noted above.

¹ Name withheld to protect the individual's identity.

On appeal, counsel for the petitioner asserts that the director's decision is an abuse of discretion and that the denial fails to apply the correct preponderance of the evidence standard.

Residence

As noted above, the petitioner indicated on the Form I-360 that she resided with F-A- from September 2000 to December 2001 and on the Form G-325A indicated that she had resided at an address on [REDACTED] from February 2001 to the "present time,"² and at an address on United from December 1999 to February 2001.

In addition, the petitioner provided a copy of a lease indicating that she is the sole occupant of an apartment on [REDACTED] in Houston, Texas with a lease term beginning May 1, 2000 and continuing to May 1, 2005. Accompanying a copy of the lease is an undated resident referral form signed by [REDACTED] who verifies that the petitioner's date of move in to the apartment on [REDACTED] was May 1, 2000. The record also includes a lease contract renewal dated February 15, 2003 indicating that the petitioner transferred from one apartment at the [REDACTED] address to a different apartment at the [REDACTED] address and indicating that the original lease contract's expiration date is February 2005 but that the expiration date has been extended to September 30, 2005. The lease contract renewal is signed by the petitioner. The record also includes a March 16, 2006 affidavit signed by [REDACTED] who claims to be the manager and a resident for an apartment complex on [REDACTED]. [REDACTED] declares that the petitioner and F-A- were tenants in 2001 and were good and quiet tenants.

The petitioner, in her March 16, 2006 statement, declares: "[m]arried life was wonderful, even though at this time I was not aware that he had a drug problem. We lived in a modest apartment in Houston, Texas." In the petitioner's September 22, 2006 statement, she declares: that she resided officially with F-A- since September 2000; that they married in April 2001; and stopped living as husband and wife in December of 2001. She states that [REDACTED] meant to say in her affidavit that she had known the petitioner for five years and this did not have anything to do with the lease. On appeal counsel submits an April 25, 2007 affidavit signed by [REDACTED] who states:

I first met [the petitioner] at [the apartments on [REDACTED]]; she lived with the father of her children's family. I previously submitted an affidavit where I stated I knew her for five years. This is correct but her lease was not for 5 years. This was my mistake, I intended to write that I knew her for 5 years, but in no way was her lease for 5 years. She started living at [the apartments on [REDACTED]] with a lease under her name in 2003.

Counsel asserts that [REDACTED] April 25, 2007 affidavit and the lease with the start date of February 15, 2003 is proof that the petitioner was not living at the apartments on [REDACTED] in 2000.

² As the Form G-325A is undated but appears to have been submitted in conjunction with the Form I-130 filed April 30, 2001, "present time" is indicative of an April 30, 2001 date.

The AAO disagrees. As noted above, the February 15, 2003 lease is a lease renewal contract showing that the petitioner transferred from one apartment to another apartment at the same complex. In addition, [REDACTED] April 25, 2007 affidavit includes an inherently inconsistent statement. Ms. [REDACTED] states that she first met the petitioner at the apartments on [REDACTED] where the petitioner lived with the father of her children's family. This statement appears to confirm that [REDACTED] met the petitioner in 2000 when she was living at the [REDACTED] apartments although perhaps in a different apartment. Neither counsel nor the petitioner, nor [REDACTED] explain the purpose of submitting a lease that shows that the petitioner is the sole occupant of an apartment on [REDACTED] in Houston, Texas with a lease term beginning May 1, 2000 and continuing to May 1, 2005.

The record does not include any information other than the petitioner's inconsistent statements regarding the claimed joint addresses on [REDACTED] and on [REDACTED]. The record does not include any credible evidence establishing that the petitioner resided with F-A- prior to or during the marriage. The petitioner has not established that she resided with the claimed abuser.

Abuse

The petitioner has not established the requisite abuse to qualify to receive this benefit. As the director observed, the petitioner presented conflicting information regarding the alleged abuse. In her initial personal statement the petitioner declared: "[a]s I look back at our marriage I realize that there are endless occasions that document how happy we really were, I was very content that I had met and married my life partner" and "[l]ittle by little his attitude changed drastically." In the petitioner's second personal statement she declared: [m]y husband was a very good man when we were not married. It was the day after our marriage that he turned into a monster." The petitioner initially stated that F-A- would yell at her, remind her that she was not a United States citizen, take all the money she earned, threaten her that he would call immigration, make her have sex with him, bring other women into the home and make her listen to them having sex, give away her clothes, and sell the groceries to buy drugs. In the petitioner's second statement, she stated that F-A- would take all her money, bring his girlfriend to their home and force her to watch them having relations and then require her to have sexual intercourse with him. The petitioner declared that during these situations she would run to her neighbor's home for help, that whenever there was a problem at home she would go to her neighbor, and on one occasion she had relations with the neighbor and that is how she got pregnant and had this man's child.

The petitioner has also submitted the February 6, 2006 affidavit of [REDACTED] who declared that she met the petitioner in 2001 and met F-A- when the petitioner and F-A- married. [REDACTED] further reported: that many times the petitioner would come to her home to seek shelter; that she saw F-A- on drugs; that he called the petitioner names and spoke to her in a rude manner; and degraded the petitioner in front of her many times. The petitioner also provided the January 23, 2006 affidavit of [REDACTED] who stated that she knew about the verbal abuse the petitioner received from her husband.

