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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
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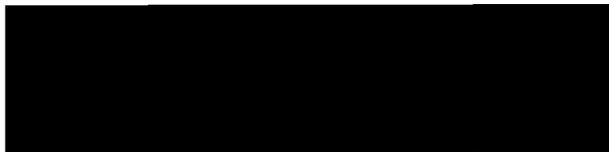


IN RE: Petitioner:



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, [REDACTED], (“the 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 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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner entered into marriage with her husband in good faith and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a supplemental brief.

Relevant 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, 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 further 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 explicated 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 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 petitioner is a citizen of [REDACTED] who married a U.S. citizen in [REDACTED] on December 19, 2006. On July 2, 2008, the petitioner was admitted to the United States with a K-3 nonimmigrant visa as the spouse of a United States citizen. The petitioner filed the instant Form I-360 on January 25, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage and her husband's battery or extreme cruelty. The

petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a supplemental brief.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. Counsel's claims do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below fails to demonstrate the petitioner's entry into her marriage in good faith. In her declaration, dated June 1, 2010, the petitioner recalled that she met her husband, H-P, through a mutual friend.¹ She stated that they spoke on the phone for three months, and then he visited her in [REDACTED]. The petitioner stated that after a few weeks they fell in love and were wed on December 23, 2006. She recalled that during their honeymoon, they "visited the great wall and a lot of other places." The petitioner did not further describe their courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

The petitioner submitted numerous letters from her friends who briefly discussed her marriage, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. The petitioner stated that she met her husband through a mutual friend, [REDACTED] [REDACTED] however, did not discuss her introduction of the petitioner to H-P-, nor did she provide any information to demonstrate the petitioner's good faith in entering into the marriage. [REDACTED] husband, [REDACTED] also failed to discuss his wife's introduction of the petitioner to H-P-. Mr. [REDACTED] stated, "I met [H-P-] when he was a frequent visitor to the massage store that my wife worked at in [REDACTED]. He was very proud of his marriage to a beautiful [REDACTED] lady, and showed me a bunch of pictures and talked a lot about [REDACTED] and his trip there." Mr. [REDACTED] statement reflects H-P-'s good faith in entering into the marriage, but does not shed any light on the petitioner's intentions. The director correctly concluded that these letters do not demonstrate that the petitioner married her husband in good faith.

The director also accurately assessed the relevant documents submitted below. The petitioner submitted a timeline of the events that occurred during her marriage. In her timeline, the petitioner stated that she resided with H-P- at his residence in [REDACTED] from her arrival in July 2, 2008 until July 20, 2008, when she moved to [REDACTED] to learn massage at her friend's massage store. The petitioner stated that H-P- visited her in [REDACTED] and they opened a joint checking account. She stated that in October 2008, she resided with H-P- at his residence in [REDACTED] but had to leave earlier than she planned because of the alleged abuse.

¹ Name withheld to protect the individual's identity.

The petitioner submitted evidence that she had car insurance and a bank account with her husband. The director noted that the bank statements, which are dated December 2008 through December 2009, and the insurance policy, which had an effective date of May 7, 2009, were issued after the date the petitioner stated that she last resided with her spouse in September 2009. On appeal, counsel asserts that some of the statements were issued before September 2009. However, the petitioner's own timeline of events reflects that she had moved out of H-P-'s residence a little over two weeks after her arrival in the United States in July 2008. The documentation she submitted reflects that the bank account and car insurance she had with her husband were during her residence in [REDACTED] where she was residing separately from him. Thus, the documents are of little probative value.

Further, as noted by the director, one of the bank statements – dated December 24, 2008 through March 24, 2009 – lists an address in [REDACTED]. The Report of Medical Examination and Vaccination Record (Form I-693) the petitioner filed with her adjustment application is dated October 14, 2008, and also reflects her address as [REDACTED]. The petitioner did not list a residence in [REDACTED] on her timeline of events, nor did she indicate that she resided in [REDACTED] in her declaration. On appeal, counsel asserts that the petitioner's residence in October 2008 was two years after her marriage, and it should not be used in assessing the petitioner's intent to enter the marriage in good faith. However, the record reflects that the petitioner and H-P- first resided together in a marital relationship after she entered the United States in July 2008. Accordingly, the discrepancy in the petitioner's residence just three months later in October 2008 is relevant in assessing her intent. Counsel further asserts that the petitioner was residing in [REDACTED] training to be a masseuse in October 2008, and she used the address in [REDACTED] as a safe address because her husband abused her. Again, the petitioner does not discuss her residence in [REDACTED] or her use of the [REDACTED] address in her timeline or her declaration. She instead stated on her timeline that she resided with H-P- in [REDACTED] in October 2008. This inconsistency detracts from the credibility of the petitioner's claim of entering her marriage in good faith.

