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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



B9

Date: **APR 05 2011**

Office:

FILE:

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 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 director, [REDACTED] Service Center, 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 The director's decision will be withdrawn in part and affirmed in part.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 and the petition will remain 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 citizen of the United States.

The director determined that the petitioner did not establish that she married her husband in good faith, or that her husband subjected her to battery or extreme cruelty during their marriage. The petition was denied accordingly. On appeal, the petitioner contends through counsel that the denial was based on a mistake of fact, and she submits an additional letter from a social worker.

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:

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:

(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 further explicated 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.

* * *

(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 record reflects that the petitioner is a native and citizen of the [REDACTED] who arrived in the United States on May 20, 1994, without being admitted or paroled. The petitioner married [REDACTED]¹ a citizen of the United States, on February 16, 1995. On October 3, 1995, [REDACTED]- filed a Petition for Alien Relative (Form I-130) on the petitioner's behalf, which was approved on November 27, 1995. U.S. Citizenship and Immigration Services (USCIS) denied the petitioner's corresponding Application to Adjust Status (Form I-485) on August 11, 2004, because she failed to appear for her adjustment of status interview.

The petitioner then filed the instant Form I-360. The director subsequently issued a Request for Evidence (RFE) of, among other things, the good-faith entry into the marriage, and battery or extreme cruelty requirements. The petitioner, through counsel, filed responsive information. After considering the evidence of record, the director denied the petition and the petitioner timely appealed.

Analysis

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 finds that the petitioner has failed to overcome the director's grounds for denying the petition.

Good Faith Entry into Marriage

The director determined that the petitioner failed to establish that she entered into her marriage in good faith. On appeal, the petitioner contends that the director's determination was based on a mistake of fact, which has now been corrected. *See Letter Brief in Support of Appeal; Letter from [REDACTED]* dated Aug. 22, 2005.

In her first affidavit, the petitioner stated that she met [REDACTED]- in a park in the [REDACTED] in August, 1994. She indicated that the couple dated, and that they married on February 16, 1995. The petitioner stated that she explained to [REDACTED]- that she "did not have a green card and [she] had a daughter [and that [REDACTED]] told [her] that was not a problem and that he accepted [her] the way that [she] was." In her second affidavit, the petitioner stated that she married [REDACTED]- on February 16, 1995, and that after the marriage, the couple began to rent a room in an apartment on [REDACTED]. She stated that in or around May, 1997, she learned from her mother-in-law that [REDACTED] was arrested for selling drugs. The petitioner indicated that after her husband's conviction, she visited him on the weekends as much as possible. She stated that "[a]fter he was released he returned to [their] home and [they] were content," until he became abusive in March, 2001. These personal statements do not provide detailed information regarding, for example, how the petitioner met her husband, and they do not describe their courtship, their decision to marry, their wedding, or any of their shared experiences, apart from the alleged abuse. Accordingly, the general statements of the petitioner are

¹ Name withheld to protect the individual's identity.

not sufficient to show that the petitioner had the requisite intent to establish a life together with [REDACTED] at the time of marriage.

The letters and affidavits submitted in support of the petitioner are similarly bereft of details, and do not support the claimed good faith marriage. [REDACTED] the petitioner's daughter by a previous relationship, indicated in an undated statement that the petitioner married [REDACTED] when she was about three years old, that [REDACTED] was nice to her, and that he later disappeared. [REDACTED] the lease-holder for the apartment on [REDACTED] stated in a letter dated July 8, 1997, that the couple had been sharing the apartment with him since May, 1994. This date is inconsistent with the petitioner's statement that she began to live with [REDACTED] at the apartment after their marriage in February, 1995, and the inconsistency detracts from the persuasive value of the letter. [REDACTED] stated that the couple was married and that she lived with them in their apartment from 1994 to 1997, but provides no other details regarding the couple's marriage. [REDACTED] stated that the couple was married and that she lived with them in the same apartment during an unspecified period of time. [REDACTED] indicated that he lived with the couple for four unspecified years at the same address. [REDACTED] stated that he saw the couple together at the apartment a few times when he visited his cousin [REDACTED]. [REDACTED] a friend of the couple, stated that he knew that the couple lived together because he used to visit them sometimes. [REDACTED] also stated that he was friends with the couple, and knew that they lived together. Given the lack of pertinent details regarding the couple's courtship, wedding ceremony, and shared experiences, these generalized affidavits are insufficient to establish that the petitioner entered into her marriage with [REDACTED] in good faith.

The petitioner submitted copies of her medical records from [REDACTED] to support her petition. However, this evidence contradicts the petitioner's claim that she entered into the marriage in good faith. Specifically, in a June 30, 2004 entry, the petitioner's medical chart indicates, in pertinent part, that the petitioner:

Today revealed that she provided false information during initial visit -- Source of her anxiety & depression centers around events to obtain her green card -- [REDACTED] got married to obtain green card -- Soon after husband arrested re: . . . drug charges -- She learned that husband had an extensive criminal record -- When released from prison became physically & verbally abusive -- Now separated -- [REDACTED] stated that she attributes changes in his behavior to her pregnancy from another relationship while he was incarcerated -- [REDACTED] states she was advised to obtain legal counsel re: green card -- Retained the services of an attorney in the area -- Gave [REDACTED] deposit but does not know qualification of attorney -- She will have to pay an additional [REDACTED] -- [REDACTED] advised not pay until process of green card is completed . . .

