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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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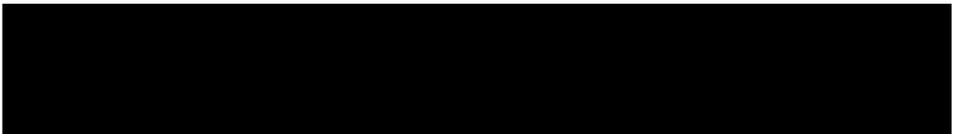
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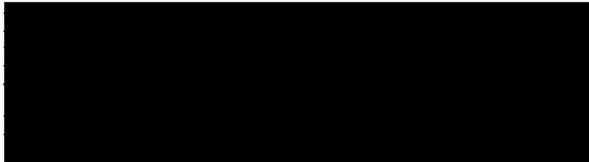
IN RE:

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. 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 United States citizen.

The director denied the petition because the petitioner did not establish that her spouse subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief and a letter from the alleged abuser's stepfather.

As set out below, the AAO concurs with the director's determination that the petitioner has not established that she was subjected to battery or extreme cruelty.

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 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.

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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a national and citizen of Jamaica, who entered the United States on March 5, 2005. On April 23, 2008, the petitioner married [REDACTED] a U.S. citizen. On May 15, 2008, [REDACTED] filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner, which was approved on January 15, 2009, but the approval was subsequently revoked. On February 23, 2009, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which was denied by the district director on December 7, 2009, based upon the revocation of the approval of the I-130 petition. On December 7, 2009, the petitioner was served with a Notice to Appear for removal proceedings and remains in proceedings before the Miami (Krome), Florida Immigration Court.

The petitioner filed the instant Form I-360 on December 28, 2009. On January 8, 2010, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character. The petitioner, through counsel, responded with additional evidence. On May 6, 2010, the director issued a second RFE of, *inter alia*, the requisite joint residence, abuse and/or extreme cruelty, and good faith entry into the marriage. The petitioner, through counsel, responded with additional evidence.

¹ Name withheld to protect individual's identity.

On July 29, 2010, the director denied the instant I-360 petition because the petitioner did not establish that her spouse subjected her to battery or extreme cruelty during their marriage. The petitioner, through counsel, timely appealed the denial of the instant I-360 petition.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that her spouse subjected her to battery and/or extreme cruelty during their marriage:

- An undated statement from the petitioner submitted at the time of filing, and a statement dated June 14, 2010, submitted in response to the RFE;
- A statement dated December 23, 2009, from the petitioner's friend, [REDACTED], submitted at the time of filing;
- A notarized statement dated December 20, 2009, from the petitioner's acquaintance, [REDACTED], submitted at the time of filing;
- A letter dated May 16, 2010, from the assistant pastor, [REDACTED] located in [REDACTED], submitted in response to the RFE;
- A statement dated June 11, 2010, from the petitioner's friend, [REDACTED], submitted in response to the RFE;
- A notarized statement dated June 11, 2010, from the petitioner's friend, [REDACTED], submitted in response to the RFE; and
- An undated statement from E-H-'s stepfather, [REDACTED] submitted on appeal.

The record does not include a statement from the petitioner submitted on appeal, addressing her claim that she was subjected to battery and/or extreme cruelty by her spouse. In her undated statement submitted at the time of filing, the petitioner states, in part, that: a few months after she and E-H- were married, he and his family began to ask her for money, and when she refused to give it to them, they threatened to report her to "immigration" and have her deported; in June 2009, she received a "green card" from "immigration services," which she knew was a mistake, so she returned it, whereupon [REDACTED] became enraged, shouted at her, insulted her, and called her a "stupid b****"; after the "green card" incident, E-H- continued to insult and threaten her, became moody and angry, and made her cry every day; on a Friday evening in July 2009, [REDACTED] asked the petitioner for money and when she told him that she did not have any, he called her a "lying b****," threatened to report her to "immigration" and have her deported; [REDACTED] continued to attack [her] every day" and she "was scared for [her] life"; she "felt like being his slave"; she was scared and depressed and cried every day "hoping that crying would ease [her] pain"; and he forced her to have sexual relations with him and raped her. The petitioner explains, "I knew it was wrong that I didn't call the police, but I became so scared that I just prayed to survive." The petitioner also states that: she "had days and days without sleeping" because she was so depressed; and in September 2009, the petitioner confronted [REDACTED] when he purchased a bedroom suite without consulting her, she stayed with her friend [REDACTED] for a few months when he told her to leave, and then she "agreed to return to him on his request."

