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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



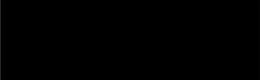
U.S. Citizenship
and Immigration
Services

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Date: **JUL 28 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:

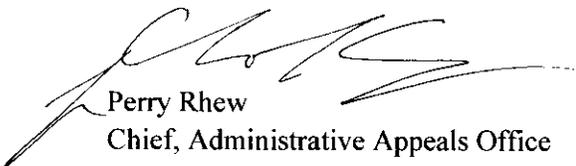
SELF-REPRESENTED

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 has a qualifying relationship as the spouse of a U.S. citizen, is eligible for immigrant classification based on that relationship, 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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act, section 204(g) of the Act, and section 204(a)(2) of the Act.

(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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Ghana who entered the United States on June 1, 1999, as a nonimmigrant visitor. The petitioner married a U.S. citizen, R-R-,¹ on December 22, 2005 in Alexandria, Virginia. A petition for alien relative (Form I-130) was filed on the petitioner's behalf by R-R- on January 30, 2006. U.S. Citizenship and Immigration Services (USCIS) denied the Form I-130 with a determination that the petitioner and R-R- entered into a fraudulent or sham marriage to circumvent the immigration laws of the United States. On May 8, 2007, the petitioner obtained a final judgment of divorce from R-R-.

The petitioner filed the instant Form I-360 on November 10, 2008. The director issued a Notice of Intent to Deny (NOID) the petition because the petitioner entered into her marriage for the purpose of evading the immigration laws. The NOID also cited the lack of sufficient evidence of the petitioner's qualifying relationship with her husband, residence with her husband, entry into the marriage with her husband in good faith, and that he subjected her to battery or extreme cruelty during their marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on the grounds cited in the NOID and the petitioner timely appealed.

On appeal, the petitioner submits her own statement and statements from her friends, [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 petitioner'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.

¹ Name withheld to protect individual's identity.

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 the letter the petitioner submitted in rebuttal to the NOID, dated August 20, 2010, the petitioner stated that she met R-R- at a "Ghanaian picnic" through a friend. She recalled, "we exchanged phone numbers and since then we have been talking to each other on the phone and with time we started taking walks together and visiting each other." The petitioner stated, "[w]ith [R-R's] persistent approach and concern for me, I was drawn to him, we fell in love, . . . and wish[ed] we could get married." The petitioner did not further describe their courtship, wedding ceremony, joint residence or any of their shared experiences, apart from the abuse.

The petitioner also submitted letters from three 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. [REDACTED] stated that she visited the petitioner and R-R- at their home and they "spen[t] a lot of time together," but she does not describe any of her visits in detail. [REDACTED] attested to the petitioner's good-faith marriage and stated that he would visit the petitioner and R-R- often, but he did not describe his observations of the petitioner's interactions with her husband or otherwise indicate that he has any personal knowledge of their relationship. [REDACTED] stated that he believes the petitioner "was actually in love with her husband but just that things never worked out for both of them." [REDACTED] however, has not detailed the basis of his belief, or otherwise indicated that he has personal knowledge of their relationship.

The director also accurately assessed the relevant documents submitted below. The petitioner indicated on her Form I-360 that she and her husband resided together from February 2002 until March 2006. The petitioner, however, submitted evidence that she held a joint bank account with R-R- during the months of June 2006 and July 2006, a letter from Chevy Chase Bank stating that the petitioner and R-R- opened a checking account on May 31, 2006, and a residential lease dated March 28, 2006 and signed by the petitioner and R-R- on May 31, 2006. The petitioner also submitted six undated photographs taken on three unidentified locations and evidence that she opened a life insurance policy on July 22, 2006.

In the NOID, the director determined the value of the aforementioned documents, which are dated May 2006 through July 2006, are undermined by the facts contained in the petitioner's divorce judgment. The divorce judgment, dated May 8, 2007, stated that the petitioner's marriage was dissolved by reason of R-R-'s abandonment of the petitioner for a period of more than one year (prior to May 2006). In response to this determination, the petitioner asserted, "abandonment . . . was what the lawyer advised me to use, because he said that I could not prove the abuse" On appeal, the petitioner further asserts that in March 2006 R-R- moved out of their home for two weeks and then returned. The petitioner states that on the Form I-360 she should have indicated their date of joint residence as ending on December 2007 instead of March 2006. She contends that they "decided to start a fresh relationship" and opened a joint bank account and she applied for life insurance with R-R- as the beneficiary. The petitioner, however, did not provide this account of her relationship in her letter submitted in rebuttal to the NOID. In her rebuttal statement, the petitioner indicated that she separated from the petitioner and moved to New York prior to her enrollment in [REDACTED] in the fall

