

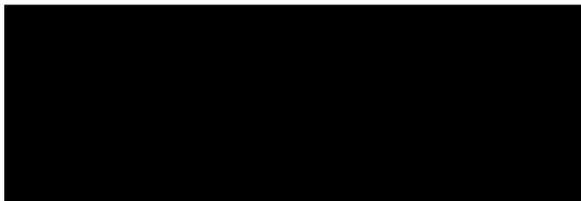
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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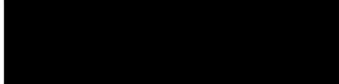


**U.S. Citizenship
and Immigration
Services**



B9

Date: JUL 08 2011

Office: VERMONT SERVICE CENTER File: 

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:

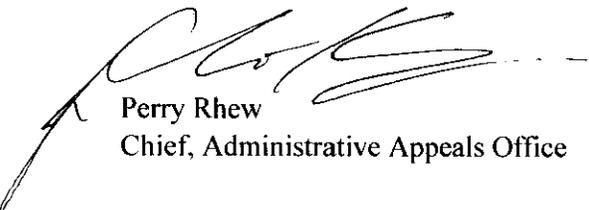
SELF-REPRESENTED

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 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, Vermont Service Center, (“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 resided with her husband, entered into marriage with her husband in good faith, and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, the applicant submits a statement and additional evidence.

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:

(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 or the self-petitioner's child, 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.

* * *

(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.

* * *

(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 Haiti who entered the United States on September 9, 1983, as a nonimmigrant visitor. The petitioner married a U.S. citizen on March 24, 1997 in Hempstead, New York. A petition for alien relative (Form I-130) was filed on the petitioner's behalf by her husband on June 11, 1997. The Form I-130 was approved on February 9, 1998. On October 28, 2008, the applicant was served with a notice to appear in removal proceedings after failing to appear for an asylum interview. On November 25, 2008, the applicant was ordered removed in absentia by an immigration judge in Atlanta, Georgia for failing to appear at her removal hearing.

The petitioner filed the instant Form I-360 on December 28, 2009. The director subsequently issued a Request for Evidence (RFE) of the petitioner's residence with her husband, good moral character, 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 for failure to establish that the petitioner resided with her husband, entered into marriage with her husband in good faith, and that he subjected her to battery or extreme cruelty during their marriage. The applicant filed a timely appeal.

On appeal, the petitioner submits her own statement, statements from her friends, [REDACTED] and [REDACTED] and she resubmits a letter from a licensed clinical social worker, [REDACTED]

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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The applicant's claims and the evidence submitted on appeal 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 and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her first statement, dated March 24, 2010, the petitioner stated that she met her husband at a birthday party through a friend. She stated that they started dating "right away" and kept on dating until they "fell in love with each other." She noted the locations she and her husband would go to during their courtship. She stated that after two years of dating they were married at a small wedding without a ceremony. She stated that they then moved into a "nice apartment" in Brooklyn. On appeal, the petitioner submitted another statement, dated August 13, 2010, stating that her mother-in-law liked her because she "was a church lady." The petitioner stated that she lived with her husband in a "big apartment" with seven rooms. She noted that they were both working, and paid their bills together. The petitioner did not, however, describe in detail their shared residence and experiences as a married couple.

In response to the RFE, the petitioner also submitted letters from two friends who briefly discussed the petitioner's marriage, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. ██████████ stated that she visited the petitioner and her husband at their home in Brooklyn, but she does not describe any such visit in detail. Although ██████████ stated that she had known the petitioner for the past 10 years (since 2000) and that they are good friends, she stated that the petitioner and her husband were married "about 7 years ago," or 2003, which is when the petitioner stated that she and her husband were separated. ██████████ stated that he often visited the petitioner when the petitioner resided with her husband, but he also fails to describe any particular visit in detail. ██████████ indicated that the petitioner and her husband "used to be happy together," but he does not describe his observations of the petitioner's interactions with her husband or otherwise indicate that he has any personal knowledge of their relationship.

On appeal, the petitioner submitted two additional letters from her friends. ██████████ stated that the petitioner and her husband "spent quiet times together such as: going to the parks, movies, shopping, church etc. In fact, their activities of daily living were excellent." ██████████ also stated that he visited the petitioner at her marital home several times, but both he and ██████████ failed to describe any particular visit they made to the former couple or other social interactions from which they gained knowledge of the petitioner's relationship with her husband. These letters do not provide additional details on the petitioner's good faith marriage to her husband. Although the petitioner credibly explained her lack of joint documentation with her husband, her statements and those of her friends fail to provide probative information sufficient 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.

