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



U.S. Citizenship
and Immigration
Services

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FILE:



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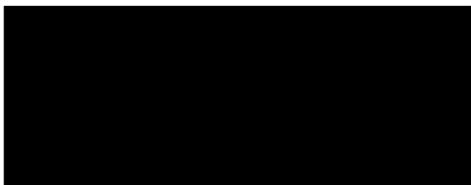
IN RE:

Petitioner:



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 the \$630 fee. 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 Director, Vermont Service Center, denied the immigrant visa petition. 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 pursuant to 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 her United States citizen spouse.

On April 30, 2010, the director denied the petition, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by her United States citizen spouse and that she had failed to establish that she entered into the marriage in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, two additional affidavits, and a statement on the Form I-290B in support of the appeal.

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 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 in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 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.

* * *

(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 record in this matter provides the following pertinent facts and procedural history. The

petitioner is a native and citizen of Ghana. She entered the United States in or about May 27, 2001.¹ On April 22, 2005, the petitioner married [REDACTED], the claimed abusive United States citizen. On or about October 14, 2005, [REDACTED] filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Form I-130 and the Form I-485 were both denied on September 8, 2009. On June 11, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On the Form I-360, the petitioner indicated that she had resided with [REDACTED] from April 22, 2005 to June 2008.

Abuse

The petitioner initially provided a copy of a temporary protective order issued on May 26, 2009 which was valid to June 1, 2009, and which was subsequently extended to June 15, 2009. The petitioner stated generally in support of the temporary protective order that on May 3rd of an unspecified year, [REDACTED] called her and threatened to kill her, that he verbally abused her when he called, and that someone comes to her apartment door and knocks but covers the peephole and she suspected it was [REDACTED] stalking her. In response to the director's request for evidence (RFE) the petitioner provided a personal statement dated March 29, 2010. The petitioner indicated: that [REDACTED] called her derogatory names without provocation; that in 2006, the police stopped by her residence looking for him and when she asked him about it, he shoved her against the wall to prove a point; that he threatened that if she told anyone about what goes on in the house he would kill her; that she isolated herself from friends and family because she was ashamed of her situation; and that in June 2008, a few days after [REDACTED] moved out, police came looking for him. The petitioner indicated further: that the same evening that the police came looking for [REDACTED] called her and accused her of exposing him to the police; that he called again and told her the next time he saw her she would be dead; that she stayed overnight at a friend's house and they escorted her home in the morning; and that she relocated in June 2009 when her lease expired. The petitioner noted that every once in a while she hears a knock at the door and she does not see anyone in the peephole and so she filed a protective order against [REDACTED]

The petitioner also submitted a March 3, 2010 affidavit signed by [REDACTED] who stated: "[t]here had been times when [he and his wife] have witnessed physical, verbal and emotional abuse by [REDACTED] on [the petitioner]" and that in "June, 2008 we even drove to the couple apt to get [the petitioner] to come spend some time with us due to a serious Physical [sic] abuse." In the affidavit of [REDACTED] dated March 3, 2010, [REDACTED] stated: "[t]here had been times when [she has] witnessed physical, verbal and emotional abuse by [REDACTED] on [the petitioner]." The petitioner also provided a letter from the [REDACTED] who stated: that on March 17, 2010, the petitioner phoned him and asked if she could seek his counsel and the petitioner disclosed to him that she was experiencing spousal abuse in her marriage.

¹ The record includes evidence that the petitioner has admitted that she entered the United States under the name of [REDACTED], using this person's passport.

² Name withheld to protect the individual's identity.

The director observed that the information provided was general and did not detail specific incidents of abuse. The director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty and that the record did not demonstrate her qualification under this element.

On appeal, counsel for the petitioner asserts that the director erred in his decision and provided an additional affidavit from the petitioner and an affidavit from [REDACTED]. The petitioner, in her May 29, 2010 affidavit, added the date of November 15, 2006, as the date she confronted [REDACTED] about police stopping at their house and she added that on May 3, 2008, [REDACTED] became physically violent pushing her hard against the wall of their bedroom. In the letter signed by [REDACTED] on May 26, 2010, [REDACTED] indicated that he understood that his verbal abuse which was on a daily basis during the course of his marriage to the petitioner caused a lot of damage. [REDACTED] also indicated that there had been several instances of physical violence, threats and name calling which he deeply regrets. [REDACTED] indicated that he and the petitioner are seeking counseling and that they are living together and that the couple has reconciled.

