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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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FILE: [Redacted] Office: VERMONT SERVICE CENTER

Date: MAR 15 2011

IN RE: Petitioner: [Redacted]

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 [Redacted]. 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 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 that she had jointly resided with a United States citizen, 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. On appeal, counsel submits a brief.

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.

* * *

(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.

Facts and Procedural History

The petitioner is a native and citizen of Ghana. She entered the United States on June 14, 2003 on a B-2 visa. She married [REDACTED], the claimed abusive United States citizen on July 26, 2004. On or about January 3, 2005, [REDACTED] filed a Form I-130 on the petitioner's behalf and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On July 20, 2009, the Form I-130 was denied. On September 22, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On March 9, 2010, 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 jointly resided with [REDACTED] that she had been subjected to battery or extreme cruelty perpetrated by [REDACTED] or 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 provides a brief in support of the appeal.

Residence

The petitioner in this matter indicates on the Form I-360 that she jointly resided with [REDACTED] from December 2003 to August 2007. In the petitioner's initial statement dated September 8, 2009, the petitioner indicated that she moved in with [REDACTED] in the late fall of 2003 at [REDACTED], in what she thinks is a housing complex. The petitioner noted that the couple moved into [REDACTED] two or three months later. The record also included a photocopy of a lease dated March 3, 2004 for premises located at [REDACTED]. The petitioner claims on the Form G-325A, Biographical Information Sheet, signed by her that she lived at [REDACTED] from June 2003 to July 2004, [REDACTED] from July 2004 to September 2004, and at [REDACTED] from September 2004 to the date of the Form G-325A. The record also included T-H-'s 2005 Internal Revenue Service (IRS) Form 1040A, U.S. Individual Income Tax Return, listing his address as [REDACTED] and showing that he was filing as head of household.

Upon review of the inconsistent information in the record regarding the petitioner's joint residence with [REDACTED], the director requested clarifying information in the RFE issued on March 9, 2010. In response, the petitioner provided a second personal statement dated June 3, 2010. The petitioner stated that she had lived at the [REDACTED] address until early 2009. The director determined that the petitioner's statement and the record did not include sufficient evidence to establish that the couple jointly resided together.

On appeal, counsel for the petitioner asserts that the director has misinterpreted the evidence of record in order to create a discrepancy regarding the petitioner's residences, when such a discrepancy does not exist.

The AAO disagrees. The record does include inconsistencies regarding the joint residence of the couple. For example, the petitioner stated that she moved in with [REDACTED] in the fall of 2003 at [REDACTED] and that two or three months later, the couple moved to [REDACTED]. The petitioner's Form G-325A indicates that the petitioner lived at [REDACTED] from June 2003 to July 2004, at [REDACTED] from July 2004 to September 2004, and moved to [REDACTED] in September 2004. The lease for premises at [REDACTED] begins in March 2004. The petitioner's spouse's address when he filed his income taxes for 2005 lists his address as [REDACTED]. These inconsistencies have not been adequately explained. Moreover, the petitioner has not provided a detailed description of the claimed joint residences. Upon review of the totality of the record, the petitioner has not provided consistent testimony that supports her claim that she jointly resided with [REDACTED] during their marriage.

Abuse

The petitioner in her initial statement indicated that [REDACTED] took all her earnings, was around less and less, and demanded sex from her all the time. The petitioner noted that she discovered that [REDACTED] had a girlfriend, that he used drugs, and that he threatened that if she did not comply with his wishes, he would report her to immigration. The petitioner references a fight in December 2004 when he threw her out of the apartment and she stayed away for a few days. The petitioner indicated that when she returned things got worse, that [REDACTED] yelled a lot and although he never beat her, he threatened to beat her.

