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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**



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FILE:



Office: VERMONT SERVICE CENTER

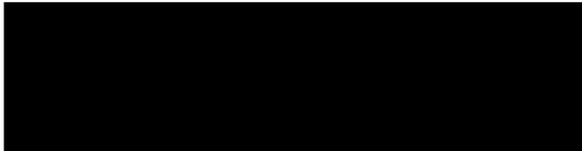
DEC 15 2010

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:

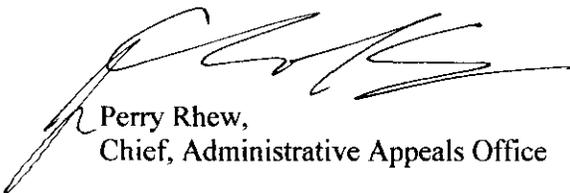


INSTRUCTIONS:

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 \$630. 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 The director's decision will be withdrawn in part and affirmed in part. 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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) her husband subjected her to battery or extreme cruelty during their marriage; and (2) that she married her husband in good faith. On appeal, counsel submits a brief reasserting the petitioner's eligibility, and additional evidence.

Applicable Law

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, the following:

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:

- (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 standard and 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.

* * *

- (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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Ghana, married D-S-,¹ a citizen of the United States, on February 22, 2006. She filed the instant Form I-360 on August 31, 2009. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on July 2, 2010.

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, we find that the petitioner has overcome the director's determination that she was not subjected to battery or extreme cruelty, and withdraw that portion of the director's decision. We find that the petitioner has failed to overcome the director's determination that she failed to establish that she married D-S- in good faith.

Battery or Extreme Cruelty

The first issue before the AAO on appeal is whether the petitioner has established that D-S- subjected her to battery or extreme cruelty during their marriage.

In her March 28, 2009 declaration, the petitioner stated that D-S- slapped her; insulted her; called her names; quit his job; left home for long periods of time; had an extramarital affair; threatened her immigration status; beat her when she did not want to engage in sexual relations; forced her to engage in sexual activity with which she was not comfortable; and was controlling.

The petitioner also submitted a letter from [REDACTED] a psychologist who stated that he interviewed the petitioner on March 8, 2009. According to [REDACTED], the petitioner told him that D-S- spent long absences away from the home, and once held her wrist forcibly after she asked him where he had been; dominated her; degraded her; slapped her on multiple occasions; grabbed her neck and held it so tightly she could not talk; intimidated her into having sexual relations with him; threatened to kill her; took her cellular telephone and then smashed a replacement given to her by a friend; disapproved of her friends; threw the couple's belongings around the apartment in fits of rage;

¹ Name withheld to protect individual's identity.

insulted her family, ethnic background, and religious beliefs; and had an extramarital affair. [REDACTED] also stated that the petitioner suffers from severe depression and severe anxiety.

In their March 2009 affidavits, [REDACTED] stated that they personally witnessed D-S- physically and verbally abusing the petitioner; and that they are aware that D-S- forced the petitioner to have sex with him.

In his July 31, 2010 affidavit submitted on appeal, [REDACTED] stated that when he saw the couple together, the petitioner "always seemed to be walking on eggshells." He also stated that he witnessed an incident at a barbeque during which D-S- grabbed the petitioner's neck and squeezed very hard, and then pushed her neck.

In his August 2, 2010 affidavit submitted on appeal, [REDACTED] stated that he drove the petitioner from the couple's home after seeing D-S- slap the petitioner across the face in January or February of 2009. He also stated that the petitioner told him that D-S- grabbed her neck and forced her to have sexual relations with him. He also stated that he noticed bruises on the petitioner's arms on several occasions, and that the petitioner stayed with him on several occasions following arguments with D-S-.

The petitioner has recounted numerous instances of abuse inflicted upon her by D-S-, and her affiants have done the same. When considered in the aggregate, the testimonial evidence of record and the letter from [REDACTED] establish that D-S- subjected the petitioner to battery and extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner has established on appeal that D-S- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act, and that portion of the director's July 2, 2010 finding otherwise is hereby withdrawn.

Good Faith Entry into Marriage

The second issue before the AAO on appeal is whether the petitioner has established that she married D-S- in good faith. We agree with the director's determination that she has failed to make that demonstration.

In her March 28, 2009 declaration, the petitioner stated that when they met, D-S- was the nicest man she had ever met, and that they had a strong, loving relationship when they married. In his letter, [REDACTED] stated that the petitioner told him that she and D-S- met in 2004 and married in 2006, and that their initial relationship was good. In their affidavits submitted on appeal, [REDACTED] and [REDACTED] offer their opinions that the petitioner and D-S- seemed to be very happy together after their marriage. As further evidence that she entered into the marriage in good faith, the petitioner submitted copies of photographs of what appear to be the couple's wedding ceremony.

The AAO has reviewed the entire record and finds that, in sum, the relevant testimonial and documentary evidence fails to establish that the petitioner married D-S- in good faith. The

statements submitted by the petitioner and her affiants lack probative detail providing insight into the petitioner's intentions upon entering into the marriage: they provide no information regarding any shared experiences apart from the alleged abuse, and the pictures of the couple's wedding day document that event, but do not establish her good-faith entry into the marriage. The petitioner has failed to provide a detailed account of the couple's courtship and marriage, apart from the abuse, which would assist the AAO in evaluating her intentions upon entering the marriage. For example, she fails to describe, in any meaningful detail, the couple's first introductions; her first impressions of D-S-; their decision to date; their first date; their courtship; their decision to marry; their engagement; their wedding; or any of their shared experiences. The petitioner has failed to establish that she entered into marriage with D-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has established that she was subjected to battery or extreme cruelty by D-S- during their marriage, and that portion of the director's decision to the contrary is withdrawn. However, the petitioner has failed to establish that she married D-S- in good faith, and that portion of the director's decision is affirmed. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and her petition must remain denied.

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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.