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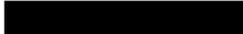
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

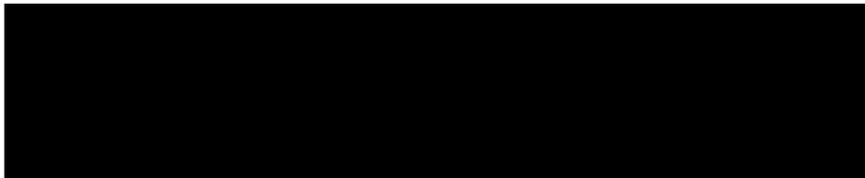


U.S. Citizenship
and Immigration
Services

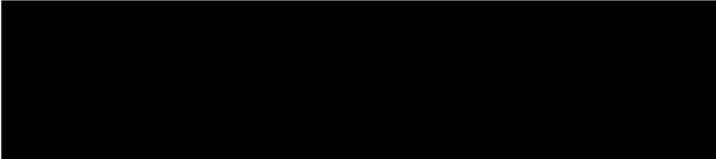


Bq

FILE:  Office: VERMONT SERVICE CENTER Date: AUG 03 2010
EAC 08 158 51292

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)

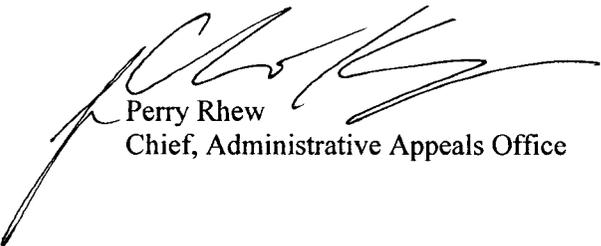
ON BEHALF OF PETITIONER:


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
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 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 that her ex-husband subjected her to battery or extreme cruelty; that she is a person of good moral character; or that she married her ex-husband in good faith. Counsel filed a timely appeal on August 14, 2009. On appeal, counsel submits a four-paragraph statement and copies of previously-submitted documentation.

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 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.

- (vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

- (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.

- (v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or

similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

- (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 Haiti who entered the United States as a B-2 visitor on August 26, 1999. She married G-P-¹ a citizen of the United States, on June 22, 2004. They divorced on September 19, 2006. The petitioner filed the instant Form I-360 on April 28, 2008. The director issued two subsequent requests for additional evidence, to which the petitioner, through counsel, filed responses. The director denied the petition on July 14, 2009.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO withdraws the director's determination that the petitioner lacks good moral character. The AAO concurs with the director's determinations that the petitioner has failed to establish that she was subjected to battery or extreme cruelty by G-P- and that she married him in good faith. Beyond the decision of the director, the AAO finds further that the petitioner has failed to establish that she and G-P- shared a joint residence.

Battery or Extreme Cruelty

The first issue before the AAO is whether the petitioner has established that she was subjected to battery and/or extreme cruelty by G-P-. Upon review, the AAO agrees with the director's determination that the petitioner has failed to make that demonstration.

As evidence that she was abused by G-P-, the petitioner submitted her own testimony and that of E. Chassagne. The petitioner stated that although things went well initially, after G-P- made some new friends things began to change. The petitioner stated that G-P- became lazy, and was fired from his job. G-P- spent increasing amounts of time outside the home; spent money on drugs and alcohol;

¹ Name withheld to protect individual's identity.

abused the petitioner physically; was unfaithful; threatened her; threatened the petitioner's immigration status; and raped her. In a brief letter, [REDACTED] stated that the petitioner stayed with her in 2004 when she was having marital problems.

In his July 14, 2009 decision, the director found the testimony of the petitioner and [REDACTED] insufficient. On appeal, counsel states that that the petitioner was afraid to report the abuse to the police.

In sum, the relevant evidence fails to establish that G-P- subjected the petitioner to battery or extreme cruelty during their marriage. With regard to battery, the petitioner's generalized allegations of rape and violence lack sufficient, probative details regarding specific instances of abuse to establish that G-P- battered her during their marriage.

