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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

PUBLIC COPY

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FILE:

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

MAR 03 2011

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 her United States citizen spouse.

The director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by a United States citizen, or that she had entered into the marriage in good faith.

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 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.

* * *

(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 native and citizen of the Ukraine. She entered the United States on or about December 10, 2003 as a B-2 visitor. On January 30, 2008, the petitioner married W-K-¹, the claimed abusive United States citizen. W-K- died on June 27, 2008. On November 4, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On July 30, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by W-K-, and that she had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and a statement on the Form I-290B. Although counsel checks the box on the Form I-290B, indicating that a brief and/or additional evidence will be sent to the AAO within 30 days, a careful review of the record reveals that no additional evidence or a brief in support of the appeal have been submitted. The record is considered complete.

Counsel asserts that: United States Citizenship and Immigration Services (USCIS) made an erroneous factual conclusion by alleging that significant and unresolved discrepancies exist in this matter; the petitioner believes that she has submitted sufficient evidence to overcome the director's non-credibility finding; the evidence submitted is credible; and the evidence submitted is the only evidence available to the petitioner to satisfy the requirements. Counsel contends that the director's decision denying the petition is in error.

Preliminarily, we acknowledge that section 204(a)(1)(J) of the Act requires USCIS to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of" USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty and good faith, lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv) and (vii). In this matter, as in all visa petition 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 Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

¹ Name withheld to protect the individual's identity.

Abuse

In the petitioner's initial statement, she noted that at the beginning of the marriage everything was fine and although she had reservations about his health and their future together, as W-K- was 86 years of age, she was W-K-'s companion, lover, and nurse. The petitioner indicated that after marriage, W-K- slowly changed and "we would start screaming obscenities and [he] would hit [her] with his stick," he threatened he would not file immigration papers for her if she did not comply with his sexual demands, he did not like her to leave the house and would throw plates and glasses at her and once hit her in the head with a glass, and he would call her derogatory names. The petitioner also noted that W-K- became ill and confessed to her that although he told her that he had filed documents for her to legalize her immigration status, he had not, and now that he was dying he wanted her to know the truth. The petitioner indicated that W-K- died before he had an opportunity to file immigration papers for her.

In response to the director's RFE, the petitioner provided a second personal statement. The petitioner explained that although she knew that W-K- was not in the best of health when she married him, W-K- told her that if things got worse he would hire a nurse or in-house care attendant to assist him. The petitioner acknowledged the couple's 28-year age difference, that W-K- used a wheelchair, and that she was physically bigger than W-K-. The petitioner stated that the relationship started to deteriorate when W-K- "flatly refused to help [her] with immigration papers" and he got mad at her and things quickly spiraled out of control. The petitioner stated that when she mentioned that she wanted to leave the relationship, W-K- told her that he would turn her life into hell and she believed this would have happened if W-K- had not fallen ill and passed away in June 2008.

The record also included a September 4, 2008 statement signed by [REDACTED] who noted that he often visited the couple's household and that the couple went to the same church and did their prayers together. In an October 5, 2009 affidavit signed by [REDACTED], she declared that on April 22, 2008 at a dinner party to celebrate W-K-'s birthday, W-K- screamed at the petitioner and yelled obscenities and although the petitioner tried to calm him down, he kept insulting her and the guests quietly left the house. In an undated statement, [REDACTED] declared that on March 9, 2008 he was hired by the petitioner and W-K- to help them move some furniture and after the petitioner paid him the money he was owed, W-K- began screaming and calling the petitioner names saying that she had paid the declarant too much money.

The record further included a September 26, 2008 psychological evaluation prepared by [REDACTED] based on an interview of unspecified length on September 26, 2008. [REDACTED] provided the same information that the petitioner had reported in her initial statement to USCIS. [REDACTED] diagnosed the petitioner with post traumatic stress disorder and depressive disorder and found that the petitioner's reported mental health decline strongly indicated that her emotional impairment resulted from her traumatic relationship. In a supplemental report, [REDACTED] Tuller noted that he had focused on the petitioner's mental health just prior to the onset of the spousal abuse and that as the petitioner was generally in good mental health prior to the onset of the spousal abuse, it was reasonable to conclude that the petitioner's post traumatic stress disorder and depressive disorder resulted from the abuse.

Based on the information in the record, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty as defined in the statute and regulation. As noted above, counsel disagrees with the director's assessment and asserts that the petitioner believes she has provided sufficient evidence to establish that she has been subjected to battery and extreme cruelty.

Although the petitioner references being hit by W-K-'s stick and being hit in the head with a glass thrown at her, the petitioner does not provide the probative detail necessary to establish that her statements credibly demonstrate that she has been subjected to battery perpetrated by her 86-year-old husband. The petitioner does not include the circumstances of this alleged battery or batteries and does not explain the alleged physical altercations in detail. The record does not include sufficient credible and probative evidence to establish that the petitioner was subjected to battery perpetrated by W-K-.

