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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

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

FEB 22 2011

IN RE:

Petitioner:

[Redacted]

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:

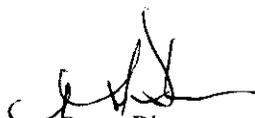
[Redacted]

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 jointly resided with a United States citizen, that she had been subjected to battery or extreme cruelty perpetrated by a United States citizen, and that she had entered into the marriage in good faith.

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Republic of the Philippines. She entered the United States on or about May 27, 1998 as a B-2 visitor. On July 19, 2004, the petitioner married A-R-¹, the claimed abusive United States citizen. On September 28, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On February 1, 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 jointly resided with A-R-, that she had been subjected to battery or extreme cruelty perpetrated by A-R-, and 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 brief in support of the appeal. Counsel asserts that United States Citizenship and Immigration Services (USCIS) failed to adhere to the any credible evidence standard when issuing the decision in this matter.

Preliminarily, we acknowledge that section 204(a)(1)(J) of the Act requires USCIS to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of" USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating residence, the requisite battery or extreme cruelty, and good faith, lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iii)(iv) and (vii). In this matter, as in all visa petition 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 Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

Residence

The petitioner in this matter indicates on the Form I-360 that she jointly resided with A-R- from July 2004 to August 2005. The petitioner did not provide an initial statement in support of the Form

¹ Name withheld to protect the individual's identity.

I-360 but submitted an envelope addressed to [REDACTED] at an address [REDACTED]. In response to the director's RFE, the petitioner provided a personal statement. She declared that she and [REDACTED] lived at a particular address [REDACTED] from July 4, 2004 to May 16, 2005 and that she could not produce any documents because [REDACTED] kept all the records. The petitioner noted that she could only provide affidavits from her friends. She provided affidavits signed by [REDACTED]. In [REDACTED] affidavit, she declared that she attended the petitioner's wedding ceremony, that the couple had a good relationship, that she attended parties with the couple, and that she visited their place [REDACTED] lots of times. [REDACTED] declared that she knew the petitioner and [REDACTED] as a couple, that she attended their wedding, that she saw them every now and then at celebrations, that the couple lived at a particular address [REDACTED] for a couple of years, and that she had visited them at their residence. [REDACTED] declared that she attended the couple's wedding, and had gone out with them. [REDACTED] declared that she attended the petitioner and [REDACTED] wedding, that every now and then they went out and had fun, and that they lived at a particular address [REDACTED] for a couple of years.

The director determined that the evidence submitted did not establish that the petitioner had resided with [REDACTED]. On appeal, counsel for the petitioner contends that the petitioner's spouse controlled all the records and thus she did not have any records of their time together.

In this matter, although the petitioner claims that she did not have access to any records to demonstrate that she jointly resided with her spouse, she also fails to provide probative testimony of their claimed joint residence. The petitioner does not provide credible testimony of when she resided with [REDACTED], rather she indicates that she resided with him from July 2004 to August 2005 on the Form I-360 but in her statement changes the date the joint residence ended to May 2005. She also fails to describe the dwelling in any way, their home furnishings, their neighbors, any of their jointly-owned belongings, or any of their daily routines within the residence. The affiants who submitted statements on the petitioner's behalf also fail to describe the petitioner's claimed joint residence, when or for how long they visited the couple, or the couple's routines they witnessed during their visits. In addition, two of the affiants, [REDACTED] declared that the couple lived together for a couple of years, rather than the one year the petitioner described. The lack of documentary evidence in this matter is not controlling; it is the petitioner's failure to provide probative testimony regarding the residence and the inconsistencies in her testimony that preclude a determination that she jointly resided with [REDACTED]. Upon review of the affidavits submitted on her behalf, these affidavits also lack probative detail and add to the inconsistencies in the record. The record lacks probative testimony establishing that the couple jointly resided together during their marriage.

Upon review of the totality of the evidence in the record, including the petitioner's testimony and the testimony submitted on her behalf, the petitioner failed to establish that she jointly resided with [REDACTED] during the marriage. The record lacks consistent, detailed information regarding the petitioner and [REDACTED] alleged joint residence.

Abuse

The petitioner initially did not provide a personal statement detailing the abuse allegedly perpetrated by [REDACTED]. She provided a psychological evaluation prepared by [REDACTED] dated April 11, 2009. [REDACTED] indicated that she interviewed the petitioner on April 9, 2009 for an unspecified amount of time. [REDACTED] indicated that the petitioner claimed that after a few months of marriage, [REDACTED] began to call her derogatory names, told her he would not help her with her immigration paperwork, and that he demanded all her money and threatened her with deportation. [REDACTED] also noted that the petitioner claimed that [REDACTED] forced her to have sexual relations against her will and that the petitioner isolated herself from family and friends. [REDACTED] further noted the petitioner's report that she separated from [REDACTED] in 2006 because she could no longer tolerate [REDACTED] humiliation and mistreatment and that [REDACTED] continued to contact her although she told him on many occasions to leave her alone. [REDACTED] offered her opinion that the petitioner developed Major Depressive Disorder as a direct result of the verbal, emotional, and psychological spousal abuse she endured during her marriage to [REDACTED].

