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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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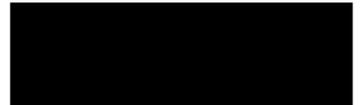


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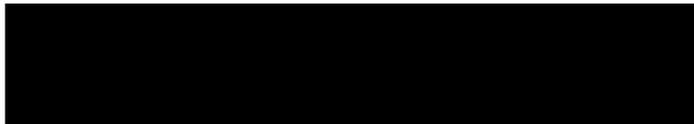
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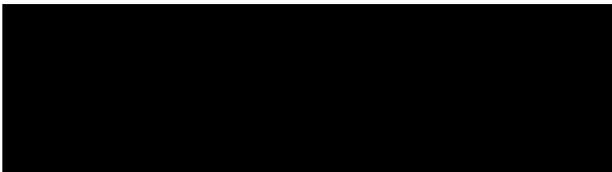


IN RE:



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:

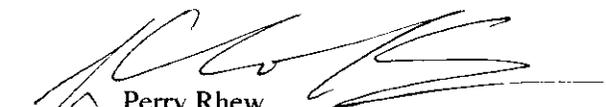


INSTRUCTIONS:

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 service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn in part and affirmed in part. 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 United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to demonstrate: (1) that her husband subjected her to battery or extreme cruelty during their marriage; (2) that she married her husband in good faith; and (3) her compliance with section 204(g) of the Act, 8 U.S.C. § 1154(g). On appeal, counsel submits an argument made on the Form I-290B, Notice of Appeal or Motion.

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.

* * *

- (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.

Section 204(g) of the Act, 8 U.S.C. § 1225(e), states the following:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

Section 245(e) of the Act states, in pertinent part, the following:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

* * *

- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) [S]ection 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(8)(v) states, in pertinent part, the following:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

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.

* * *

(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, a citizen of the Netherlands, married L-G-,¹ a citizen of the United States, on September 17, 2006. She filed the instant Form I-360 on June 10, 2010. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to his request for additional evidence, the director denied the petition on December 8, 2010.

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, we withdraw the director's determination that the petitioner failed to demonstrate her compliance with section 204(g) of the Act. However, we find that the petitioner has failed to overcome the director's remaining grounds for denying this petition.

Battery or Extreme Cruelty

In her June 5, 2008 self-affidavit, the petitioner stated that she was emotionally mistreated by L-G-; that he verbally abused her; that he was unfaithful; and that he abandoned their home. In her January 14, 2010 self-affidavit, she stated that L-G- had a child with another woman; that L-G- ridiculed her over his infidelity; and that L-G-'s harassment affected her emotional health.

The petitioner also submitted a letter from Dr. [REDACTED], a clinical psychologist. In his February 2, 2010 letter, Dr. [REDACTED] recounted that the petitioner's "identified stressors" were L-G-'s infidelity and the uncertainty surrounding her immigration status, and stated that the petitioner suffers from Adjustment Disturbance with Depression and Anxiety. The petitioner also submitted evidence that she attended several counseling sessions with Dr. [REDACTED]

We agree with counsel's assertion made on appeal that the evidence must be considered in the aggregate. However, when considered in the aggregate, the relevant evidence fails to establish that L-G- subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner does not allege, and the record does not establish, that L-G- battered the petitioner. Nor does the record establish that L-G-'s behavior constituted extreme cruelty. To qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the non-physical cruelty be extreme. *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 petitioner's generalized claims that L-G- verbally abused and emotionally mistreated her lack the probative detail necessary to demonstrate that such behavior constituted psychological abuse or was part of an overall pattern of violence or coercive control, and the remaining behaviors by L-G- alleged by the petitioner, such as marital infidelity and abandonment, are not comparable to the types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty.

¹ Name withheld to protect individual's identity.

Nor does Dr. [REDACTED] letter establish that L-G- abused the petitioner. While we do not question his professional qualifications, [REDACTED] letter does not contain detailed descriptions of any specific incidents of abuse. Although counsel asserts on appeal that his letter is “decent,” the only “stressors” identified by [REDACTED] were L-G-’s infidelity and the uncertainty surrounding her immigration status, and neither behavior constitutes battery or extreme cruelty.

When viewed in the aggregate, the relevant evidence does not establish that L-G- subjected the petitioner to battery or extreme cruelty during their marriage as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The relevant evidence does not establish that the petitioner married L-G- in good faith. Although the record contains two self-affidavits from the petitioner, she did not discuss her good faith entry into the marriage in any meaningful way: for example, her testimony lacked any information regarding the couple’s introductions, their courtship, their engagement, their wedding, or any of their shared experiences. Nor did the petitioner’s affiants provide such information: although [REDACTED] stated that they knew the petitioner and L-G- to be married, and [REDACTED] and [REDACTED] made similar assertions, they did not provide any insight into the couple’s relationship or discuss it in any meaningful way.

Nor does the documentary evidence submitted by the petitioner establish that she married L-G- in good faith. The pictures of the couple establish only that they were together on a few occasions. Because the *Certificado de Vacaciones* was not translated into English, as required by 8 C.F.R. § 103.2(b)(3), it has little evidentiary value. However, if it was a wedding gift, as appears to be the case, it would speak to the intentions of the individual who gave the gift rather than to those of the petitioner. Nor does the paperwork pertaining to the petitioner’s bank account in Curacao speak to the petitioner’s good faith entry into marriage with L-G-, as it does not mention him. The paperwork regarding the purchase of furniture in 2008 does not establish that the petitioner married L-G- in good faith, as the purchase took place more than three months after the date on which the petitioner stated on the Form I-360 that L-G- moved out of the couple’s home. The joint receipt for a car engine assembly and copies of jointly-addressed mailers are insufficient to demonstrate that the petitioner married L-G- in good faith. That L-G- once wired \$100 to the petitioner speaks to his intentions, not those of the petitioner.

Considered in the aggregate, the relevant evidence does not establish that the petitioner married L-G- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

The director’s determination that section 204(g) of the Act bars approval of this petition is hereby withdrawn, as the petitioner did not enter into marriage with L-G- while she was in administrative removal or related judicial proceedings.

As set forth above, section 245(e)(2) of the Act states that “the period described in this paragraph” consists of “the period during which administrative or judicial proceedings are pending regarding the alien’s right to be admitted or remain in the United States.” The petitioner married L-G- on September 17, 2006, and she was arrested and placed into immigration proceedings more than three months later on December 22, 2006.² As no administrative or judicial proceedings regarding the petitioner’s right to be admitted to, or remain in, the United States were pending at the time of the marriage, the petitioner is not required to establish her eligibility for the bona fide marriage exemption contained at section 245(e)(3) of the Act.

Conclusion

As set forth above, the director’s determination that the petitioner failed to demonstrate her compliance with section 204(g) of the Act is withdrawn. However, the petitioner has failed to overcome the director’s remaining grounds for denial of the petition. She has failed to demonstrate that L-G- subjected her to battery or extreme cruelty during their marriage or that she married him in good faith. 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 visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The director’s December 8, 2010 decision is withdrawn in part and affirmed in part. The appeal is dismissed.

² The petitioner was refused entry into the United States through the Visa Waiver Pilot Program on two separate occasions: (1) April 5, 2001, and (2) February 22, 2003. However, as of the date of the petitioner’s marriage to L-G- on September 17, 2006, neither incident constituted a pending administrative or judicial proceeding regarding her right to be admitted to, or remain in, the United States.