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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

PUBLIC COPY

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[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JAN 10 2011

IN RE:

[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:

SELF-REPRESENTED

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 service center director denied the immigrant visa petition and dismissed two subsequent motions to reopen and reconsider. 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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty during their marriage, and affirmed his decision in response to two subsequent motions to reopen and reconsider. The petitioner filed a timely appeal. On appeal, the petitioner submits additional letters and copies of previously-submitted documentation.

Applicable Law

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, the following:

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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Guyana, married G-S-¹ a citizen of the United States, on July 29, 2000. The petitioner filed the instant Form I-360 on November 24, 2008. The director issued two subsequent requests for additional evidence, and the petitioner filed timely responses to both. After considering the evidence of record, including the petitioner's responses to his requests for additional evidence, the director denied the petition on December 14, 2009. The petitioner filed two subsequent motions to

¹ Name withheld to protect individual's identity.

reopen or reconsider, and the director affirmed his decision denying the petition in response to each motion.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

Battery or Extreme Cruelty

The sole issue on appeal is whether the petitioner has established that G-S- subjected her to battery or extreme cruelty during their marriage. As evidence that she was subjected to abuse perpetrated by R-S- during their marriage, the petitioner submits four personal statements, letters from her daughter and from friends, and a letter from an individual she claims is a doctor.

In her November 19, 2008 unsigned letter, the petitioner stated that she caught G-S- having an extramarital affair; that he was dishonest and lied frequently; and that he pushed and hit her.

In her November 6, 2009 letter, the petitioner stated that their marital problems began in April 2003 when G-S- began spending time with friends of whom she did not approve. The petitioner stated that G-S- ridiculed her in front of those friends; spent money excessively; forced her to have sexual relations; called her names; and had an extramarital affair.

In her January 10, 2010 letter, the petitioner stated that G-S- criticized her weight; called her names; tried to control her; often failed to pay utility bills; accused her of being unfaithful; asked her to engage in sexual activity with which she was not comfortable; slapped and tried to choke her during sexual activities; and threatened her immigration status. The petitioner also stated that G-S- tried to make her feel as though a miscarriage she suffered had been her own fault.

In her August 9, 2010 letter submitted on appeal, the petitioner repeated her earlier assertions and added that G-S- punched her; pushed her to the ground; and called her names.

In her November 1, 2009 unsigned letter, the petitioner's daughter stated that she witnessed an incident during which G-S- pinned the petitioner to the wall and yelled at her. She also stated that when she tried to call the police, G-S- pulled the telephone out of the wall socket, and then smashed her cellular telephone when she attempted to use it to call the police. The petitioner's daughter also stated that G-S- was unfaithful and that he demanded sexual relations from the petitioner.

The petitioner also submitted three letters from friends. In her January 9, 2010 letter, [REDACTED] stated that G-S- abused the petitioner verbally, mentally, and physically; was unfaithful; and caused the family financial difficulty due to his gambling addiction. In her January 10, 2010 letter, [REDACTED] stated that the petitioner told her that G-S- did not help her pay the rent, which caused the family to be evicted from multiple apartments.

In her January 13, 2010 letter, [REDACTED] stated that during a party she gave at her residence in June 2003, she witnessed G-S- punching the petitioner in the face and hitting her with a beer bottle. She stated that she learned later that G-S- had also been calling the petitioner names and accusing her of infidelity. According to [REDACTED], on the following day she witnessed G-S- pulling the petitioner's hair.

Finally, the petitioner submitted a letter purporting to be from [REDACTED] of the [REDACTED] [REDACTED] stating that the petitioner had been the victim of abuse, and that he had diagnosed her with severe depression and stress due to spousal abuse.

In his October 28, 2009 request for additional evidence, the director requested additional information relating to the letter from [REDACTED]. The director informed the petitioner that [REDACTED] was not located in the New York State Physician Profile, that the license number stated on the letter could not be found, and that when the [REDACTED] was called, the operator did not know of [REDACTED]. The director noted that although [REDACTED] letter indicated the petitioner had been prescribed naproxen sodium for depression, naproxen sodium is a pain reliever, not an antidepressant. The director also noted the misspelling of another medication in the letter. Given these issues, the director requested a copy of [REDACTED] medical license and information regarding his credentials, including his education. The petitioner, however, did not respond to the director's request. Nor does she address the matter on appeal. The AAO, therefore, will accord [REDACTED] letter no evidentiary weight.

We also note an inconsistency in the testimonial evidence submitted by the petitioner. For example, in her January 13, 2010 letter [REDACTED] stated that after seeing G-S- punching the petitioner in the face she called for help, and that later that same day she rushed to the petitioner's rescue after witnessing G-S- pulling her hair. As noted by the director, the petitioner made no mention of this incident.

The petitioner has failed to establish that G-S- subjected her to battery or extreme cruelty during their marriage. Her submission of the letter purportedly written by [REDACTED] constitutes the submission of a false medical record. In *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), we explained that when adjudicating a petition pursuant to the preponderance of the evidence standard, the director is to examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, in order to determine whether the fact to be proven is probably true. When the director can articulate a material doubt regarding a specific piece of evidence, it is appropriate to either request additional evidence or, if that material doubt leads the director to believe the claim is probably not true, deny the petition. Here, the director articulated fully his material doubt about [REDACTED] and requested further evidence to dispel this doubt. The petitioner did not respond to the request or further address [REDACTED] letter. Consequently, the director denied the petition. In his decision denying the petition, the director again placed the petitioner on notice of his concerns regarding this letter, and the petitioner elects again not to address those concerns on appeal.

Our examination of the letter allegedly written by [REDACTED] leads to the same conclusion as that reached by the director. This letter was a central piece of the petitioner's submission regarding the abuse to which she was allegedly subjected, and we conclude that it was falsified. This falsified document is material to the petitioner's claim of abuse and negates her credibility on this matter.

The petitioner has failed to establish that G-S- 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

The petitioner has failed to establish that G-S- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.