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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
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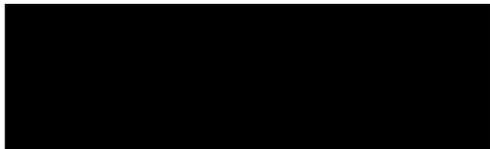
IN RE:

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 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 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 husband subjected her to battery or extreme cruelty during their marriage and that she married him in good faith.

On appeal, counsel submits a brief, and asserts, in part, that the petitioner's husband subjected the petitioner to battery and extreme cruelty and that the petitioner married her husband in good faith. Counsel asserts that the petitioner's previously submitted evidence, which includes the petitioner's statement, a psychological assessment, evidence of her prescription for anti-depressant medication, and a police report of her husband's abuse of his girlfriend, prove that the petitioner was subjected to battery and extreme cruelty. Counsel also asserts that the petitioner has submitted sufficient documentation, including her personal statement, evidence of her miscarriage, an application for a joint bank account, bills, and life insurance policies, to establish the bona fide nature of her relationship with her spouse. In support of her contentions, counsel submits only the referenced brief and documentation already in the record.

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

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a national of Ghana, who entered the United States as a B-2 nonimmigrant visitor on January 29, 2003. On July 7, 2004, the petitioner married M-G-¹, a U.S. citizen. On July 27, 2006, the petitioner's divorce from M-G- became final. On September 29, 2007, the petitioner married P-K-², a U.S. citizen, who is the claimed abuser in the instant case. On June 26, 2008, P-K- filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On January 16, 2009, P-K- withdrew the I-130 petition, whereupon the Field Office Director issued a Notice of Termination, terminating all action on the I-130 petition. On February 27, 2009, the Field Office Director denied the Form I-485, due to the withdrawal of the I-130 petition. On May 20, 2009, the petitioner was served with a Notice to Appear for removal proceedings and remains in proceedings before the Los Angeles, California Immigration Court.

The petitioner filed the instant Form I-360 on January 5, 2010. On March 19, 2010, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residence, abuse, and good faith entry into the marriage. The petitioner, through counsel, responded with additional evidence. On August 25, 2010, the director denied the instant I-360 petition because the petitioner did not establish that her husband subjected her to battery or extreme cruelty during their marriage and that she married him in good faith. 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 or extreme cruelty during their marriage:

- A statement from the petitioner, dated December 18, 2009, submitted at the time of filing;
- Patient information related to the petitioner's miscarriage;
- An incomplete, unsigned Los Angeles County Booking and Property Record dated December 29, 2008, listing P-K- as the arrestee for the charge of inflicting corporal injury on a spouse/cohabitant;
- A psychological evaluation dated May 26, 2010, from [REDACTED]; and
- The petitioner's personal prescription information dated May 28, 2010.

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

The record does not include a statement from the petitioner submitted in response to the director's RFE or on appeal addressing her claims that she was subjected to battery or extreme cruelty by her spouse. In her December 18, 2009 statement submitted at the time of the petition's filing, the petitioner states, in part, that she met P-K- in 2006 at a shopping mall when he asked to borrow money from her, and that they began dating two months later. The petitioner states that a year later, P-K- proposed to her and they married on September 29, 2007. The petitioner reports that a few months after their marriage, P-K- began to spend more time away from her, took her cell phone away from her, argued with her, and called her names. The petitioner states that after one of their arguments, P-K- stayed away for seven days without contacting her, and that when he returned, he was disrespectful of her, called her "African Lady" instead of calling her by her name, and accused her of not knowing anything and being unable to speak English. The petitioner states that P-K- smoked marijuana in their apartment, "seemed to make [her] cry" all the time, refused to work, and, on one occasion, wrote a bad check. The petitioner states that when she discovered that he was having an affair and confronted him, "[h]e rose his hand as if he was going to hit [her], but [she] backed away quickly before he could." The petitioner states that the "worst issue came several months later, when [she] became pregnant," and P-K- "did not respond with concern or excitement." The petitioner states that she ended up having a "stress-related miscarriage." The petitioner states that she learned that P-K- was arrested "[t]owards the end of [their] relationship," and that she "heard that it may have been for harming a girlfriend of his." The petitioner states that when she did not pay the bail money, P-K- told her that he had a girlfriend and no longer wanted her, and that he never returned home. The petitioner goes on to state that she has "started to get [her] life in order" and that she is "now in a good place," that she has been working since May 2009, as a Certified Nursing Assistant, that she has made a life for herself in the United States, and that she goes to church, enjoys her community and has close friends.