semester of 2006. [REDACTED] also stated in his August 9, 2010 letter that the petitioner moved to New York in June 2006. The numerous inconsistencies in the petitioner's statements and supporting evidence diminish the credibility of the petitioner's claim of having entered a good-faith marriage. Accordingly, she has failed 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 R-R- resided together at [REDACTED] in Reston, Virginia and their last shared residence was from February 2002 until March 2006. In her statements, the petitioner does not describe their home or shared residential routines in any detail, apart from the alleged abuse. The petitioner's friends, [REDACTED] have stated that they visited the petitioner and her former husband's residence, but did not discuss their visits or provide a description of the residence. The submitted photographs are not identified as having been taken at any specific residence that the petitioner shared with her husband. As discussed, the supporting documentation the petitioner submitted of her residence with R-R-, including a residential lease and bank account statements, are dated several months after the date the petitioner claims she separated from R-R- on her Form I-360 and in her divorce petition. The petitioner's attempts to resolve this inconsistency have been found unpersuasive. The petitioner has submitted no probative, credible evidence of her joint residence with R-R-. 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 R-R- was a "substance abuser and a drunkard" who "will say threatening words to [her]." She stated that R-R- physically and sexually abused her and threatened her with deportation. She stated that R-R- was "over possessive" and that after R-R- threatened to kill her, she ran away to New York. Although the petitioner claims that her former husband's behavior involved physical violence, sexual abuse and threatened violence, she has failed to describe in detail any specific incident of the alleged abuse.

The letters from the petitioner's friends do not provide any additional details to support her claim. [REDACTED] stated in his August 9, 2010 letter that R-R- "usually abused [the petitioner] verbally and on a few occasions it was physical to the point where others including myself had to get involved and pull him off of her." [REDACTED] stated in her August 9, 2010 letter, "I witness several outburst between them and [R-R-] been [sic] verbally and physically abused [sic] towards [the petitioner]." [REDACTED] stated in his August 9, 2010 letter that the petitioner told him R-R- had "gone beyond the boundary and physically and verbally abused her on a daily basis." These letters do not describe any particular incident of abuse that the petitioner's friends witnessed or provide a probative account of their observations of the effects of the abuse on the petitioner.

[REDACTED] later described in his December 21, 2010 letter an incident of abuse that occurred in September 2005. [REDACTED] further stated that he had seen R-R- throw away food the petitioner had

made for him, call the petitioner degrading names, push her, and threaten her immigration status. The incident [REDACTED] described from September 2005, however, was not during the petitioner's marriage, but a few months prior to her December 22, 2005 marriage. It is also inconsistent with the petitioner's initial statement in which she described the alleged abuse as starting after her marriage.

[REDACTED] also submitted a second letter in which she explained that she witnessed "one of their confrontation[s] in 2005 during a social gathering." [REDACTED] stated that she confronted R-R- about taking the petitioner's phone and personal property. She recalled that R-R- became "more upset and push her in the face" and "kept degrading and ridiculing her." [REDACTED] further recalled that R-R- smashed the petitioner's phone on the floor and "spat in her face." [REDACTED] has not indicated if the 2005 incident she described was before or after the petitioner's December 22, 2005 marriage. Moreover, [REDACTED] has not explained her basis for having personal knowledge of this incident as she stated in her initial letter that she became friends with the petitioner and R-R- in 2006. The inconsistencies contained in [REDACTED] and [REDACTED] letters diminish the credibility of their accounts of the alleged abuse.

In sum, although the petitioner claims that R-R-'s behavior involved physical violence, sexual abuse and threatened violence, she has failed to describe in detail any specific incident of the alleged abuse. The statements submitted by the petitioner's friends also fail to provide detailed, credible and probative evidence of the alleged abuse. [REDACTED] does not describe any particular incident of abuse that he claims he witnessed. [REDACTED] statements are detailed, but inconsistencies in the statements diminish the overall credibility of their accounts of the alleged abuse. Accordingly, the petitioner has not established that her former 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.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director correctly determined that petitioner failed to demonstrate a qualifying relationship with her former husband. The record shows that the petitioner and R-R- were divorced on May 8, 2007 before this petition was filed on November 10, 2008. As the petitioner has failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

As the petitioner has not established a qualifying relationship with her husband, she has also not demonstrated her eligibility for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. See 8 C.F.R. § 204.2(c)(1)(i)(B).

Conclusion

On appeal, the petitioner has failed to overcome the director's determinations that she did not establish that she has a qualifying relationship with her former husband, resided with her former husband, entered into marriage with her former husband in good faith, and that he subjected her to

battery or extreme cruelty during their marriage. 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 her 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 for the reasons stated above.

ORDER: The appeal is dismissed.