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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
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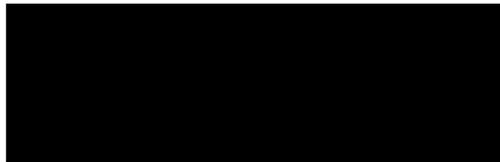
Office: VERMONT SERVICE CENTER

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:

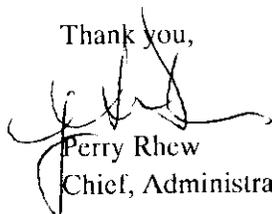


INSTRUCTIONS:

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 Vermont Service Center director (“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 petition will remain denied.

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 her United States citizen spouse.

The director denied the petition for failure to establish the requisite abuse and good-faith entry into the marriage. On appeal, counsel submits a brief and asserts that the petitioner was subjected to extreme cruelty by her husband. As supporting documentation, counsel submits the referenced brief and a copy of an *amici* memorandum dated April 23, 2001, submitted to the Board of Immigration Appeals in support of another Violence Against Women Act (VAWA)-related appeal.

Applicable 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 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 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 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.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of Nigeria who entered the United States as a nonimmigrant visitor on January 20, 2005. On July 27, 2005, the petitioner married a U.S. citizen in California. The petitioner's husband subsequently filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner, which remains pending. The petitioner filed the instant Form I-360 self-petition on April 15, 2010.

The director subsequently issued a request for additional evidence (RFE) that the petitioner had the requisite qualifying relationship, joint residence, abuse, good moral character, and good-faith entry into the marriage. The petitioner, through counsel, submitted additional evidence. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite abuse and good-faith entry into the marriage.

On appeal, counsel asserts that the petitioner's declarations and the evaluation from [REDACTED] establish that the petitioner was a victim of extreme cruelty by her husband. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and on appeal does not overcome the director's grounds for denial.

Battery or Extreme Cruelty

In her April 7, 2010 statement submitted at the time of filing, the petitioner stated, in part, that: she and her husband were married on July 27, 2005, and had a good relationship before he started to change; her husband began drinking alcohol often, became angry for no reason, yelled at her, called her bad, insulting names, and criticized her; her husband smoked cigarettes constantly and maybe also marijuana because he returned home with strange smells on him; her husband began to work less and wanted her to work and to stay at home when she was not working; her husband refused to introduce her to his friends and many times pushed and shoved her when he was angry and then disappeared for two or three days; she felt sad and depressed and did not know what to do; and in July 2008, her husband took all the money from their joint bank account and disappeared, leaving her with no money for rent or food.

In her August 17, 2010 statement submitted in response to the RFE, the petitioner stated, in part, that: life with her husband was good until around the middle of 2006, when he wanted her to have a baby and became angry when she did not get pregnant; her husband yelled at her every month when she did not become pregnant and blamed and insulted her by calling her a man for not getting pregnant; her husband's insults grew worse in their second year together and he called her derogatory names and continued to accuse her of being a man because she did not get pregnant; she had to apologize to him to calm him down; at least ten times her husband threw things at her such as dishes and cups, which hit the wall; during their last year together, her husband would bang his hand hard on the table and yell at her when he was angry, which she felt was a threat; she had to be careful of what she said and she was afraid to go home from work because she did not know what mood he would be in; her husband told her that everything was her fault and he would not go to the doctor with her to find out why she could not get pregnant; her husband left and stayed away for days when he was angry; her husband refused to go out with her to visit her friends and he ordered her off the phone whenever she talked with them; she did not invite anyone to their house because she did not want anyone to see how she was treated whereupon she had little contact with anyone; her husband criticized her for what she wore and accused her of trying to attract other men; her husband liked to see her cry and laughed and walked out whenever she did; she became depressed and sometimes had no appetite and, could not eat or sleep, was forgetful and sometimes overreacted to other people's comments; in 2007, she sought help from a social worker who could not take her case and she also received counseling from a church member; she was unable to continue her nursing studies because she could not concentrate due to her husband's treatment of her; her husband

left her in July 2008, and took all their money; and she is now trying to move on with her life, though she is distrustful of everyone.

In her April 8, 2010 evaluation report submitted at the time of filing, [REDACTED] stated, in part, that the petitioner was interviewed on March 24, 25, and 26, 2010. [REDACTED] reiterated information from the petitioner's statements, but she did not mention the incidents reported by the petitioner in her own testimony of her husband throwing dishes at her and banging his hand hard on the table in a threatening manner. [REDACTED] diagnosed the petitioner with Major Depressive Disorder, Moderate, Single Episode, and recommended that the petitioner learn about the dynamics of domestic violence relationships and participate in counseling.

