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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



U.S. Citizenship
and Immigration
Services

B9

FILE: [REDACTED]
EAC 07 227 50604

Office: VERMONT SERVICE CENTER

Date: APR 22 2010

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:

SELF-REPRESENTED

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).

Perry Rhew
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 petition will be denied.

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 for the petitioner's failure to establish that she married her former spouse in good faith.

On appeal, the petitioner submits a Form I-290B, Notice of Appeal, and an additional statement.

As set out below, the AAO concurs with the director's determination that the petitioner has not established that she married her former spouse in good faith. Beyond the decision of the director, the AAO also determines that the petitioner failed to establish that she was subjected to the requisite battery or extreme cruelty and that she resided with her former spouse during the marriage.

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 of Ethiopia and a citizen of Israel. The record includes a Form I-94 showing the petitioner was admitted into the United States in B-1 status on October 19, 2005. The petitioner provided a copy of a marriage certificate showing that she married S-B-¹, a United States citizen on January 18, 2006, in New York. On the Form I-360, Petition for Amerasian, Widow(er), Special Immigrant, the petitioner indicated that she lived with S-B- from October 2005 to September 2006. The record includes a copy of the petitioner and S-B-'s divorce decree issued February 13, 2007 and filed March 12, 2007. The petitioner filed the Form I-360 on July 27, 2007. Upon review of the record, including evidence submitted in response to the director's request for further evidence (RFE), the director denied the petition on February 5, 2009. This timely appeal followed.

Good Faith Entry into Marriage

The petitioner initially provided a June 7, 2007 personal statement indicating that she met her former husband in 2004 in Israel when they were introduced by a mutual friend. The petitioner noted after S-B- returned to the United States, she communicated with him primarily via telephone for the next eight months. The petitioner stated that she entered the United States on October 19, 2005 to visit S-B- and to see New York and that "[u]nexpectedly and to [her] total surprise, S-B- asked [her] to marry him in early 2006." The petitioner stated that she married S-B- honestly and in good faith.

The petitioner also provided an affidavit of her "best friend," [REDACTED], dated March 29, 2007. [REDACTED] averred: that she had known the petitioner for seven years; that she knew that the petitioner lived with S-B- because she talked to the petitioner almost every day and they visited her before the marriage and after; and that the petitioner was afraid to leave S-B-'s house when S-B-

¹ Name withheld to protect individual's identity

asked the petitioner to leave because the petitioner did not know anyone. The petitioner provided a second affidavit of a "close friend," [REDACTED] dated March 28, 2007. [REDACTED] averred: that she had known the petitioner for approximately ten years; that she knew the petitioner was married to S-B- because they came to visit her in Maryland after the wedding and again after a few months; and that she was aware that S-B- abused the petitioner by screaming and cursing and throwing her out of their house.

In response to the director's RFE, the petitioner provided a second personal statement dated July 24, 2008. The petitioner stated: that she "did, in fact, reside with [her] ex-husband" and that she "married him in good faith and in [her] heart and in [her] mind the marriage was based upon love and affection as evidenced by [her] own sworn affidavit as well as the affidavits of [her] witnesses." The petitioner noted that as she "was literally thrown out of the marital home by both [her] ex-husband and his mother a short time after [she] moved into said marital home, [she] did not have the opportunity to obtain some of the typical documents which a married couple would normally have in their possession." The petitioner indicated that she was able to retrieve some banking statements of a joint bank account and a couple of photographs of her and her ex-husband. The petitioner also provided an additional affidavit from another "best friend." The petitioner again averred that she married her ex-husband in good faith.

The record includes banking statements for September, October, and November 2006 sent to the petitioner and S-B- at an address in Staten Island, New York. The three photocopies of photographs are not clear and do not provide any information regarding the couple. The additional affidavit provided is dated June 20, 2008 and is from [REDACTED] who averred: that she had known the petitioner for two years; that she is the petitioner's best friend; that she knew the petitioner had married S-B- because she visited their house and they would go out together; and that the petitioner came to this country only because of S-B- and that she left all her family and friends behind.

On February 5, 2009, the director denied the petition determining that the petitioner had not established that she had married her former husband in good faith. The director found: that the petitioner's statements and the statements of her witnesses lacked sufficient detail regarding the petitioner and S-B-'s courtship and marriage; that the bank statements submitted covered a period when the petitioner and S-B- were no longer together and that the statements did not evidence shared control and use of the account; and that the photographs were of people sharing a common event but were insufficient to establish the relationship of the parties at the event. The director concluded that the record did not establish that the petitioner had entered into the marriage in good faith.

