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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**



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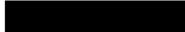
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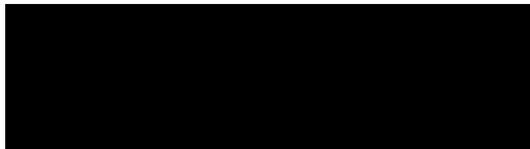
IN RE:

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 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, 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 remains 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.

The director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by a United States citizen or that she had entered into the marriage in good faith.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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.

* * *

(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 set forth 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.

Facts and Procedural History

The petitioner is a native and citizen of Nigeria. She entered the United States on May 12, 2004 on a B-2 visa. On October 30, 2004, the petitioner married W-W-¹, the claimed abusive United States citizen. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on January 26, 2009. On May 11, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by W-W- or that she had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

Battery or Extreme Cruelty

The petitioner initially submitted a personal statement in which she stated that: W-W- frequently complained about her poor audio and speech pattern; she suspected that he was having an affair; W-W- made excuses not to be at home; and he refused to communicate or speak to her. The petitioner indicated that W-W- abandoned the marriage in August 2008 and she had not seen him again. The record also included January 22, 2009 statements signed by her aunt and an acquaintance. The petitioner's aunt indicated she was aware the couple experienced minor problems and that her niece informed her that W-W- had left the home in August 2008. stated that he was aware that the petitioner had married W-W- and it was a shock when he learned that W-W- left the petitioner.

In response to the director's RFE, the petitioner submitted a second personal statement. The petitioner stated that the marriage was blissful while it lasted but sometime in 2008, she noticed that her husband stayed away from home using different excuses and when she confronted him with his behavior, he became verbally violent. The petitioner indicated that this went on for a long time until he moved out in August 2008 without leaving her any contact information. The petitioner also stated that W-W- was emotionally abusive in that he ridiculed and taunted her for being handicapped, laughed at her speech impairment, and refused to be sexually intimate. The petitioner added that on two occasions in 2008, before W-W- moved out, he shoved her against the wall when she tried to talk to him about seeing a marriage counselor.

Based on the information in the record, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty.

On appeal, counsel asserts that the petitioner was subjected to verbal and physical abuse. Counsel asserts that W-W- shoved the petitioner against the wall, especially when he came home late at night and when he was drunk. Counsel states that the petitioner went through this on a daily basis until W-W- moved out of the home.

Upon review of the record, we find no error in the director's assessment of the relevant evidence.

¹ Name withheld to protect the individual's identity.

In the petitioner's initial statement to United States Citizenship and Immigration Services (USCIS) she does not indicate that she was physically assaulted by W-W-. In her statement in response to the director's RFE, she added that on two occasions in 2008, before W-W- moved out, he shoved her against the wall when she tried to talk to him about seeing a marriage counselor. The petitioner does not explain why she failed to mention the two shoving incidents in her first statement to USCIS. Moreover, the petitioner does not describe the alleged battery in probative detail. Although counsel stated on appeal that the petitioner was shoved against a wall repeatedly, counsel's description of the circumstances does not correspond with the petitioner's limited information about the incident(s). The record does not include sufficient probative testimony to establish that the petitioner was subjected to battery perpetrated by W-W-.

The petitioner has also failed to establish that she was the victim of extreme cruelty perpetrated by W-W-. The petitioner initially stated that W-W- complained about her hearing and speech, made excuses not to be at home, refused to communicate with her, and eventually abandoned the marriage. She also noted that she suspected that he was having an affair. Infidelity and abandonment are not actions that constitute extreme cruelty under the statute and regulations. The petitioner's statement in response to the director's RFE adds that when she confronted W-W- about not coming home he became verbally violent and that he ridiculed, taunted, and made fun of her speech impairment. The petitioner, however, does not provide specific detail of any particular incident of "verbal violence." She does not provide probative testimony regarding physical harm or threats of harm or offer probative testimony that W-W-'s actions were aimed at insuring dominance or control over her. She does not describe specific acts or behavior or include other probative information establishing that her husband's actions constituted extreme cruelty as contemplated by Congress when establishing this benefit.

Upon review of the statements submitted on the petitioner's behalf, the affiants do not indicate that they witnessed any incidents of battery or extreme cruelty perpetrated by W-W-. Counsel's statement on appeal is not supported by the petitioner's statements and the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Upon review of the petitioner's statements and the statements submitted on her behalf, the evidence of record lacks probative testimony establishing that W-W- subjected the petitioner to battery or that his actions constituted extreme cruelty as defined in the statute and regulations. The petitioner has failed to provide probative testimony establishing that W-W-'s actions were comparable to the types of 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. Nor has the petitioner established that W-W-'s behavior was part of an overall pattern of violence or coercion. 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)). In this matter, the petitioner has not

provided sufficient probative evidence to establish that she was subjected to battery or extreme cruelty perpetrated by W-W-.

Good Faith Entry into Marriage

The petitioner initially provided no information regarding her initial meeting and subsequent interaction with the W-W- except as it related to the claimed abuse. The petitioner's aunt initially indicated that she was aware of the petitioner's marriage and indicated that she had given them her blessing and had provided them with support from the time of their marriage. [REDACTED] in his January 22, 2009 affidavit, declared that he had seen the couple together a few times and that he admired them.

In response to the director's RFE, the petitioner declared that she married W-W- because she loved and trusted him and believed that he loved her. In the petitioner's aunt's affidavit in response to the RFE, the petitioner's aunt declared that she had been and remained a source of support to the petitioner and considered this an obligation to ensure the petitioner remained comfortable in her relationship with her husband. The petitioner's aunt noted that she consistently paid the couple's rent, utilities, and had provided financial support when necessary. The petitioner also provided copies of leases and photographs of the couple.

The director determined that the record was insufficient to establish the petitioner's good faith intent when entering into the marriage.

On appeal, counsel for the petitioner asserts that petitioner cooked, cleaned, met her husband's sexual needs, and ran errands for him. Counsel also asserts that the petitioner's attempt to involve her husband in marriage counseling is indicative of her good faith intent when entering into the marriage.

Upon review of the petitioner's statements, she does not provide any testimony describing how she met W-W-, their interactions prior to marriage, or their interactions subsequent to the marriage, except as it relates to the claimed abuse. The petitioner's aunt and [REDACTED] also fail to provide probative testimony regarding the petitioner's relationship with her spouse and do not describe particular incidents where they witnessed the alleged bona fides of the marital relationship.

Upon review of the remainder of the record, the record lacks information regarding the couple's joint life for the year and month that the petitioner claims the couple was married and residing together. The leases provided assist in establishing the couple's joint residence but do not demonstrate the petitioner's intent when entering into the marriage. Similarly, the photographs show the couple together on a few occasions but do not include identifying information and are insufficient to establish the petitioner's underlying intent when entering into the marriage.

The petitioner's statements fail to provide probative information regarding her courtship with and marriage to W-W-, except as it relates to the claim of abuse. The petitioner does not describe the couple's mutual interests, she does not describe their daily routines in detail, and she does not provide any probative information for the record that assists in determining her intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter the petitioner has not set forth her intent in probative detail in her statement to USCIS and the record does not include sufficient evidence that the couple established a life together. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with W-W- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. 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. The petition remains denied.