A full review of the relevant evidence submitted below fails to reveal any error in the director's determination. The petitioner submitted photographs of her wedding ceremony, H-P-'s residence and H-P-'s social interactions with her friends on two occasions. However, the petitioner has not substantively described their courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. None of the petitioner's friends discuss in probative detail their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. Further, the submitted bank statements and car insurance card are of little probative value because they were issued when the petitioner was residing separately from her husband. Accordingly, the petitioner has failed to demonstrate that she 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

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty. In the petitioner's June 1, 2010 statement, she stated that after she arrived in the United States, her husband's attitude toward her changed. She recalled that she was not allowed to use the kitchen and there was little food in their home. She stated that her husband kept their home dark and she could not make noise. She stated that two weeks later she moved to [REDACTED]. The petitioner

stated that she returned to their marital home in October 2008, but did not remain there. She recounted that after she returned her husband yelled at her, threw things at her and attempted to sexually assault her. She stated that she was not allowed to cook or make phone calls, and she was feeling cold and hungry. She stated that her husband repeatedly called her a demeaning name. The petitioner stated that she returned to her marital home in July 2009, “[b]ut the nice [H-P-] didn’t last long at all. He turned mean and abusive again.” She stated that in August 2009 she learned that her husband is disabled. The petitioner recalled that when she asked him about his disability he started “yelling and throwing things” at her. She stated that in September 2009 her husband left their home, and she contacted the police to help locate him. She stated that she looked at his personal documents and learned that he was diagnosed with schizophrenia and bipolar disorder. The petitioner concluded that she was deceived by H-P- because he tried to hide his condition.

Although the petitioner claims that her husband threw objects at her and attempted to sexually assault her during her residence with him in October 2008, she has not established that she resided with H-P- during this time period. The director correctly noted that the letters from the petitioner’s friends, [REDACTED] and [REDACTED] indicate that after the petitioner left her residence with H-P-, she moved to [REDACTED] to receive a massage certificate. Counsel on appeal asserts that the petitioner was in [REDACTED] in October 2008 “studying massage.” However, the petitioner does not discuss her residence in [REDACTED] in her timeline or her declaration. Counsel has not further clarified the dates the petitioner was in [REDACTED]. Nor has counsel indicated the dates the petitioner was allegedly residing with H-P- in October 2008. The petitioner’s failure to provide a consistent, credible account of her residence during the period of alleged physical abuse diminishes the credibility of her claims.

The petitioner’s friends, [REDACTED] and [REDACTED] attested to the physical abuse the petitioner alleges she suffered, but their statements are inconsistent with the petitioner’s claims. Ms. [REDACTED] stated that when she spoke with the petitioner in July 2008, the petitioner told her that H-P- forced her to have sex, did not allow her to use the phone and kitchen, and he would not buy food for her. The petitioner, however, did not state in her declaration that H-P- sexually assaulted her in July 2008. Ms. [REDACTED] recalled that she stayed with the petitioner at her marital home in August 2009, and H-P- mentioned that he no longer wanted to see the petitioner. Ms. [REDACTED] further recalled that the petitioner later told her that H-P- did not allow her to cook, threw away the food she purchased and he threw food at her. Again, the petitioner in her declaration does not describe this incident. Neither of these individuals describes any particular incident of abuse that they witnessed or provides a probative account of their observations of the effects of the alleged abuse on the petitioner.

The petitioner’s friends, [REDACTED] reported that after the petitioner moved out of her marital home she attempted to call H-P- and visit him, but he refused to have contact with her. [REDACTED] recalled that the petitioner told her that when she was residing with H-P-, he kept the house dark, would not allow her to use the kitchen, and she had little food. [REDACTED] stated that in September 2009 the petitioner said she was residing with H-P- and he was away for several days and turned off the electricity. The petitioner, however, did not mention this incident in her declaration. [REDACTED] recalled that the petitioner told her that when she was residing with H-P- in October 2008, he was making it difficult for her to make telephone calls, go out of the house and eat meals. As discussed, the claim that the petitioner resided with H-P- in Boulder in October 2008 is undermined by the petitioner’s subsequent claim of

residence in [REDACTED] during that time period. The letters do not establish that the petitioner's husband's behavior involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The director concluded that the relevant evidence submitted below did not establish that the petitioner's husband subjected her to battery or extreme cruelty. The director noted that the petitioner had a bank account that she used on a regular basis and her spouse took her to [REDACTED] for her to be trained as a masseuse. The director stated that petitioner had not demonstrated that her spouse attempted to control and isolate her, nor had she described in detail the verbal abuse she alleges she suffered. On appeal, counsel asserts that the petitioner was subjected to economic coercion and control because H-P- did not give her money or food, and he forced her to support herself. Counsel contends that H-P- isolated the petitioner by keeping the marital home dark and forbidding the use of the telephone. Counsel further asserts that H-P- physically harmed the petitioner by sexually assaulting her and throwing food at her. Counsel's claims are not supported by the record.

Upon a full review of the evidence, we find that the director correctly concluded that the petitioner failed to establish that her husband subjected her to battery or extreme cruelty. The petitioner's failure to provide a consistent account of her residence during the period of alleged physical abuse undermines the credibility of her claims. [REDACTED] attested to the alleged physical abuse, but their statements are inconsistent with the petitioner's claims. [REDACTED]

[REDACTED] attested to the petitioner's troubled marriage and her husband's abandonment. Their letters do not establish, however, that H-P-'s behavior involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determinations that she did not establish the requisite entry into the marriage in good faith and battery or extreme cruelty. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.