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

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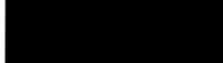


U.S. Citizenship and Immigration Services



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FILE:



Office: VERMONT SERVICE CENTER

Date:

SEP 14 2009

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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)

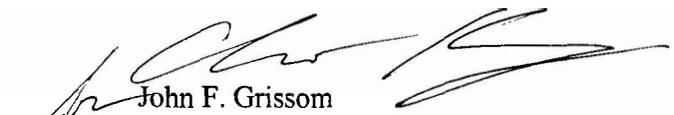
ON BEHALF OF PETITIONER:



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.

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 service center director 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 on the basis of his determination that the petitioner had failed to establish: (1) that she shared a joint residence with her husband; (2) that her husband subjected her to battery or extreme cruelty; and (3) that she married her husband in good faith.

Counsel filed a timely appeal on March 20, 2009.

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:

- (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 United States 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 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.

* * *

- (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 petitioner is a citizen of Colombia who entered the United States as an B-2 visitor on November 22, 1997. She married R-Z-,¹ a citizen of the United States, on January 30, 2006.

The petitioner filed the instant Form I-360 on November 13, 2007. The director issued a request for additional evidence on December 3, 2007 to establish that the petitioner is a person of good moral character. The petitioner responded on March 28, 2008.

The director issued a second request for additional evidence on December 2, 2008 to establish that the petitioner shared a joint residence with P-Z-; that P-Z- subjected her to battery or extreme cruelty; and that she married P-Z- in good faith. The petitioner responded on January 30, 2009. After considering the evidence of record, the director denied the petition on February 18, 2009. On appeal, counsel claims that the director erred in denying the petition.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition.

Joint Residence

The first issue on appeal is whether the petitioner has established that she and P-Z- shared a joint residence. The petitioner stated on the Form I-360 that she and P-Z- shared a joint residence from January 2006 until September 2006. However, in her September 8, 2007 self-affidavit, the petitioner stated that P-Z- left the marital residence in October 2006, and in her August 15, 2007 affidavit, stated that P-Z- left the marital residence "since May." The petitioner also

¹ Name withheld to protect individual's identity.

submitted a May 6, 2006 letter from Citibank confirming that she and P-Z- had opened a joint savings account at that institution, as well as a receipt indicating a deposit of \$500 into the account two days later. The record contains no evidence of any further activity on the account.

In his February 18, 2009 denial, the director stated that the record lacked satisfactory evidence of the couple's joint residence.

No additional evidence or testimony was submitted on appeal. In her April 17, 2009 appellate brief, counsel looked to the joint Citibank account as evidence of the couple's shared joint residence. Counsel asserts that, because the couple "was on the lower-end of the economic scale, documentary evidence reflecting mostly the values of the American upper-middle class is not available."

Upon review, the AAO agrees with the director's analysis. As a preliminary matter, the AAO notes the inconsistencies between the petitioner's testimony on the Form I-360 and in her self-affidavit, as well as that of [REDACTED], and finds that such inconsistencies diminish from the credibility of the petitioner's claim. Nor does the evidence regarding the existence of the joint savings account establish that the couple shared a joint residence, as there is no evidence of, for example, any activity on the account subsequent to the initial deposit or postmarked statements jointly addressed to the petitioner and P-Z-.

Although counsel offers a credible explanation as to why the petitioner lacks documentary evidence to establish that she shared a joint residence with P-Z-, the petitioner's own testimony does not establish that she resided with him, as she provides no probative information about their purported joint residence. For example, the petitioner does not describe in detail their residential building, their apartment, their home furnishings, their neighbors, any of their jointly-owned belongings, or any of their daily routines within the residence.

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

Battery or Extreme Cruelty

The second issue on appeal is whether the petitioner has established that P-Z- subjected her to battery or extreme cruelty. In her September 8, 2007 affidavit, the petitioner stated that P-Z- abused her verbally by insulting her constantly and calling her names; used drugs in her presence; demanded that she remain at home to care for him rather than working; and told her that he wanted to be with an additional woman. The petitioner stated that although P-Z- never physically abused her, he told her that because he is so tall, he would kill her if he hit her.