The information in the petitioner's medical record directly contradicts a finding that she entered her marriage with [REDACTED] in good faith. Rather, this evidence indicates that the petitioner entered into the marriage for the primary purpose of circumventing the immigration laws.

On appeal, counsel contends that the petitioner's medical chart contains a mistake of fact "stemm[ing] in large part from the language barrier between" the petitioner and the social worker. *Letter Brief on Appeal* at 1. In support of this contention, the petitioner submits a letter from certified social worker [REDACTED] dated August 22, 2005, stating, in pertinent part, that the petitioner:

Initially denied any problems but presented very anxious and depressed – [REDACTED] was guarded & afraid to reveal information re: domestic violent [sic] issues – During this time also revealed her undocumented status – Although noted in the chart that she married for green card she has corrected that information. It is possible that I misunderstood her when I noted a green card was her motivation. . .

Although the social worker now states that "[i]t is possible" that she misunderstood the petitioner, given the equivocal nature of the social worker's statement, her failure to claim a language barrier, and the detailed information recorded on the petitioner's medical chart during the June 30, 2004 visit, the weight of the evidence does not support the petitioner's claim on appeal that her medical records contain a mistake of fact.

Finally, the record contains: (1) the couple's marriage certificate; (2) Internal Revenue Service (IRS) documentation indicating that the petitioner was listed as [REDACTED] spouse on joint tax returns and other forms, *see Forms 1040* (for 1996 and 2000); *IRS Payment Vouchers; Account Statement*, dated Dec. 31, 1996; and (3) photocopies of envelopes from [REDACTED] at various correctional facilities addressed to the petitioner at the [REDACTED]. Although these documents are relevant to the good faith marriage determination, given the lack of probative detail and substantive information in the petitioner's testimony and supporting affidavits, coupled with the evidence in the petitioner's medical records that she married [REDACTED] - to obtain a green card, these documents are insufficient to establish a good faith marriage.

In sum, the weight of the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The petitioner claims that she was verbally and physically abused by [REDACTED] after he returned home from prison. In her first affidavit, the petitioner stated generally that [REDACTED] spoke to her in a rough manner, humiliated and threatened her, and hit her in front of her daughter. In her second affidavit, the petitioner stated that the abuse began in March, 2001. In this affidavit, the petitioner related several specific incidents of verbal and physical abuse including, punching her in the stomach in front of her daughters, calling her names, forcing her to have sexual relations, and throwing food at her, which burned her face. The petitioner stated that she did not report these incidents to the police because she was afraid that she would be deported.

The petitioner's daughter indicated in her statement that [REDACTED] use to "push and scream" at her mother, and that [REDACTED] would scream at her when she started to cry. The record also includes a letter from [REDACTED], dated April 5, 2005, indicating that the petitioner's daughter had been an active patient at the clinic since July 31, 2004, and that the petitioner reported that the "family group were [sic] a victim of her ex-husband[']s abuse."

Several other affidavits in the record mention the petitioner's mistreatment and abuse. *See Statement of [REDACTED]* (indicating that [REDACTED] hit and insulted the petitioner, and that the couple separated as a result of his mistreatment); *Statement of [REDACTED]* (noting that [REDACTED] abused the petitioner and then abandoned her with her daughters); *Statement of [REDACTED]* (indicating that the couple "separated because he abused her and mistreated her").

The petitioner's medical records also support her claims of abuse. Although the petitioner initially described her husband as supportive and understanding, and she did not relate any incidents of abuse, subsequent chart entries indicate that the petitioner revealed that her husband became verbally and physically abusive after his release from prison. *See Medical Chart*, dated June 30, 2004; *Psychiatric Summary*, dated July 22, 2004; *Medical Chart*, dated Apr. 14, 2005; *Letter from [REDACTED]*, dated Aug. 22, 2005 (indicating that the petitioner was participating in on-going treatment). The director discounted the subsequent medical records as indicating that the petitioner did not report the abuse until after the RFE was issued. However, notes from the petitioner's medical chart and a letter from her psychiatrist predate the RFE and explicitly link the petitioner's depression to her husband's verbal and physical abuse.

The director also determined that the petitioner failed to establish that she was subjected to battery or extreme cruelty by her spouse because she failed to provide "sufficient evidence to corroborate [her] allegations." The regulations do not require a self-petitioner to submit primary, corroborative evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i).

A de novo review of all of the relevant evidence demonstrates that [REDACTED] subjected the petitioner to battery and extreme cruelty during their marriage. Accordingly, this part of the director's decision will be withdrawn.

Conclusion

On appeal, the petitioner has demonstrated that she was subjected to battery and extreme cruelty by [REDACTED] during their marriage and the director's decision to the contrary is hereby withdrawn. The petitioner has not, however, demonstrated that she entered into the marriage in good faith. She consequently remains ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, and her petition must remain denied. 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.