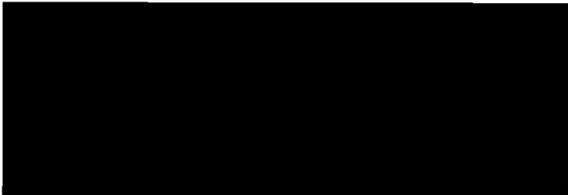


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



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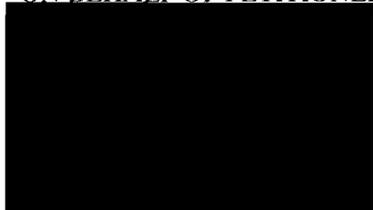
DATE: **JUN 17 2019** Office: VERMONT SERVICE CENTER

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, initially approved the immigrant visa petition. Upon review of the record, the director issued a Notice of Intent to Revoke (NOIR) approval of the petition and ultimately revoked its approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition's approval remains revoked.

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 determined that the petitioner had not established a qualifying relationship with the United States citizen spouse or that she was eligible for immediate relative classification. The director also determined that the petitioner had not established that she had entered into the marriage in good faith, lived with her U.S. citizen spouse, or had been subjected to battery or extreme cruelty by him. On appeal, counsel submits a brief 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:

(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 . . . 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 set forth 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

(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.

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).

Facts and Procedural History

The petitioner is a native and citizen of the Ivory Coast. She initially claimed she entered the United States on a P-3 visa on or about December 12, 1998. The petitioner later admitted that she came to the United States on August 1, 1998 using her sister's B-2 visa. The record shows that the petitioner married A-L-¹ on June 14, 2001 in the State of Maryland. On April 14, 2003, the petitioner married W-P-², the claimed abusive United States citizen in the Commonwealth of Virginia. On October 1, 2003, a Judgment of Absolute Divorce was filed in Montgomery County, Maryland, terminating the marriage between the petitioner and A-L-. On June 14, 2006, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that she had resided with W-P-, the claimed abusive United States citizen spouse from April 2003 until July 2005. The director erroneously approved the petition on February 19, 2008. Upon receipt of information that the petitioner had entered into a bigamous marriage with the claimed abusive United States citizen, the director issued a NOIR. The director notified the petitioner of the records demonstrating that her marriage to W-P- was bigamous and also notified the petitioner that United States Citizenship and Immigration Services' (USCIS) records raised questions regarding the petitioner's good faith intent when entering into marriage with W-P-, the claimed abusive United States citizen. The

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

director requested any evidence that would demonstrate the petitioner's good faith intent in entering into the marriage and any evidence that would overcome the determination that her marriage to the claimed abusive United States citizen was bigamous. Upon review of the record, including the petitioner's response to the NOIR, the director determined that the petitioner had not established a qualifying relationship with the claimed abusive United States citizen spouse because the petitioner's first marriage had not been terminated prior to her marriage to the claimed abusive United States citizen. The director also determined that the petitioner had not established that she entered into the marriage with W-P- in good faith. Although the director did not request information in the NOIR regarding the issues of the petitioner's joint residence with W-P- and the claimed abuse perpetrated by W-P-, the director also found that the record did not contain sufficient evidence to establish that she had resided with W-P- or had been subjected to battery or extreme cruelty perpetrated by W-P-.

Qualifying Relationship

As observed above, the evidence in the record demonstrates that the petitioner was married to A-L- in Maryland prior to her marriage to W-P- and she did not obtain a divorce from this individual until October 1, 2003. The petitioner married W-P-, the claimed abusive United States citizen, on April 14, 2003, prior to the termination of her marriage to A-L-.

