

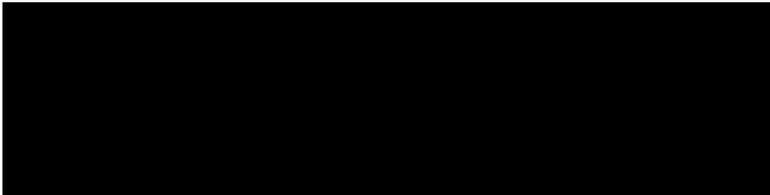
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



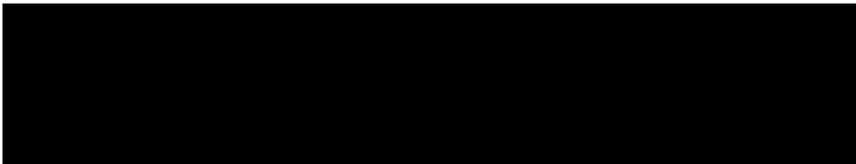
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DATE: JUN 03 2011 Office: VERMONT SERVICE CENTER FILE:

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:



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 Director, Vermont Service Center, 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 remains denied.

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 a United States citizen spouse.

The director denied the petition on July 13, 2010, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by her United States citizen spouse. On appeal, the petitioner submits a Form I-290B, Notice of Appeal or Motion, a statement on the Form I-290B, and additional documentation.

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 based on his or her relationship to the abusive spouse, 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 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 in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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.

(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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Pertinent Facts and Procedural History

The petitioner is a native of Ecuador and citizen of Ecuador and Spain. She entered the United States on or about March 25, 2009, with a temporary authorized period of stay until June 23, 2009. On April 10, 2009, the petitioner married M-R-¹ a United States citizen. On August 24, 2009, M-R- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. In a letter dated March 22, 2010, counsel for the petitioner noted that the petitioner in this matter was requesting that the appointment for the Form I-130 interview be adjourned as the petitioner had filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on February 22, 2010. The petitioner noted on the Form I-360 that she had resided with M-R- from April 2009 to February 2010. The director issued a request for evidence (RFE) on March 22, 2010. Upon consideration of the evidence in the record, including the response to the RFE, the director denied the Form I-360 petition on July 13, 2010, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty by a United States citizen spouse. Counsel timely submits a Form I-290B, Notice of Appeal or Motion, a statement in support of the appeal, and documentation.

Battery or Extreme Cruelty

The petitioner initially did not submit a statement indicating that she was the victim of battery or extreme cruelty perpetrated by M-R-. In response to the director's RFE, she provided a June 8, 2010 personal statement. She stated that about five months after their marriage, her relationship with M-R- changed. The petitioner explained that for no reason, she was unable to please M-R- in any way and that M-R- would scream and turn aggressive against her and her children. The petitioner reported that he called her derogatory names and threatened to throw the children out in the street. She noted that he did not like the way she cooked, he stopped paying the house expenses, he apparently no longer worked, he did not hit her but forced her to have sexual relations because she was his wife, and he came home drunk and screaming and the landlord told them they would be evicted if the situation continued. She stated that she borrowed money from her brother and moved to a new apartment but that M-R- continued to scream that he would call immigration and they would be deported. The petitioner indicated that the way M-R- treated her was terrible and she was afraid that he would hurt her children. The petitioner reported that she visited the hospital on January 2, 2010 with chest pain, a headache, and depression and was given medication and referred to Safe Horizon. She noted that M-R- had left the home a couple of weeks prior to her statement and she has found out he is seeing someone else.

The record included a June 8, 2010 letter signed by [REDACTED] [REDACTED] stated that the petitioner is a patient at the mental health clinic at [REDACTED]

¹ Name withheld to protect the individual's identity.

the hospital and had a history of adjustment disorder mixed with anxiety and depressed mood and had been prescribed medication and was compliant with the medication and follow-up appointments.

The director determined that the petitioner's statement was insufficient and the letter signed by [REDACTED] did not link any claimed abuse to the petitioner's symptoms. The director denied the petition, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty.

On appeal, the petitioner provides a statement on the Form I-290B. The petitioner states that she was a victim of domestic violence and that her teen daughter and minor child suffered seeing the violence M-R- directed at her. The petitioner adds that she was concerned that M-R- "wanted to stay next to [her] teen daughter" and when she discussed this with him he was very upset. The petitioner notes that her daughter told her that M-R- did not touch her and she trusts her daughter but is very afraid that he might touch her or do something to her. Counsel includes an August 4, 2010 letter on the letterhead of Safe Horizon with a signature of an unidentified representative. The letter writer indicates that the petitioner came to [REDACTED] requesting assistance as a victim of domestic violence and that she was receiving psycho-educational counseling sessions. Counsel also submits an August 11, 2010 letter signed by [REDACTED] indicating that the petitioner is enrolled in the Ambulatory Behavioral Health Services at the hospital for treatment of a psychiatric condition. [REDACTED] identifies the condition as major depressive disorder, moderate but does not identify the cause of the condition.