On appeal, the petitioner emphasizes that she entered into the marriage with S-B- with an honest good faith desire to have a bona fide marital relationship based upon love and affection. The petitioner notes that United States Citizenship and Immigration Services (USCIS) approved a Form I-130, Petition for Alien Relative, filed on her behalf by S-B- and that USCIS acknowledged that she met all of the statutory requirements for eligibility for this I-360 benefit except the element of a good faith marriage. The petitioner contends that if USCIS accepts that she was abused by S-B- it makes

no sense to deny the petition based upon a failure to obtain unobtainable documents to support her good faith in marrying the abuser. The petitioner similarly asserts that if the affidavits she submitted were sufficient to establish the abuse of S-B- the affidavits should also be sufficient to establish her good faith in entering into the marriage. The petitioner again notes that she was not able to produce documents because the documents “in reality,” do not exist and she was literally thrown out of the marital home by her ex-husband and his mother and was barely able to collect her personal belongings. The petitioner also submits a second affidavit signed by [REDACTED] on February 26, 2009. [REDACTED] avers she has known the petitioner for eight years and again avers that the petitioner was in touch with her almost daily and that the petitioner told her everything that went on in her life.

Upon review of the record, the AAO concurs with the director’s determination that the evidence of record fails to establish that the petitioner entered into the marriage in good faith. The AAO has reviewed the petitioner’s statements, the affidavits submitted on her behalf, the photographs, and the bank statements. The petitioner in this matter has not detailed the courtship and circumstances leading up to the “unexpected” proposal by S-B-. The petitioner, other than stating that the couple met through a mutual friend in Israel, that the couple communicated via telephone for eight months, and that she came to visit S-B- and see the sights of New York, has provided no information of events or circumstances that demonstrate her intent upon entering the marriage. The record requires more than a statement that the individual entered into the marriage in good faith. The AAO acknowledges that a Form I-130 filed on behalf of the petitioner was approved; however, while relevant, such approval 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 (9th 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 matter, 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 S-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The AAO has reviewed the statements and affidavits submitted on the petitioner’s behalf. The AAO finds that the affiants indicate that they knew the petitioner and her former husband and visited the couple. The affiants, however, provide no probative details regarding their observations of the petitioner’s allegedly good faith entry into the marriage. The affiants do not describe any particular incidents wherein they witnessed the alleged *bona fides* of the couple’s marital relationship. The general statements provided do not substantiate that the petitioner’s intent upon marrying S-B- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the legitimacy of the marriage.

The AAO has also reviewed the bank statements submitted to show that the couple had a joint account. As the director noted, the bank statements submitted cover a period of time after the petitioner was allegedly thrown out of the “marital home” with little opportunity to collect anything other than her personal belongings. The petitioner has not explained how she was able to obtain these bank statements, why her name would be included on bank statements at an address where she no longer lived, and why a joint account was still in existence when she had allegedly been thrown out of the marital home. As the director noted, the bank statements do not show that the couple used the account to commingle funds or used the funds for the shared responsibilities of a bona fide marriage. Similarly, the photographs show that the petitioner was with S-B- and in the company of several other individuals on one or two unidentified occasions. The photographs do not establish the petitioner’s intent in entering into the marriage and do not otherwise establish the requisite good faith marriage.

The record lacks any independent documentary evidence suggested by the regulation including: proof that one spouse has been listed as the other’s spouse on insurance policies, property leases, income tax forms, or bank accounts; detailed testimony or other evidence regarding courtship, the wedding ceremony, the shared residence, and experiences; or other types of readily available evidence such as police, medical, or court documents² providing information about the relationship. The AAO finds 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 S-B- and the subsequent interactions with S-B- 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. 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.

Battery or Extreme Cruelty

Beyond the decision of the director, the AAO finds that the petitioner has not established that she suffered battery or extreme cruelty at the hands of her former husband. The initial record included the petitioner’s statement: that S-B- would not call or communicate with her; that S-B- and his mother would verbally abuse her by constantly yelling at her and criticizing everything that she did; that S-B- and his mother threatened to throw her into the street if she did not follow their orders and commands; that S-B- refused to sleep with her; and that S-B- forced her out of the house in the summer of 2006.