In her June 14, 2010 statement, submitted in response to the RFE, the petitioner states, in part, that: after she and [REDACTED] were married, “[e]verything was going well until [around July 2009] his mother started to visit frequently and asked [her] for money and later [REDACTED] started to do the same and when [she] did not have money he got very upset and aggressive with [her]”; her relationship with E-H- changed and he called her names and yelled at her for no reason; “[t]hese confrontations seemed to occur every two weeks and threatens continue until I give me money [sic]”; “One day he treated me so violent and pushed me because I told him that I was not going to give me any money any more [sic]”; and she wanted to call the police but was afraid that hit would upset [REDACTED] - more so she internalized her feelings and confided in her friend, [REDACTED]. The petitioner again describes the “bedroom suite” incident that she mentioned in her initial statement and added, “We had a serious argument because he tried to beat me up when I got upset with him and complaint of what he did [sic].” The petitioner states that: she moved in with her friend [REDACTED] for a few months until [REDACTED] asked her to go back with him; the insults and yelling continued and E-H- was worse than before; and [REDACTED] harassed her for money and “pressured [her] for sex.” The petitioner explains, “After all the evil things he put me through I was not attracted to my husband and that’s why I refused to sleep with him.” The petitioner also states: she has suffered mentally and emotionally, her health has been “mistreated” and she “[has] depression”; she is being treated for high pressure because of the stress caused by her husband; she was continuously physically violated and forced to perform sex acts with E-H- “with the threat of him turning [her] over to immigration authorities”; [REDACTED] called her cruel and horrible names and “[took] all the money [they] had including [their] tax return”; and she was “abandoned and discarded.”

In her December 23, 2009 statement, [REDACTED] states, in part:

Unfortunately, [the petitioner] had confided in me on few occasions, and told me about the problems she was experiencing in her marriage to [REDACTED]. She said that he would withdraw large amounts of money from their joint bank account without notice. When she would approach her husband with this information, she stated that his reasoning behind taking the money, centered on him feeling that he is young and she is old, so it was [the petitioner’s] responsibility to take care of him. Furthermore, he would threaten [the petitioner] by telling her that he was going to call immigration. These threats were given on several occasions. [The petitioner] was very distraught over the situation.

In her December 20, 2009 notarized statement, [REDACTED] states, “During her relationship with her husband, [the petitioner] always complain to me about him been very emotional abuse and verbally to her . . . and that he has the power [to send her back home].” [REDACTED] also states that the petitioner’s husband “will go into the [joint] account and take most of it out and she can’t say anything about it [b]ecause the husband will verbally abuse her.”

In his May 16, 2010 letter, [REDACTED] states, in part, that approximately three months after her marriage, the petitioner related to him that: a few weeks after her marriage, her husband started demanding money from her, locking her out of the apartment when his demands were not met and telling her “it was the duty of an older woman to take care of a young man”; the petitioner’s husband accused the petitioner of “holding out on him” in money matters; the petitioner’s husband

became possessive and told her that he owned her and had power over her; the petitioner's husband called her names and "force[d] her to have sex with him several times . . . lock[ed] her out of the apartment leaving her outside begin [sic] and pleading for hours" and threaten to call "immigration" unless she complied with his demands. [REDACTED] also stated, "The constant insults and systematic rape by her husband had caused her to seek refuge with friends on a number of occasions."

In her June 11, 2010 statement, [REDACTED] states, in part, that: the petitioner called her one night and told her she was being abused by her husband, that he was "treating her with bad words," calling her names, and asking her for money; the petitioner's husband "was forcing her to have sex," locked her out of the apartment, and allowed her back in after several hours and "then forced her to have sex with him," the petitioner's husband threatened to call "immigration" if she did not give him all her money and "have sex whenever he wanted." [REDACTED] also states that on "another time" she suggested that the petitioner report her husband to the police "but she said she could not do that to her husband." [REDACTED] states that the petitioner's husband treated her in a humiliating way and the petitioner "lived in continuous fear and uncertainty due to the control he had over her." [REDACTED] states, "One day [the petitioner] called [her] very scared and crying because he locked her at the apartment because she did not give him the money he needed. . . . I took her to my house and provide food, shelter and comfort for her [sic]."

In her June 11, 2010 notarized statement, [REDACTED] states, in part, that: the petitioner told her a few months after her marriage that [REDACTED] - "was the most abusive and disrespectful person she ever met"; [REDACTED] consistently asked her for money and he would get very angry and become so violent if she did not give him the money he wanted." [REDACTED] states, "In one occasion [the petitioner] told me that her marriage was getting worse . . . he forced her in a violent way to have sex . . . threaten[ed] her saying he would call immigration to take her back to Jamaica . . . called her old bitch or a whore or pushed her out of the apartment"; "she would often spend several hours outside" and afterwards he raped her and called her bad names and told her "it was the duty of an old woman to take care of a young man." [REDACTED] also states that she went to see the petitioner and "saw her scared and depressed" and the petitioner told her that "she was afraid to make any report against [REDACTED] because she was very scared and did not want to go to the police to report him."