The petitioner has also failed to establish that G-P-'s non-physical actions constituted extreme cruelty, as defined by the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's brief statements do not establish that G-P-'s non-physical behavior was accompanied by any coercive actions or threats of physical or mental injury, or that his actions were aimed at insuring dominance or control over the petitioner. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." *See Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. The petitioner has failed to establish that G-P- subjected her to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The second issue before the AAO is whether the petitioner has established that she is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in April 2005 and ending in April 2008).

Although the record before the director lacked a local police clearance or state-issued criminal background check checks from each place the petitioner lived for at least six months during the three-year period immediately preceding the filing of the petition, the petitioner submits a state-issued criminal background check on appeal. The record, therefore, establishes the petitioner's good moral character and the AAO withdraws this particular portion of the director's July 14, 2009 decision.

Good Faith Marriage

The third issue before the AAO is whether the petitioner has established that she married G-P- in good faith. As evidence that she married G-P- in good faith, the petitioner submitted her own testimony and that of [REDACTED]. The petitioner stated that she met G-P- at a backyard barbeque while on vacation in the United States. They exchanged information and, over time, fell in love. She returned to the United States in 1999, and she and G-P- dated until 2004 when they moved to Florida and married. In her May 1, 2009 statement, Ms. [REDACTED] stated that the petitioner and G-P- lived with her between 1999 and 2004 in Brooklyn, New York.

On appeal, counsel states that there is no evidence regarding the petitioner's good faith entry into the marriage because the petitioner lacked immigration documents, and because G-P- was controlling the petitioner.

The AAO agrees with the director's determination that the record, as presently constituted, fails to establish that the petitioner married G-P- in good faith.

The petitioner's testimony, which focuses on the alleged abuse to which she was subjected, provides little meaningful insight into the couple's relationship apart from that abuse. The petitioner failed to provide a detailed account of the couple's courtship and marriage, apart from the alleged abuse, which would assist the AAO in evaluating her intentions upon entering the marriage. For example, the petitioner fails to describe, in meaningful detail, the couple's first introductions; the petitioner's first impressions of G-P-; their decision to date; their first date; their courtship; their decision to marry; their engagement; their wedding; or any of their shared experiences, apart from the abuse. While documentary evidence is not required to demonstrate entry into a marriage in good faith, the statements submitted by the petitioner and Ms. [REDACTED] lack probative detail sufficient to establish the petitioner's good faith upon entering into the marriage.

The petitioner has failed to establish that she entered into marriage with G-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

Beyond the decision of the director, the AAO finds that the petition may not be approved for another reason, as the record fails to establish that the petitioner and G-P- shared a joint residence. The petitioner stated on the Form I-360 that she and G-P- resided together from June 2004 until February 2005, and that they began living at [REDACTED] Terrace in [REDACTED] in 2004. However, on her Form G-325A, the petitioner stated that she began residing at that address in August 2003. The petitioner does not explain this inconsistency. In her statement, Ms. [REDACTED] stated that the petitioner and G-P- lived together with her at [REDACTED], New York between 1999 and 2004. However, on the Form G-325A,

the petitioner stated that she lived at [REDACTED] from August 1999 until August 2003 before moving to Florida. The petitioner also does not explain this inconsistency.

Apart from these inconsistencies, which diminish the probative value of the petitioner's testimony with regard to whether she shared a joint residence with G-P-, the AAO finds that although counsel offers a credible explanation as to why the petitioner lacks documentary evidence to establish that she shared a joint residence with her ex-husband, the petitioner's own testimony does not establish that she resided with him. Although the petitioner provides the former couple's address, she does not provide any probative information about their purported joint residence. For example, the petitioner does not describe in detail their residential building, their apartment, their home furnishings, any of their jointly-owned belongings, their neighbors or their daily routines. Considered in the aggregate, the relevant evidence of record fails to demonstrate that the petitioner resided with G-P-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that she was subjected to battery or extreme cruelty by her ex-husband and that she married him in good faith. The AAO withdraws the director's finding that the petitioner failed to demonstrate that she is a person of good moral character. Beyond the decision of the director, the AAO finds that the petitioner has failed to demonstrate that she resided with her ex-husband. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must be denied.

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 Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.