The petitioner provided affidavits from [REDACTED] and [REDACTED]. Mr. [REDACTED] declared that the petitioner called him and told him about the problems she was having, that six months into the marriage the petitioner called him and told him that [REDACTED] was "ill-treating her," and that the petitioner told him that [REDACTED] was always drunk, was a heavy smoker of marijuana, and that [REDACTED] had a child with another woman. [REDACTED] declared that she knew the petitioner was having a tough time and in December 2004 the petitioner called her and said that she had a fight with her husband and he had kicked her out and the affiant picked her up and the petitioner stayed in a motel for a few days. [REDACTED] declared that she met the petitioner in December 2004 and that the petitioner had told her that [REDACTED] her and beat her and that she lived in fear of him.

In response to the director's RFE, the petitioner provided a second personal statement and added that [REDACTED] verbally abused her. The petitioner confirmed that [REDACTED] did not subject her to battery and stated that she did not know why [REDACTED] declared that [REDACTED] physically abused her.

The director determined that the petitioner had not provided probative, consistent information regarding the claimed abuse and that the record was insufficient to establish that the petitioner had been subjected to battery or extreme cruelty.

On appeal, counsel for the petitioner asserts that the petitioner has provided consistent testimony regarding her husband's verbal abuse and that the director overlooked the evidence demonstrating that she was the victim of abuse.

Upon review of the petitioner's statements and the statements submitted on her behalf, the record does not include the requisite probative testimony establishing that the petitioner was subjected to battery or extreme cruelty as defined in the statute and regulation. The petitioner does not claim and there is no probative evidence provided to demonstrate that she was subjected to battery perpetrated by [REDACTED]. Rather, she claims that she was subjected to verbal and mental abuse; however she does not provide a detailed account of specific incidents or events that constitute extreme cruelty as defined in the statute and regulation. The petitioner states generally that [REDACTED] demanded sex and money and that he threatened her. She references one fight that occurred in December 2004 but does not describe the circumstances of the fight. The petitioner's description of her husband's behavior lacks the necessary detail to establish that she was subjected to extreme cruelty as the term is defined in the statute and regulation.

The affidavits submitted on the petitioner's behalf also fail to provide probative detail of specific incidents of battery or extreme cruelty. The affiants do not indicate that they witnessed battery or extreme cruelty perpetrated by [REDACTED].

Upon review of the petitioner's testimony and the testimony of the individuals who submitted statements on her behalf, the record does not provide probative information that demonstrates that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that [REDACTED]'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 of others lack the consistent detail necessary to establish that [REDACTED]'s actions constitute extreme cruelty as defined in the statute and regulation. The petitioner has failed to establish that [REDACTED] 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 [REDACTED] 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 information to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her spouse.

Good Faith Entry Into Marriage

The petitioner provided a cursory description of her initial meeting and subsequent interaction with the [REDACTED] and fails to provide probative information regarding her specific intent when entering into the marriage. The record lacks information regarding the couple's joint life for the

years that the petitioner claims the couple were married. The petitioner does not provide the requisite information regarding her interactions with [REDACTED] subsequent to the marriage, except as it relates to the claimed abuse. The record includes a quote regarding life insurance but no evidence that life insurance was obtained or that [REDACTED] was the intended beneficiary or purchaser. The record includes copies of a credit card and a letter indicating that [REDACTED] was an authorized user of the petitioner's credit card but no evidence that [REDACTED] ever used the credit card. On the other hand, the record includes evidence that [REDACTED] did not claim to be married when he filed his 2005 tax returns, information that casts doubt on the legitimacy of the marriage.

Counsel does not address the lack of evidence on the issue of the petitioner's intent when she entered into the marriage and upon review we find no error in the director's assessment of the relevant evidence. The petitioner's statements fail to provide substantive information regarding her courtship with and marriage to [REDACTED], except as it relates to the claim of abuse. The petitioner does not describe the couple's mutual interests, she does not describe the family circumstances in detail, and she does not provide any 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 probative detail in her statements to United States Citizenship and Immigration Services (USCIS) and the record does not include sufficient 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 [REDACTED] in good faith, as required by section 204(a)(1)(B)(ii)(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.