In response to the RFE, counsel submitted the original, signed evaluation report from [REDACTED] and a letter from the [REDACTED], dated June 21, 2007, informing the petitioner that they do not handle cases involving marital problems.

The AAO acknowledges [REDACTED] April 8, 2010 evaluation in which she diagnosed the petitioner with Major Depressive Disorder, Moderate, Single Episode, and recommended that she learn about the dynamics of domestic violence relationships and participate in counseling. While we do not question the expertise of [REDACTED] her testimony fails to establish that the behavior of the petitioner's spouse was comparable to the behavior described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has the petitioner established that her spouse's behavior was part of an overall pattern of violence or coercion.

The petitioner also submitted affidavits from [REDACTED], who all stated, in part, that they had witnessed the petitioner crying about her marital problems. It is noted that all of these affidavits contain identical and/or similar language. Thus, it is not clear that the statements expressed by these individuals are their own. As the authorship of these affidavits is unclear, the credibility of the testimony of these individuals is diminished. Moreover, [REDACTED] claimed that the petitioner's husband forced her to have sex with him, a claim that does not appear in the testimony of either the petitioner or [REDACTED]. For this additional reason, the credibility of the testimony on behalf of the petitioner is diminished.

We find no error in the director's assessment of the relevant evidence. Although counsel asserts on appeal that the petitioner's testimony and the evaluation from [REDACTED] demonstrate that the petitioner was submitted to extreme cruelty by her husband, the record contains unexplained discrepancies and/or inconsistencies, as discussed above. In addition, the petitioner's statements and the statements submitted on her behalf do not recount any credible incidents of battery. Their statements also do not demonstrate that the petitioner's husband's 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 her husband'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)). The relevant evidence in this case fails to demonstrate that, during their marriage, the petitioner's husband subjected her to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In her April 7, 2010 statement submitted at the time of filing, the petitioner stated, in part, that: she met her husband in 2005 and they started living together in June 2005; she and her husband were married on July 27, 2005, they had a good relationship at first, and she was very happy; and she and her husband got along well and she was in love with him and she thought that he was in love with her.

In her August 17, 2010 statement submitted in response to the RFE, the petitioner stated, in part, that: she and her husband never had any insurance together and her health insurance from work did not cover him; she and her husband did not have a car; when she first met her husband in 2005, they got along well together, talked about their hopes and plans, and they decided to marry because it seemed that they both wanted a peaceful, stable life and a family; and their life together was good until about the middle of 2006.

The record also contains the following: joint checking account statements for 2007, reflecting minimal activity; utility bills dated 2006 – 2008, addressed to the petitioner and husband; and photographs of the petitioner with her husband.

The director determined that the petitioner submitted insufficient evidence to establish that she married her husband in good faith. On appeal, counsel asserts that the petitioner's husband refused to share the bills and never added the petitioner to the rental agreement, as a means to maintain control over her.

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). In this case, we do not find the petitioner's evidence sufficient to meet her burden of proof. The petitioner provided only a cursory overview of how she met her husband, their courtship, decision to marry, and shared experiences, which, significantly detracts from the credibility of her claim. The photographs submitted showing the couple together do not establish the petitioner's intent at the time of her marriage. Similarly, the bank account statements and utility bills do not establish that the petitioner and her husband established a life together. As discussed above, the bank statements reflect minimal activity and the utility bills are not evidence of a bona fide marriage. The documents, when considered in the aggregate, do not include the necessary and fundamental information to establish the petitioner entered into the marriage in good faith. While the lack of documentation is not necessarily disqualifying, in this matter, as previously mentioned the petitioner provides little information regarding her initial meeting with her spouse, their courtship, their discussions of marriage, their plans to marry, and the interactions subsequent to the marriage except as they relate to the claims of abuse. Simply stating that she entered into her marriage in good faith is insufficient. The petitioner fails to provide probative testimony that contributes to an understanding of her intent when entering into the marriage. Upon review, the record in this matter does not include sufficient probative evidence establishing that the petitioner entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

In these 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. Here, that burden has not been met. The petitioner has failed to establish the requisite abuse and good-faith entry into the marriage. Accordingly, the appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed. The petition remains denied.