In her May 26, 2010 evaluation, [REDACTED] states, in part, that she evaluated the petitioner on May 8, 12, and 18, 2010. [REDACTED] provides excerpts from the petitioner's December 18, 2009 statement as the information the petitioner "recounted" and "shared" with her. [REDACTED] states that the petitioner's "emotional and psychological state are extremely fragile as a result of the violence, verbal, emotional and psychological, that she endured while with her husband." [REDACTED] also states that the petitioner has been prescribed Prozac and Trazodone by a psychiatrist "in order to treat her anxiety and depression, intrusive obsessive thoughts and images, flashbacks and nightmares, mood swings and irritability." [REDACTED] diagnoses the petitioner with "Major Depressive Disorder, Single Episode, Severe, Without Psychotic Symptoms," "Anxiety Disorder NOS," and "Posttraumatic Stress Disorder." [REDACTED] concludes that the petitioner "requires constant monitoring by a mental health professional."

Upon review of the totality of the information in the record regarding the claimed abuse of the petitioner, the AAO finds that the petitioner has failed to describe in probative detail specific threatening or controlling behavior of her husband that constitutes battery or extreme cruelty. It is noted that the petitioner provided general information and did not include specific dates for the claimed abuse in her December 18, 2009 statement. It is also noted that the petitioner described no

physical abuse from her husband in her December 18, 2009 statement. The petitioner described her husband's behavior, which included arguing with her, calling her names, telling her that she did not know how to speak English, smoking marijuana in their apartment, writing a bad check, refusing to work, causing her to miscarry due to stress, being unfaithful, and ultimately abandoning her, but as found by the director, these actions do not constitute extreme cruelty as set out in the regulations. The petitioner has not established that her husband's behavior, including her claim that her miscarriage was due to stress, constituted psychological or sexual abuse or was otherwise part of an overall pattern of violence. The petitioner has not submitted any evidence from Arrowhead Regional Medical Center where she was treated for her miscarriage, or another physician to support her claim of a causal connection between her miscarriage and any abuse by her husband. Likewise, the petitioner's husband's other behaviors, including name calling, belittling her English-speaking skills, smoking marijuana at home, arguing with her, being unfaithful, and ultimately abandoning her, do not rise to the level of the 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. The petitioner's claims fail to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty, that P-K-'s behavior was accompanied by any substantiated coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over her. In sum, the AAO finds that the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty.

The AAO acknowledges the incomplete, unsigned Los Angeles County Booking and Property Record dated December 29, 2008, listing P-K- as the arrestee for the charge of inflicting corporal injury on a spouse/cohabitant. On appeal, counsel explains that the police report pertains to P-K-'s abuse of his girlfriend, and states further that this report "proved that [P-K] was an abusive man that subjected [the petitioner] to battery and extreme cruelty." The AAO disagrees, as the petitioner was not involved in the incident and there is no evidence that P-K- was convicted of the charges filed against him.

The AAO has reviewed the psychological evaluation from [REDACTED], dated May 26, 2010. As stated by the director, [REDACTED] evaluation does not establish that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage. Although [REDACTED] states that she evaluated the petitioner on May 8, 12, and 18, 2010, she does not specify the length of her sessions with the petitioner. In addition, as stated herein and by the director in his August 25, 2010 decision, [REDACTED] merely included the text, verbatim, of the petitioner's December 18, 2009 statement, in recounting the petitioner's marital history with P-K-. Thus, the nature of the clinical interview conducted by [REDACTED] with the petitioner is unclear, which detracts from the probative value of her evaluation. Further, although [REDACTED] states that the petitioner's "emotional and psychological state are extremely fragile as a result of the violence, verbal, emotional and psychological, that she endured while with her husband" and that she has "never encountered a woman as depressed, emotionally disconnected and alienated, withdrawn and numb as [the petitioner]," her finding is inconsistent with the petitioner's own testimony, in which she describes herself as in a good place, working since May 2009, as a Certified Nursing Assistant, having made a life for herself in the United States, and going to church, enjoying her community and having close friends. Moreover, while [REDACTED]

describes the petitioner as “[h]aving lived with her husband through **years** (emphasis added) of tension, disappointment, stress, uncertainty and shame . . .”, information on the petition reflects that the petitioner and P-K- lived together for only one year and three months. The record contains no explanation for these inconsistencies and/or deficiencies. In addition, although on page 5 of her evaluation, states that the petitioner was referred to seek supportive psychotherapy and that she is already taking two anti-depressive medications, does not specify who referred the petitioner to seek supportive psychotherapy or who prescribed the anti-depressive medication. It is noted that the copies of the petitioner’s personal prescription information for antidepressant medication are dated May 28, 2010, which is after May 26, 2010 evaluation, and contain the name of ” The record, however, contains no letter or statement from describing the circumstances under which the medication was prescribed. In view of the foregoing, it is unclear that the alleged abuse by the petitioner’s husband was a causative or contributing factor to the petitioner’s mental and/or physical health condition. It is also noted that, although, finds that the petitioner requires constant monitoring by a mental health professional, the record contains no evidence of such monitoring.