The petitioner further provided a September 22, 2006 unsigned statement from the Houston Area Woman's Center describing the abuse the petitioner mentioned that she had suffered at the hands of F-A-. The letter-writer, who does not sign her name, indicates that she has the required 72 hours of training on domestic violence and sexual assault and concludes that the petitioner experienced excessive control and increasing isolation during the relationship and based on the letter-writer's training, experience, and observations of the petitioner "think[s] she is experiencing common effects of domestic violence." The record includes an intake form dated February 14, 2006 indicating that the petitioner reported that her partner was emotionally and sexually abusive to her and indicating that the petitioner needed individual counseling, support groups, and legal information.

The AAO has reviewed the petitioner's statements and finds the statements and information in the record contain inconsistencies. For example, the petitioner first declared that the marriage was happy but that little by little F-A- changed and later changed to say that immediately after the marriage F-A- became a monster. The petitioner also indicated that whenever there were problems at home she would seek the solace of a neighbor who is the same individual that fathered her child. This information does not correspond to [REDACTED] affidavit in which she declared that she is the neighbor that the petitioner would run to for shelter. In addition, [REDACTED] indicated that she only met the petitioner's husband when the couple married in April 2001, which appears inconsistent with the petitioner's statement that she had jointly resided with F-A- from September 2000. The AAO finds as well that the affidavits of [REDACTED] and [REDACTED] do not offer probative detail of abuse that constitutes battery or extreme cruelty that they personally witnessed. The affidavits submitted on the petitioner's behalf do not assist in substantiating that the petitioner was subjected to battery or extreme cruelty.

As noted above, the petitioner's testimony contains inconsistencies that have not been resolved. Thus, the unsigned letter from the Houston Women's Center and the intake form, based on the petitioner's statements are not based on reliable information. Moreover, the petitioner provided the information regarding the alleged abuse to the Houston Women's Center more than four years after she had left the claimed marital residence. The length of time between the alleged abuse and reporting the alleged abuse, coupled with the letter-writer's inconclusive opinion regarding the petitioner's condition as well as the letter-writer's limited training, undermines any probative value of the letter. In addition, the Houston Women's Center letter does not include the signature of the letter-writer. Upon review of the totality of the information in the record, the AAO finds that the petitioner has not provided sufficient consistent evidence with details of specific events and timing to substantiate that she has been subjected to abuse.

The petitioner's failure to describe in probative detail the verbal and physical abuse and the conflicting testimony diminish the petitioner's claim. Further, the petitioner offers no specific credible testimonial evidence regarding any alleged abuse perpetrated against her by F-A- which demonstrates that his behavior rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

Accordingly, the petitioner failed to establish that she was battered or subjected to extreme cruelty by F-A- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In the petitioner's initial statement she declared that she met her husband on the day she arrived in the United States, on December 31, 1999. She reported: that they talked and immediately became very good friends; that she loved the way he treated her; that they were both in love; and he asked her to marry him in 2001. The petitioner did not provide further probative information regarding her courtship, interactions with F-A-, or any other statements to indicate her intent in entering into marriage with F-A-. The record includes photocopies of three unidentified and unexplained photographs. The record does not include 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, or other types of readily available evidence such as birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and probative affidavits of persons with personal knowledge of the relationship.

The AAO notes that while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf also fail to support a finding that she entered into this marriage in good faith. There are no probative, consistent details about the petitioner's initial relationship with F-A- and the subsequent interactions with F-A- that allow a conclusion that the petitioner entered into the marriage in good faith. The record lacks credible detailed information sufficient to establish the good faith intent of the petitioner in entering the marriage. Upon review of the information in the record, the AAO does not find the petitioner's statements probative on the issue of her good faith in entering the marriage and does not find the affidavits submitted on her behalf sufficient to establish the petitioner's allegedly good faith entry into the marriage. There is no information in the record substantiating that the petitioner's intent upon marrying F-A- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the legitimacy of the marriage. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Section 204(g) of the Act further bars approval of this petition. Section 204(g) of the Act states:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has

resided outside the United States for a 2-year period beginning after the date of the marriage.

The record in this matter shows that the petitioner married her husband after she had been ordered to appear before an immigration judge and while the action was still pending. The record does not indicate that the petitioner resided outside of the United States for two years after her marriage.

The *bona fide* marriage exception to section 204(g) of the Act also does not apply to the petitioner. Section 245(e) of the Act states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to

section 204(a)(1)(A)(iii)(I)(aa) of the Act and eligibility for the *bona fide* marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). To demonstrate eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the petitioner must establish his or her good-faith entry into the qualifying relationship by a preponderance of the evidence and any relevant, credible evidence shall be considered. Sections 204(a)(1)(A)(iii)(I)(aa) and 204(a)(1)(J) of the Act, 8 U.S.C. §§ 1154(a)(1)(A)(iii)(I)(aa), 1154(a)(1)(J); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the *bona fide* marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good-faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478. *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard”).

As the petitioner has failed to establish that she entered into her marriage with her husband in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also failed to demonstrate that she qualifies for the *bona fide* marriage exemption under the heightened standard of proof required by section 245(e)(3) of the Act. Accordingly, section 204(g) of the Act requires the denial of this petition. Contrary to counsel’s assertion on appeal, the director applied the proper evidentiary standard when rendering his decision.

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.