Joint Residence

The petitioner indicated on her Form I-360 that she and her husband resided together from March 1997 until April 2003 and that their last shared residence was at ██████████. The petitioner did not indicate if she and her husband owned or rented the apartment, and in her statements, the petitioner does not further describe their home or shared residential routines in any detail, other than to state that they had a seven-room apartment. The petitioner's friends have stated that they visited the petitioner and her husband's residence, but their description of the residence lacks specific detail and is inconsistent. ██████████ stated that the petitioner and her husband shared "a very nice apartment with three bedrooms, one and a half bathrooms, a kitchen, dining room and living room." ██████████ stated that he is familiar with the apartment the petitioner resided in with her husband. He noted that "on the left hand side is the kitchen and on the right hand side is the living room. There are two bedrooms in the back." ██████████'s letter lacks credibility because it is dated August 15, 2010 and he indicated that the petitioner was still residing at the ██████████ apartment, but the petitioner stated that she had moved to another residence after her husband left her in 2003. Furthermore, the letters from ██████████ and ██████████ are inconsistent in their description of the petitioner's apartment. The letter from ██████████ states that the petitioner had a three-bedroom apartment while the letter from ██████████ states that the petitioner had a two-bedroom apartment. Accordingly, the

record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) 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 and the additional evidence submitted on appeal fails to overcome this ground for denial. In the petitioner's first statement she asserted that after a few years of marriage, her husband would come home late at night or sleep outside their home. She stated that her husband would scream at her, curse her and beat her. She noted that when she went to work one morning her husband had moved out. In the second statement filed on appeal, the petitioner asserted that her husband abused her "physically, sexually, verbally and emotionally." The petitioner noted that her husband was in a relationship with another woman. She indicated that he would stay out very late or forget to come back home. The petitioner stated that the woman her husband was seeing would call her and harass her. She concluded that her "marriage was not a safe and healthy relationship [sic] it was like violence & fear." The petitioner's statements fail to describe any specific incident of the claimed abused.

The letters from the petitioner's friends do not provide any additional details to support her claim. [REDACTED] stated that "about a year after the couple were married, things began to change." This statement is inconsistent with the petitioner's claim that her husband became abusive "after living together for a few years" and "having a beautiful life together." [REDACTED] stated that the petitioner's husband "used to beat her" and "had a mistress that used to call her house to harass her." [REDACTED] stated that during the petitioner's marriage "she suffered mental abuse and verbal abuse from [her husband's] lack of consideration." He noted that the petitioner's husband "would go out without letting her know and would not return until the next morning." [REDACTED] stated that the petitioner's husband became violent after the petitioner "found out about his cheating habit." She stated that "their relationship started to deteriorate, lots of verbal and physical abuse." None of these individuals describe any particular incident of abuse that they witnessed or provide a probative account of their observations of the effects of the abuse on the petitioner.

The record contains two identical letters from a licensed clinical social worker, [REDACTED] which state that she met the petitioner for one 45 minute evaluation in April, 2010, seven years after the petitioner stated that her husband abandoned her. [REDACTED] stated that the petitioner reported that her husband "abused her physically, verbally and emotionally." She stated that the petitioner "was repeatedly confronted with events that involved threats and injury" and she "experienced fear, helplessness and horror." [REDACTED] noted that the petitioner's husband "had been unfaithful and had a mistress who used to harass [REDACTED] with repeated phone calls." [REDACTED]s report on the type of abuse and threats the petitioner claims she suffered consists of a single, six-sentence paragraph, which fails to provide probative information to support the petitioner's claims.

The statements of the petitioner, her friends and [REDACTED] fail to provide probative accounts of any particular incidents of battery. The relevant evidence also lacks sufficient, detailed information to demonstrate that the petitioner's husband's extramarital affair, abandonment and other behavior involved threats of injury to the petitioner or her children, psychological abuse or sexual abuse, an overall pattern of violence or otherwise amounted to extreme cruelty, as defined in the regulation 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, residence with her husband, 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 his 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.

ORDER: The appeal is dismissed.