The affiants, [REDACTED] and [REDACTED], did not indicate that they had witnessed verbal or physical abuse of the petitioner by S-B-. Similarly, the additional affidavit submitted in response to

² The AAO will address the deficiencies of the provided divorce decree in the section below regarding abuse.

the director's RFE and the second affidavit of _____ submitted on appeal fail to provide detailed information regarding specific instances of abuse that they witnessed.

The initial record also included a copy of the petitioner's divorce decree issued February 13, 2007 and filed March 12, 2007. The divorce decree indicates that the petitioner presented a verified complaint, that S-B- did not appear, and that it is ordered and adjudged "that the Referee's Report, if any, is confirmed." The AAO observes that an unsigned, undated, and incomplete referee's report is attached to the divorce decree. The AAO questions the legitimacy of the referee's report that is in the record. The AAO notes that the referee's report indicates that the petitioner "has lived in New York State for a continuous period in excess of two years immediately preceding the commencement of this action." As the divorce decree was issued February 13, 2007 and the referee's report would have been issued some time before that, the statement regarding the petitioner's residence is false as the petitioner entered the United States in October 2005, less than two years prior to the claimed referee's report. The AAO also observes that on the second page of the referee's report three incidents of claimed abuse are listed, incidents that were not reported by the petitioner in any of her personal statements. On the other hand, the referee's report does not indicate that the petitioner was "thrown out of the marital home" but rather notes that it is unsafe for the "plaintiff" to live with and cohabit with the "defendant." Additionally, the referee's report states that the plaintiff (the petitioner) is entitled to a divorce on the grounds set forth at section 170, subd. (2) of New York's Domestic Relations Law, which is a ground that relates to "the abandonment of the plaintiff by the defendant for a period of one or more years." N.Y. Stat. Ann. § 17, subd. (2)(West 2010). The petitioner's divorce, however, was granted pursuant to section 170, subd. (1) of New York's Domestic Relations Law. The AAO does not find that the referee's report in the record is part of the petitioner's divorce decree as it is unsigned and undated. Moreover, the AAO questions the petitioner's failure to provide testimonial evidence to USCIS regarding specific incidents of alleged abuse or to otherwise provide testimony that corresponds with the information in the referee's report.³

Upon review of the totality of the record, the AAO does not find that the petitioner has provided consistent probative testimony that establishes that she suffered abuse at the hands of S-B-, her former husband. The petitioner has not established that her former husband's actions constituted psychological or sexual abuse or was otherwise part of an overall pattern of violence or constituted any acts that rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi),

³ We note that the petitioner's marriage was dissolved pursuant to section 170, subd. (1) of New York's Domestic Relations Law, which provides for a divorce on the ground of: "The cruel and inhuman treatment of the plaintiff by the defendant such that the conduct of the defendant so endangers the physical or mental well being of the plaintiff as renders it unsafe or improper for the plaintiff to cohabit with the defendant." N.Y. Stat. Ann. § 17, subd. (1)(West 2010). This definition differs significantly from the description of the term battery or extreme cruelty in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In addition, a state court's ruling on the dissolution of an alien's marriage may be relevant, but is never binding on U.S. Citizenship and Immigration Services (USCIS) determination of the alien's eligibility for immigrant classification under section 204(a)(1)(A)(iii)(I)(bb) of the Act.

which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner fail to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty, that S-B-'s behavior was accompanied by any substantiated coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over her. The AAO finds that the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty.

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

Residence

In addition, beyond the decision of the director, the petitioner has not established that she resided with S-B-. Although the petitioner claims to have stayed with S-B- prior to marriage until sometime in the summer of 2006 when she was allegedly thrown out of the marital home or in September 2006 as typed onto the Form I-360, the record does not include any documentation supporting her residency with S-B-. The AAO again has reviewed the affidavits submitted on her behalf but finds that neither the petitioner nor any of the affiants discusses the petitioner's residence with her spouse, such as a description of the apartment/house and its location, their shared belongings, the petitioner and S-B-'s living arrangements, or other information which demonstrates a joint residence. The AAO has again reviewed the bank statements and notes that the bank statements cover a time period when the petitioner claims that she did not reside with her former husband. There is no probative information in the record establishing the petitioner's joint residence with her former husband. For this additional reason, the petition is not approvable.

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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.