From the documents in the record, it is clear that the petitioner's divorce from A-L- was not final at the time she entered into marriage with W-P-. However, contrary to the director's implication, this fact is not necessarily disqualifying. Rather, we must look to the law of the place of remarriage for the determination of the validity of the marriage for immigration purposes. *Matter of Arenas*, 15 I&N Dec. 174 (BIA 1975). In *Arenas*, the beneficiary did not terminate her prior marriage in Mexico until after she married the U.S. citizen petitioner in Texas. *Id.* at 174. Texas law provided that a marriage is invalid if either party was previously married and not divorced at the time of remarriage, but that the subsequent marriage becomes valid when the prior marriage is dissolved if the parties have since lived together and represented themselves as husband and wife. *Id.* at 175. The Board of Immigration Appeals (BIA) held that the marriage would be valid for immigration purposes on the date of the dissolution of the beneficiary's prior marriage, provided the couple presented evidence of their compliance with the other provisions of the Texas law. *Id.*

In this instance, we find no similar provision under the law of the Commonwealth of Virginia, the place of the petitioner's marriage to the claimed abusive United States citizen. Title 20 of the Virginia Code, Chapter 3 states at section 20-43:

Bigamous marriages void without decree.

All marriages which are prohibited by law on account of either of the parties having a former wife or husband then living shall be absolutely void, without any decree of divorce, or other legal process.

Virginia law also does not recognize common law marriages. Title 20 Chapter 2 of the Virginia Code. Accordingly, under Virginia law, the removal of the petitioner's impediment to marry by procuring a divorce from her prior spouse did not cure her defective marriage to W-P-.

Immigrant Classification

As the petitioner has not established that she has a qualifying relationship with a United States citizen, she is also precluded from establishing that she is eligible for immediate relative classification based on her relationship with W-P-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. In this matter her relationship to the claimed abusive spouse has not been established.

Good Faith Entry Into Marriage

The record does not include the petitioner's testimony regarding her initial meeting with W-P-, their courtship, and subsequent interactions. The petitioner initially provided a psychological report prepared by [REDACTED] on December 22, 2005, who provides a cursory description of the petitioner's initial meeting and interactions with W-P-. [REDACTED] indicated that the petitioner reported that she met W-P- through a neighbor in the summer of 2002, they discussed going into business together, he gave her a cash gift to give to her son for tuition, he proposed in August 2002, and the couple wed in April 2003. The report does not provide other details of the petitioner's courtship or interactions with W-P-.

The record also included four photographs of the petitioner's wedding ceremony to W-P-, an application for a lease, and an insurance form designating W-P- as the beneficiary in the case of the petitioner's death. The photographs show that the couple was together on their wedding day but do not include identifying information and are insufficient to establish the petitioner's intent when entering into the bigamous marriage. As the director noted, the lease is not signed by W-P- and does not list him as an occupant. There is no evidence that the insurance form was ever submitted to the insurance company. The record also included several utility bills addressed to both the petitioner and W-P- and several bank statements reflecting minimal bank activity. The utility bills and bank statements are insufficient to establish the petitioner's intent when entering into the marriage. The petitioner's Internal Revenue Service (IRS) Forms from 2003 to 2009 show that the petitioner filed taxes as married, filing separately. Thus, the tax returns have little probative value as evidence of a couple establishing a life together.

The record also includes statements made by friends who indicated that they had met W-P- and that the petitioner initially seemed happy. The declarants, however, provide no probative details regarding their observations of the petitioner's allegedly good faith entry into marriage with W-P-.

Upon review, the petitioner has provided a cursory description of her introduction to and meeting W-P- as well as her subsequent interactions with him. She does not describe the couple's mutual

interests, she does not describe W-P-'s family in detail, she does not detail the couple's daily routines, and she fails to provide the necessary probative information that would assist 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 probative detail in her statement to USCIS and the record does not include sufficient probative credible 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 W-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Residence

We concur in the director's ultimate determination that the record does not include sufficient evidence to establish that the petitioner jointly resided with W-P-. The petitioner did not provide probative testimony regarding the claimed joint residence and her testimony as well as the testimony of others fail to provide the probative detail necessary to establish that the couple established a joint residence. The petitioner indicated on the Form I-360 that she resided with W-P- from April 2003 until July 2005. Counsel, on behalf of the petitioner, indicated that once married, W-P- moved into the petitioner's apartment [REDACTED] State of Maryland. Counsel noted that W-P- was a traveling merchant and so was frequently away from the marital home and his absences escalated to weeks away at a time. Counsel stated that in December 2004, Bank of America called the petitioner and informed her that W-P- had unilaterally changed the address of their bank account to an address in North Carolina and was withdrawing large sums of money. Counsel noted further that W-P- made himself unavailable for the pending immigration interviews in August 2005 and that the petitioner had not seen W-P- since July 2005. The record also included the statement of [REDACTED], dated August 17, 2005, in which [REDACTED] noted that the couple had resided at the [REDACTED] address since their marriage. Individuals who submitted additional statements do not indicate where the couple allegedly lived.