The petitioner also submitted three psychological evaluations. In his October 16, 2007 evaluation, Dr. [REDACTED] stated that the petitioner told him that shortly after the marriage, P-Z- became both physically and verbally abusive. [REDACTED] testified that the petitioner told him that P-Z- grabbed

the petitioner's arm and threw her against the wall as he demanded money; threatened her immigration status; called her names; and attempted to rape her.

In his January 6, 2009 evaluation, [REDACTED] stated that the petitioner "was exposed to verbal and psychological abuse," and that she has been under psychiatric treatment and been prescribed antidepressant medications.

In his March 26, 2009 evaluation, [REDACTED] stated that the petitioner suffers from Post Traumatic Stress Disorder and Major Depressive Disorder, and that his office has been treating her since January 12, 2007.

The petitioner also submitted letters from friends regarding the alleged abuse. In her August 28, 2007 letter, [REDACTED] stated that the petitioner is a good woman, and that P-Z- is a bad man. In her August 18, 2007 letter, [REDACTED] stated that the petitioner was a victim of P-Z-'s aggression and constant threats. In her August 15, 2007 letter, [REDACTED] stated that the petitioner was the victim of ill-treatment by P-Z-, and in her January 8, 2009 letter, she stated that P-Z- abused the petitioner. In her January 8, 2009 letter, [REDACTED] stated that P-Z- subjected the petitioner to abuse. In his January 8, 2009 letter, [REDACTED] stated that the petitioner was the victim of ill-treatment by P-Z-.

The director noted discrepancies between the severity of the claims of abuse in the petitioner's self-affidavit and [REDACTED] evaluations in both his December 2, 2008 request for additional evidence and February 18, 2009 denial. On appeal, counsel elects not to address the director's findings with regard to these discrepancies. Rather, counsel states that the record establishes that the petitioner "was battered or subjected to a pattern of abuse and violence."

The AAO agrees with the director's analysis. According to [REDACTED] the petitioner described both physical and verbal abuse. However, in her self-affidavit, the petitioner specifically testified that there had been no physical abuse. While the AAO does not question [REDACTED] expertise, it does question the testimony of the petitioner upon which his statements are based. This discrepancy undermines the evidentiary value of the petitioner's testimony and, despite the director's highlighting of the matter, counsel elects not to address it. Nor does the testimony from the petitioner's friends establish that she was subjected to battery or extreme cruelty. First, their testimony is insufficiently detailed to be of any evidentiary value. Second, none of them indicate how they came to acquire knowledge of the alleged abuse; it is unclear whether any of them actually witnessed any acts or direct effects of battery or extreme cruelty on the petitioner, or whether they are relaying information provided by the petitioner. The petitioner has failed to establish that her 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.

Good Faith Entry into Marriage

The third issue on appeal is whether the petitioner has established that she married P-Z- in good faith. The AAO agrees with the director's determination. The record lacks critical information regarding the intentions of the petitioner at the time she entered into marriage with P-Z-, beyond the statement that they met while working at Ground Zero following the attacks of September 11, 2001. For example, there is no information regarding the couple's first meeting; the petitioner's first impressions of P-Z-; their decision to date; their first date; their courtship; their decision to marry; or their wedding. Such information would allow the AAO to examine the petitioner's intentions upon entering into the marriage. The pictures of the couple's wedding ceremony fail to convey the petitioner's intentions, and the testimony of the petitioner's friends is insufficiently detailed. With regard to the existence of the joint savings account, the AAO notes again that there is no evidence of any activity on the account subsequent to the initial deposit. The evidence of record fails to demonstrate that the petitioner entered into marriage with P-Z- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that she shared a joint residence with P-Z-; that P-Z- subjected her to battery or extreme cruelty; or that she married P-Z- in good faith. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.