In response to the director's RFE, the petitioner provided a personal statement in which she declared that she did not know why [REDACTED] changed after a couple of months of marriage, but that he was loud, insulting, and sarcastic, called her derogatory names and treated her like a slave. The petitioner also stated that [REDACTED] demanded all her money and threatened her with deportation if she refused and demanded intimate relations that she was uncomfortable with. The petitioner indicated that [REDACTED] would not let her send things to the Philippines and that he did not like her friends coming over but when they did come over he was always nice to them. The petitioner claimed that over a year into the marriage, [REDACTED] threatened her with his fist but did not hit her and after this incident, they stopped talking and a few days later she came home from work and he was gone and she never heard from him again.

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 as defined in the statute and regulation. The director also noted inconsistencies in the petitioner's testimony to USCIS and to her psychologist.

On appeal, counsel for the petitioner asserts that the petitioner's sworn statements and the psychological evaluation report are sufficient to establish the petitioner's eligibility under this requirement. Counsel also declares that when she presented the inconsistencies noted by the director to the petitioner, the petitioner stated that she had not provided that information to counsel and that she had not read the statement counsel had prepared for her to sign but had just signed it.

Upon review of the record, the petitioner does not claim that she was subjected to battery perpetrated by [REDACTED] and the record does not include any evidence that the petitioner was subjected to battery. Rather she bases her claim on the alleged extreme cruelty perpetrated by [REDACTED]. Her statement to the USCIS which she now indicates she never read is not sufficient to establish that she was subjected to extreme cruelty as defined in the statute and regulation. The information does not provide the detailed, probative evidence that establishes she had been

subjected to extreme cruelty as set out in the statute and regulation. Because the petitioner's statements are critical in establishing extreme cruelty or battery, her statement must include sufficient detail of specific events and incidents to result in a conclusion that she suffered such abuse. In this matter, the petitioner has not provided the requisite probative detail regarding any specific event. The petitioner provided general statements regarding name calling, forced intimacy, and a generalized threat regarding deportation; however, she does not describe in detail the circumstances of any of the name calling, the demands for her money, threats, or imposed isolation or when or how often they occurred. Although the petitioner references a general threat regarding her immigration status, the petitioner does not indicate that [REDACTED] threat was accompanied by violence or threats of physical or mental injury.

Upon review of the petitioner's statements to [REDACTED] the petitioner referred to name calling, forced intimacy, and threats of deportation, but did not provide probative detail of the circumstances of any specific incidents regarding [REDACTED] behavior. The information provided by the petitioner to [REDACTED] is insufficiently detailed to allow a conclusion that the petitioner's spouse's behavior included actions that constitute extreme cruelty under the statute or regulation. In addition, [REDACTED] findings were based upon a single interview with the petitioner and, as such, they fail to reflect the insight commensurate with an established relationship with a mental health professional. While we acknowledge [REDACTED] training and professional experience, she fails to provide examples of the causal relationship of specific abuse as defined in the statute and regulation that is consistently detailed to her diagnosis of the petitioner's major depressive disorder. Moreover, [REDACTED] does not identify specific behavior by [REDACTED] that included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

Upon review of the petitioner's testimony and the psychological evaluation submitted, the record does not demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that [REDACTED] non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. The petitioner's statements and the statements she made to others lack the consistent detail necessary to establish that [REDACTED] subjected her to battery or that his actions constitute extreme cruelty as defined in the statute and regulation. The petitioner has failed to establish that [REDACTED] 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 A-R-'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 record presented lacks sufficient, consistent information to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her spouse.

Good Faith Entering Into Marriage

The petitioner has not provided any information regarding her courtship with and eventual marriage to [REDACTED]. She stated generally to [REDACTED] that she was introduced to [REDACTED] by her daughter's friend and that she was attracted to his good looks, their mutual interests, and his kindness and support. She does not describe their mutual interests, she does not describe when and how she met him, and she does not describe their subsequent dating, if any. She does not provide any information for the record that would assist in determining her intent in entering into the marriage. The affidavits of the four individuals who testified on the petitioner's behalf also fail to provide substantive information regarding the interactions of the couple. The affiants do not offer probative information regarding any particular incident or incidents where they witnessed the alleged bona fides of the couple's claimed marital relationship.

Upon review of the photographs submitted, the photographs show that the petitioner and [REDACTED] were together on their wedding day, but this evidence fails to establish the petitioner's intent in 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 consistent and probative detail in a statement to USCIS. In addition, the affiants' statements, submitted on behalf of the petitioner, do not disclose the circumstances or specific events witnessed that would assist in establishing the petitioner's intent in entering into the marriage. Neither has the petitioner provided other evidence that would demonstrate that her intent in entering into the marriage was in good faith. Upon review of the petitioner's statement and the totality of the record, the record is bare of the essential detail necessary to demonstrate that the petitioner's intent to enter into the marriage was in good faith, as required by section 204(a)(1)(A)(iii)(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.