While we do not question the expertise of , her testimony fails to establish that the petitioner was subjected to battery or extreme cruelty by her spouse. As stated previously, evaluation contains information that is either deficient or conflicts with the petitioner’s own testimony, which detracts from the probative value of evaluation. In sum, does not provide substantive, probative information indicating that the petitioner was subjected to actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

In this case, we do not find the petitioner’s evidence sufficient to meet the petitioner’s burden of proof. The petitioner does not claim and the record does not indicate that P-K- subjected her to battery. The relevant evidence also fails to demonstrate that P-K- 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). The petitioner also has not resolved the inconsistencies and/or deficiencies discussed herein that diminish the evidentiary value of her statements. 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.

Good Faith Entry into Marriage

In addition to the documentation listed above, the record contains the following evidence relevant to the petitioner’s claim that she married her husband in good faith:

- Copies of receipt letters from dated January 2009, addressed to the petitioner and the beneficiary, respectively, at
- A bank account application dated December 19, 2008, listing the petitioner and the beneficiary;

- The petitioner's 2009 federal income tax return, reflecting her filing status as "Married filing separately";
- Two partial electric bills dated January 26, 2008 and July 29, 2009, respectively, addressed to P-K- at the [REDACTED] address";
- Excerpts from the Department of State Foreign Affairs Manual (FAM), regarding children born in wedlock; and
- Photographs.

In her December 18, 2009 statement submitted at the time of the petition's filing, the petitioner states, in part, that she met P-K- in 2006, at the shopping mall, and that they began dating two months later. The petitioner also states that P-K- helped her to learn English, went to the library with her, and promised to love and care for her forever. The petitioner states that a year later, P-K- proposed to her and they married on September 29, 2007.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The petitioner, however, has submitted scant testimonial evidence to support a finding that she entered into her marriage in good faith. The statement from the petitioner is general and vague and provides minimal information pertinent to the circumstances of her courtship with her husband, their marriage, and their shared experiences, apart from the alleged abuse. In addition, the record contains numerous deficiencies and unexplained inconsistencies. For example, while the AAO acknowledges the receipt letters from Garden State Life Insurance Company, dated January 2009, addressed to the petitioner and P-K- at the [REDACTED] address," according to information on the petition, the petitioner and P-K- no longer resided together during this time period. Moreover, it is noted that these policies were purchased in the same month as the petitioner's adjustment of status interview at the USCIS office in Santa Clara, California. It is additionally noted that in her December 18, 2009 statement, the petitioner stated that P-K- called her from jail in December 2008 to ask for bail money, and when she did not provide the requested money, he told her that he no longer wanted her. The petitioner went on to state that P-K- "never came home after that event" and "[t]hey have been separated since that time." A review of the record, however, reflects that on January 16, 2009, the petitioner and P-K- appeared together at the USCIS office in Santa Clara, California office for an adjustment of status interview, and presented themselves to the USCIS officer as spouses residing together. The record contains no explanation for these inconsistencies. In addition, the bank account application for the petitioner and P-K- does not show that the account was ever used. Counsel's explanation on appeal that the petitioner did not keep bank statements is noted; however, the record contains no evidence that the petitioner requested an account history from the bank. Nor does counsel indicate why such information is unavailable. The photographs confirm that the petitioner and P-K- were pictured together, but, in light of the deficiencies and inconsistencies discussed herein, these documents, along with the two partial electric bills and the petitioner's 2009 federal income tax return, reflecting her filing status as "Married filing separately," do not establish the petitioner's good-faith entry into the marriage. Moreover, the lack of information in the record regarding how the petitioner met her husband, their courtship, decision to marry, and shared experiences, apart from the alleged abuse, significantly detracts from the credibility of her claim. The AAO also acknowledges counsel's statements on appeal that the petitioner's pregnancy "was good

evidence of her bona fide marriage to [P-K-],” and that, in accordance with the provisions of the [REDACTED] as the petitioner conceived a child during her marriage, the child is presumed to be the issue of the marriage. Again, the inconsistencies in the petitioner’s testimony regarding the circumstances surrounding her miscarriage were discussed in detail in the previous section. As discussed above, the petitioner has not resolved the numerous inconsistencies in the record that diminish the evidentiary value of her statements. As such, the petitioner’s miscarriage does not establish her good-faith entry into the marriage.

In this case, we do not find the petitioner’s evidence sufficient to meet the petitioner’s burden of proof. The relevant evidence fails to demonstrate that the petitioner married her husband in good faith, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(ix). The petitioner also has not resolved the inconsistencies and/or deficiencies discussed herein that diminish the evidentiary value of her statements. Accordingly, the AAO concurs with the findings of the director that the petitioner failed to establish 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.

The petitioner has not demonstrated that her husband subjected her to battery or extreme cruelty during their marriage and that she married her husband in good faith. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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