Upon review of the petitioner's initial statement, she provides a broad overview of difficulties in her marriage. She does not expound upon the sudden change in her husband's behavior after five months of marriage. She does not provide probative testimony relating to the circumstances of her interactions with her husband but states generally that he came home drunk, he screamed at her and the children, he threatened to report her to immigration, and he threatened to throw her or her children out of the house. She expresses her fear that he will hurt her children but does not provide a detailed foundation explaining the reasoning for her fear. Her testimony is not accompanied with the necessary detail of specific incidents or events that allows an evaluation of her credibility. The petitioner's testimony does not include sufficient detailed information to conclude that M-R-'s conduct constituted extreme cruelty. Although the petitioner indicated that M-R- threatened that he would call immigration, the petitioner does not describe the circumstances of these threats in detail. There is no evidence that M-R- used tactics of control intertwined with these threats in order to maintain his dominance over her through fear. The petitioner's failure to provide detail regarding specifics of particular incidents of the claimed verbal abuse undermines her credibility and casts doubt on the actuality of the incidents occurring in the general manner described.

The petitioner's additional statement on appeal that she was afraid that M-R- "wanted to stay next to [her] teen daughter" is not sufficiently detailed. She does not explain the reasons or circumstances that led her to this fear. Moreover, she failed to reference this fear in her June 8, 2010 statement to United States Citizenship and Immigration Services (USCIS) and does not explain why this information was not previously forthcoming. The additional statement is

insufficient to conclude that the petitioner or her children were victims of battery or extreme cruelty perpetrated by M-R-.

Upon review of the letters and medical report regarding the petitioner's mental health, neither letter references domestic violence. Although the petitioner testifies that she told a doctor of her life with M-R- and the doctor called a social worker, she does not provide testimony or other evidence of her treatment for a mental health condition related to specific acts of battery or extreme cruelty as described in the statute and regulation. The August 4, 2010 letter on the letterhead of Safe Horizon does not identify particular behavior described by the petitioner as perpetrated by M-R-. The record in this matter does not include probative evidence that the petitioner is being treated for mental illness causally connected to battery or extreme cruelty perpetrated by M-R-.

The petitioner's testimony and the letters submitted on her behalf do not contain the necessary consistent detail of specific incidents and events that sufficiently demonstrate that M-R-'s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. The petitioner has failed to establish that M-R-'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. When evaluating the record as a whole, the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty under the statute and regulation.

Good Faith Entry into Marriage

Beyond the decision of the director, the petitioner has failed to establish that she entered into the marriage in good faith. The petitioner stated that she was introduced to M-R- telephonically through a cousin who lived in New York. She indicated that she communicated with M-R- telephonically for some undisclosed length of time until he convinced her to visit New York City. The petitioner noted that she finally agreed to come to New York and stay with her cousin. The petitioner noted that while in New York, M-R- took her many places in New York. The petitioner also indicated that she left the United States on March 7, 2009 to visit relatives in Ecuador but continued to stay in touch with M-R- and he proposed while she was in Ecuador. The petitioner noted the couple married on April 10, 2009 and her children and family and friends were present. The remainder of the petitioner's statement relates to her claims of abuse. Although the petitioner generally describes her phone conversations with M-R-, her travels, and her decision to marry, she does not provide probative information regarding her specific intent when entering into the marriage. She does not describe her interactions with M-R-'s children, if any, she does not describe the couple's daily routines leading up to and throughout the marriage, and she does not describe in detail their joint life for the time prior to the couple's marriage and claimed residence together. The petitioner does not provide the requisite information regarding her interactions with M-R- subsequent to the marriage, except as it relates to the claimed abuse.

The record does include photographs of the couple and children on the wedding day and other unidentified occasions; however, photographs are insufficient to establish the petitioner's intent

when entering into the marriage. The record also includes a copy of an unsigned lease with a beginning date of January 15, 2010, a bank statement with limited activity on a joint bank account, and a November 25, 2009 letter indicating that payment for a life insurance policy purchased in September 2009, could not take place because a hold had been placed on the couple's joint account. These documents also fail to establish the petitioner's intent when entering into the marriage.

Upon review of the totality of the record, the petitioner's statement fails to provide substantive information regarding her courtship with and marriage to M-R-. The petitioner does not describe the couple's mutual interests, she does not describe their daily routines in detail, and she does not provide probative information for the record that assists in determining her intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter the petitioner has not set forth her intent in detail and the record does not include sufficient consistent probative evidence that the couple established a life together. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with M-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

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