The petitioner also fails to establish that she was subjected to extreme cruelty perpetrated by W-K-. Although she acknowledges W-K-'s medical condition prior to their marriage and that at the beginning of their marriage, she was W-K-'s companion, lover, and nurse, she fails to provide credible probative testimony that her nursing responsibilities associated with W-K-'s care constituted extreme cruelty perpetrated by W-K-. The AAO acknowledges the petitioner's claimed expectation that W-K- would hire additional help once they were married, but his failure to do so does not constitute extreme cruelty. The petitioner's allegation that W-K- threatened that he would not file immigration papers for her if she did not comply with his sexual demands and her subsequent contradictory statement that W-K- had told her that he had filed the immigration documents for her but confessed on his death bed that he had not, have not been clarified. Thus, the petitioner's allegation that W-K- used her immigration status to control her is not credible. The petitioner's indication that W-K- yelled and screamed at her, shouted obscenities, and called her derogatory names is not sufficiently detailed to conclude that these actions constituted extreme cruelty.

The petitioner's statements do not provide the detailed, probative evidence that establishes she was subjected to extreme cruelty as set out in the statute and regulation. In this matter, the petitioner has not provided the requisite probative detail regarding specific events and incidents. The petitioner provided statements regarding name calling, intensive care for a medically impaired individual, and generalized threats regarding her immigration status; however, the petitioner does not provide credible testimony demonstrating that W-K-'s behavior was accompanied by violence or threats of physical or mental injury.

Upon review of the affidavits and statements submitted on the petitioner's behalf, the declarants do not provide detailed testimony of any specific event or incident that constitutes battery or extreme cruelty as set out in the statute and regulation.

Upon consideration of [REDACTED] evaluation, the AAO observes that the evaluation was based on a single interview of unspecified length with the petitioner and, as such [REDACTED] findings fail to reflect the insight commensurate with an established relationship with a mental health professional.

While we acknowledge [REDACTED] training and professional experience, he fails to provide examples of the causal relationship of specific abuse as defined in the statute and regulation that is consistently detailed to his diagnosis of the petitioner's post traumatic stress disorder and depression. [REDACTED] single interview of the petitioner does not provide the necessary foundation to establish that the petitioner was subjected to specific incidents of spousal abuse that are set out in the statute and regulation. [REDACTED] does not identify specific behavior by W-K- that included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

Upon review of the petitioner's testimony, the testimony of others submitted on her behalf, and the psychological evaluation submitted, the record does not demonstrate that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that W-K-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. The petitioner's statements and the statements she made to others lack the consistent detail necessary to establish that W-K- subjected her to battery or that his actions constitute extreme cruelty as defined in the statute and regulation. The petitioner has failed to establish that W-K-'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 W-K-'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)). In this matter, the record presented lacks sufficient consistent and credible information to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her spouse.

Good Faith Entry Into Marriage

Upon review of the petitioner's statements, the petitioner has not provided the requisite detail regarding her courtship and interactions with W-K- prior to her marriage and she has not provided probative testimony establishing that her intent in entering into the marriage was in good faith. 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). Although the petitioner stated that she shared an intense relationship with W-K- for two years prior to the marriage, she provides no probative detail of their interactions and the circumstances of their courtship during those two years.

Upon review of the letters submitted by other individuals on the petitioner's behalf, the letters indicate only that the declarants knew the petitioner and W-K-; they do not provide probative information that assists in establishing the petitioner's intent in entering into the marriage. The declarants do not offer probative information regarding any particular incident or incidents where

they witnessed the alleged bona fides of the couple's claimed marital relationship. Similarly, the customer access agreement and bank statements submitted without the underlying transactional information are insufficient to establish that the couple used the joint accounts for the necessities of a life together and similarly, do not assist in establishing the petitioner's intent in entering into the marriage. The grant deed signed by W-K- on the date he passed away which transfers his real property to himself and the petitioner as joint tenants may establish his intent but does not reveal the petitioner's intent in entering into the marriage. The photographs submitted show that the petitioner and W-K- were together on their wedding day, but this evidence fails to establish the petitioner's intent in entering into the marriage.

In this matter the petitioner has not set forth her intent in consistent and probative detail in a statement to USCIS. In addition, the affiants' statements, submitted on behalf of the petitioner, do not disclose the circumstances or specific events witnessed that would assist in establishing the petitioner's intent in entering into the marriage. Neither has the petitioner provided other probative evidence that would demonstrate that her intent in entering into the marriage was in good faith. Upon review of the petitioner's statement and the totality of the record, the record is bare of the essential detail necessary to demonstrate that the petitioner's intent to enter into the marriage with W-K- was 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.