The petitioner's statements do not provide the probative evidence necessary to establish that she has been subjected to battery or extreme cruelty. Her statements include generalities without specific detail. In addition, the petitioner in her statement in support of the temporary protective order filed on May 26, 2009, does not disclose that [REDACTED] moved out sometime in 2008. Moreover, she provides no substantive testimony supporting her suspicion that [REDACTED] was stalking her after he removed himself from their residence. Further, her statement and the statement of [REDACTED] on appeal confuse the issue of the petitioner's relationship with [REDACTED]. Upon review of the conflicting information provided in the petitioner's and [REDACTED] statements on appeal, the circumstances of the petitioner's marital relationship in May 2010 are not clear. It is the lack of definitive descriptions of specific acts of the claimed abuse and the inconsistencies as it relates to the petitioner's relationship with [REDACTED] in May 2010 that undermine the credibility of the petitioner's testimony. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient detail of specific events and incidents and consistent information to result in a conclusion that the petitioner was subjected to battery or extreme cruelty. The generality and inconsistency of the petitioner's statements do not allow an informed decision regarding the credibility of the statements.

Similarly, the affidavits submitted on the petitioner's behalf do not provide any information about specific incident(s) of abuse. The affiants do not provide probative testimony regarding the circumstances of any specific incident that could be considered battery or extreme cruelty as set out in the statute and regulation. Likewise, the temporary protective order is based on generalities and which are insufficient to evidence that the petitioner was subjected to battery or extreme cruelty. In addition, the record does not disclose that the temporary protective order was extended after the expiration of the three weeks for which it was valid.

The petitioner does not provide detailed information regarding the circumstances of events sufficient to conclude that her spouse's behavior constituted battery or extreme cruelty. Moreover, the

petitioner's spouse's behavior is too generally described to provide a complete understanding of the circumstances of the petitioner's marital relationship. As noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress required a showing of extreme cruelty in order to ensure that a petitioner is protected against the extreme concept of domestic violence, rather than mere unkindness, not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. The petitioner has failed to establish that her spouse's actions rose to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Upon review of the totality of the information in the record, including the petitioner's testimony, the temporary protective order, the affidavits and letter submitted on her behalf, as well as the statement on appeal, the record does not provide sufficient probative evidence to demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that she has been subjected to battery or extreme cruelty perpetrated by her spouse in order to meet her burden of proof. In this matter she has failed to do so.

Good Faith Entry into Marriage

The petitioner has also failed to establish that she entered into the marriage in good faith. The director in this matter articulately set out the deficiencies in the record regarding the petitioner's claim that she had entered into the marriage in good faith. On appeal, neither counsel nor the petitioner directly addresses these deficiencies. The petitioner's statement on appeal simply reiterates the very general information she provided in her previous statement. in his May 26, 2010 affidavit, states that the couple entered into the marriage in good faith and that he loves his wife and cares about her welfare. However, neither statement provides specific information regarding the petitioner's intent in entering into the marriage. In this matter, the petitioner provided only a cursory comment regarding her introduction to - and does not provide any information regarding her interactions with prior to the marriage or during the marriage, other than as her interactions related to the alleged abuse. The petitioner's testimony is general and insufficient to establish that she entered into the marriage in good faith. As this criterion has not been further addressed on appeal, the evidence is insufficient to overcome the director's decision on this element.

Beyond the director's decision, we find that the petition is also not approvable because the record fails to establish that the petitioner has established that she is a person of good moral character. The petitioner submitted a Maryland Criminal Justice Information System record check that confirmed that the petitioner did not have a criminal record under her married name. The record does not include police clearances using the petitioner's maiden name or her other aliases. For these reasons, the petitioner has failed to establish that she is a person of good moral character. As the petition will be denied on other grounds, this element will not be discussed further.

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



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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 143, 145 (3d Cir. 2004) (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 a separate and independent alternative basis for the decision. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The appeal is dismissed.