In his undated statement, [REDACTED] identifies himself as [REDACTED] stepfather and his address as: [REDACTED] which is the same address that the petitioner claims she resided with [REDACTED] from the date of their marriage to September 2009. [REDACTED] states that the petitioner and [REDACTED] "rented a room from my wife and I" and states further that he was a witness to the petitioner's claimed abuse. [REDACTED] states, "I notice that [the petitioner] would frequently stand outside the door of their room pleading with her husband to let her in" and "I would hear shouts and yelling coming from their apartment." [REDACTED] concludes that he submits his statement "with a heavy heart" because he was a witness to the petitioner's "misery" and did not know "what role [he] could have played in assisting her."

On appeal, counsel asserts, "The petition was supported by credible evidence meeting the statutory standard, and should have been approved." Counsel reiterates the alleged abuse as described by the petitioner, [REDACTED] Counsel also states,

“As stated in [redacted] letter, the [petitioner] and [redacted] rented a room inside his home. [redacted] witnessed the [petitioner] being shut out of her room by her husband where she was residing.”

In this case, we do not find the petitioner’s evidence sufficient to meet the petitioner’s burden of proof. The statements from the petitioner and the affidavits submitted on her behalf contain numerous inconsistencies and/or deficiencies. For example, on appeal counsel submits a statement from [redacted]’s stepfather, [redacted] who lists his address as the same address as the petitioner and [redacted]’s claimed joint residence, as of the date of their marriage until September 2009: [redacted]. [redacted] states that the petitioner and [redacted] rented a room from him and his wife, and thus he personally witnessed the alleged abuse. The petitioner, however, does not state in her own testimony that she and [redacted] lived with [redacted]’s mother and stepfather. Moreover, in her June 14, 2010 statement, the petitioner states, “Everything was going well until his mother started to visit frequently,” which indicates that the petitioner and [redacted] did not share a joint residence with [redacted] mother and step-father. It is also noted that none of the other “witnesses” who submitted statements claimed that the petitioner and [redacted] lived with [redacted] mother and stepfather. The record contains no explanation for this inconsistency, which detracts from the probative value of [redacted]’s statement. In addition, although the petitioner states in her June 14, 2010 statement that she confided only in her friend, [redacted] about her problems with [redacted], [redacted] mentions no physical abuse of the petitioner by [redacted] in her December 23, 2009 statement. Rather [redacted] states that the petitioner confided in her that [redacted] withdrew “large amounts of money from their joint account,” and threatened to call “immigration” on her. Again, this inconsistency/deficiency detracts from the probative value of [redacted]’s statement. It is also noted that [redacted] states that “[d]uring her relationship with her husband, [the petitioner] always complain[ed] to me” about [redacted] emotional and verbal abuse, which again conflicts with the petitioner’s June 14, 2010 statement, in which she states that she confided only in her friend, [redacted] about her problems with [redacted]. [redacted] also mentions no physical abuse of the petitioner by [redacted]. Again, these inconsistencies/discrepancies detract from the probative value of [redacted]’s statement. In addition, according to Assistant [redacted] in his May 16, 2010 statement, the petitioner confided in him about her problems with [redacted], which again conflicts with the petitioner’s June 14, 2010 statement, in which she states that she confided only in her friend, [redacted] about her problems with [redacted]. Moreover, Assistant [redacted]’s statement that [redacted] “constant insults and systematic rape . . . caused her to seek refuge with friends on a number of occasions,” conflicts with petitioner’s testimony, in which she states only that in September 2009, she “decided to stay with [her] friend [redacted] . . . for [a] few months hoping that [redacted] would] change . . .” Assistant [redacted]’s additional claim that the petitioner reported that [redacted] told her “it was the duty of an older woman to take care of a young man,” is not mentioned in the petitioner’s own testimony. Again, these inconsistencies/discrepancies detract from the probative value of [redacted]’s statement. Likewise, [redacted] describes various occasions of the petitioner calling her and confiding in her about her problems with [redacted], which, again, conflicts with the petitioner’s June 14, 2010 statement, in which she states that she confided only in her friend, [redacted] about her problems with [redacted]. Also, [redacted] states that she provided the petitioner with food, shelter, and comfort, a claim that is not mentioned in the petitioner’s own

testimony, and thus detracts from the probative value of ██████████ statement. In like manner, ██████████ describes various occasions of the petitioner confiding in her about her problems with ██████████ which, again, conflicts with the petitioner's June 14, 2010 statement, in which she states that she confided only in her friend, ██████████ about her problems with ██████████. The record contains no explanation for these inconsistencies and/or deficiencies.

In this case, we do not find the petitioner's evidence sufficient to meet the petitioner's burden of proof. The petitioner has not established that ██████████ subjected her to battery. The relevant evidence also fails to demonstrate that ██████████- subjected her to extreme cruelty during their marriage, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the AAO concurs with the findings of the director that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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.