The record includes the couple's marriage certificate showing that the couple married in Arlington, Virginia. The petitioner's Form G-325A, Biographic Information sheet shows that she lived on [REDACTED] in Maryland from September 1999 until January 2003 when she moved to [REDACTED] where she was living when she married W-P- on April 14, 2003. The record also includes credit card statements addressed to the petitioner and W-P- in 2004, bank statements addressed to the couple in 2004, and the petitioner's nursing certification dated August 2006, all showing the Carroll Avenue address. A letter from the petitioner's pastor, dated November 18, 2005, shows that the petitioner resided on [REDACTED] in Maryland. The petitioner's IRS tax return for 2002 shows her address [REDACTED] and the petitioner's IRS tax return for 2004 and 2005 shows her address [REDACTED]. The record does not include sufficient documentary evidence establishing that W-P- lived either on [REDACTED]. Although he received some mail at [REDACTED] address, receipt of mail at a specific location does not establish that the individual resided at the

address. The lease provided is for [REDACTED] address and is undated and does not include W-P- as a tenant.

Upon review of the documentary evidence in the record and the statements submitted by the petitioner's pastor, and [REDACTED] the record does not provide a consistent accounting of where the petitioner lived and when she lived at each location. The record also does not include consistent probative evidence demonstrating that W-P- lived at any particular address and the time period that he lived at particular addresses. The record does not include probative evidence establishing that the petitioner and W-P- resided together.

Battery or Extreme Cruelty

The petitioner does not provide a statement detailing the battery or extreme cruelty allegedly perpetrated by W-P-. Counsel provides a statement on the petitioner's behalf indicating that W-P- was frequently not at the marital home, that he stole money from the petitioner, and when the petitioner confronted him with stealing money in July 2005, W-P- grabbed her by the neck, choked her, and warned her not to bring up the subject again. Counsel noted that the petitioner was so shaken by the incident that when she escaped the apartment and drove away, she was involved in an accident. In a December 22, 2005 evaluation prepared by [REDACTED] which was based on testing conducted on November 18, 2005, [REDACTED] reported that in November 2004 W-P- told the petitioner that he was going to visit his family in North Carolina and in December 2004, the Bank of America called her and told her that W-P- had unilaterally changed the account's address. [REDACTED] recounts the same incident occurring in July 2005 when the petitioner confronted W-P- about the missing money and notes that W-P- disappeared after this incident. [REDACTED] indicated that in September 2005, W-P- called her collect from North Carolina and asked for bail money as he was in jail and that this was the last the petitioner had heard from him. The record also included several statements from the petitioner's acquaintances who do not indicate that they personally witnessed any abuse, reporting only that the petitioner had told them that she had been abused.

Based on the record, the petitioner has not provided sufficient probative evidence to demonstrate that she was subjected to battery or extreme cruelty. The record regarding the incident in July 2005 as described by [REDACTED] does not include the probative detail necessary to evaluate the actuality of the incident. The petitioner does not provide a personal statement describing the surrounding circumstances of the incident and she does not provide sufficient detail of the timing of the incident to allow a determination that battery actually occurred. W-P-'s conduct of stealing her money and staying away from the marital home and eventually abandoning the marriage is not behavior that constitutes extreme cruelty as set out in the statute and regulation.

[REDACTED] evaluation is based on one interview and does not reflect the insight commensurate with an established relationship with a mental health professional, thereby rendering his findings speculative and diminishing the value of his report.

The current record does not include the requisite credible, probative evidence describing specific incidents or events that constitute battery or extreme cruelty under the statute or regulation. The

record is simply deficient in this regard. The petitioner has not established that she was subjected to battery or extreme cruelty.

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.