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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
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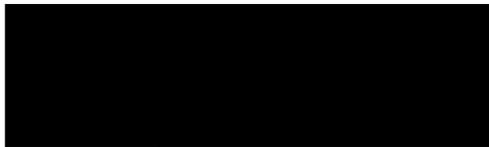


IN RE: Petitioner:



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 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 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.

* * *

(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 Peru. She last entered the United States on September 8, 2006 on a B-2 visa. She married C-M-, the claimed abusive United States citizen on May 7, 2007. On February 10, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On September 24, 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 jointly resided with C-M-, that she had been subjected to battery or extreme cruelty perpetrated by C-M-, 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 additional documentation in support of the appeal.

Residence

The petitioner in this matter indicates on the Form I-360 that she jointly resided with C-M- from January 2007 to December 2007 and that the last place she lived with him was in Alhambra, California. In the petitioner's initial undated statement, the petitioner indicated that she married C-M- on the condition that he would move to Texas where she has property and where her daughter was attending her last year of high school. The petitioner noted that after the marriage, C-M- refused to move. She indicated that she sacrificed and moved to California even though it meant that her daughter would stay in Texas. The petitioner noted that she had to fly to Houston, Texas many times to see her daughter because C-M- did not want to move. She noted that in December 2007 she visited her daughter in Texas and then planned to meet C-M- in Miami, Florida but he did not show up at the Miami Airport. The petitioner indicated that she flew to California in March (2008) to surprise him but discovered him in bed with another woman and he kicked her out of the house.

The petitioner also submitted copies of a phone and cable bill addressed to her at the claimed marital address in Alhambra, California, as well as a bank account statement addressed to the petitioner and C-M- at the Alhambra, California address.

The petitioner did not submit any further testimony or evidence in response to the director's RFE on this issue. Based on the information in the record, the director determined that the petitioner had not established that she had jointly resided with C-M- during the marriage.

On appeal, counsel for the petitioner submits a statement signed by the petitioner's daughter who indicates that her mom always had to go to Los Angeles on business and that she suspected that her mom was seeing C-M-. The petitioner's daughter states that her mom and C-M- talked to her when they decided to get married and although she was shocked, she wanted her mom to be happy. The petitioner's daughter also states that after a while her mom changed, she could tell her mom was stressed, that her mom stopped caring about how she looked, and that her mom would plan things with C-M- but he would always ditch her for no reason. The petitioner's daughter further stated that she stopped going to their house.

Upon review of the petitioner's daughter's statement on appeal and the totality of the evidence in the record, the petitioner has not established that she resided with C-M-. The petitioner's own testimony does not reveal any specific information regarding her claimed joint residence with C-M-. It appears from the petitioner's daughter's statement that the petitioner continued to live in Texas with her daughter while she was married. As the petitioner's daughter fails to provide a chronological time line of her residences as well as those of her mother or to offer other probative details, her testimony is insufficient to assist in establishing the joint residence of the petitioner and C-M-. The petitioner's receipt of mail at a particular address does not establish that the petitioner resided at the address. Upon review of the totality of the record, the petitioner has not provided probative testimony that supports her claim that she jointly resided with C-M- during their marriage.

Abuse

As referenced above, the petitioner in her initial statement indicated that C-M- refused to move with her to Texas after their marriage. The petitioner also noted that C-M- used to disappear from the house, that money disappeared from her wallet, and that he insulted her. The petitioner noted further that when she would not give him money, C-M- would yell, insult her, humiliate her, and try to blackmail her by saying he would divorce her and immigration would deport her and her daughter. The petitioner reported that C-M- did not fly to Miami at Christmas in 2007 as they had planned and that when she was able to contact him by phone after the New Year, he told her not to come back. The petitioner indicated that at that time she found that C-M- had over drafted a bank account. The petitioner related that three months later, C-M- began to call her and ask her to forgive him, so in March 2008 she flew to California to surprise him but found him in bed with another woman and he kicked her out of the house and she returned to Houston.

The petitioner provided an October 17, 2008 letter signed by [REDACTED], an advocate at [REDACTED] located in Texas, who indicated that the petitioner had been receiving counseling due to the abusive situation with her husband. [REDACTED] noted that the petitioner had suffered emotional, physical, verbal and sexual abuse.

In response to the director's RFE, the petitioner provided a second letter signed by [REDACTED] dated December 11, 2009. [REDACTED] added that [REDACTED] records show that the petitioner had contacted the organization 43 times either by phone, electronic mail, or in person and that she attended support group classes. The petitioner also provided a December 14, 2009 statement signed by [REDACTED] who indicated that the

petitioner stayed with her about five days after C-M- failed to show up at the Miami Airport in December 2007 and that the petitioner was sad and crying during this time.

The director determined, based on the information submitted, that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by C-M-.

On appeal, counsel for the petitioner submits an August 12, 2010 psychological evaluation of the petitioner prepared by [REDACTED], Clinical Psychologist. [REDACTED] indicates that the evaluation is based on a three and a half hour consultation on August 10, 2010. [REDACTED] indicates that the petitioner reported the most painful aspect of her relationship with C-M- was their sexual life, which included forced penetration with objects. [REDACTED] reports that the petitioner indicated that she felt bad and humiliated at C-M-'s conduct and was reluctant to report this information for fear her daughter would find out.

As noted above, counsel also submitted the petitioner's daughter's statement in which the petitioner's daughter states generally that her mom was under stress and stopped caring about how she looked after her marriage. The petitioner's daughter also notes that C-M- treated her mother like she was worthless.

Upon review of the totality of the evidence in the record, the petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by C-M-. The petitioner initially provided a general statement regarding her unhappiness with C-M-'s failure to move to Texas as promised, her suspicion that C-M- took money from her wallet, her unhappiness at his demands for money, her unhappiness that he failed to comply with her plans to meet in Miami, Florida, and her discovery of his infidelity after they had separated. The petitioner does not reference any physical or sexual abuse. Similarly, the letters from [REDACTED] fail to provide any information regarding any specific incident or particular event that involved physical or sexual abuse. Although [REDACTED] states that the petitioner had suffered emotional, physical, verbal and sexual abuse, she provides no examples of the alleged abuse. Moreover, as the director observed, the record does not include [REDACTED] qualifications to evaluate the petitioner. The record before the director included no evidence that the petitioner had been subjected to battery or extreme cruelty as defined in the statute and regulation.

[REDACTED], in the evaluation submitted on appeal, provides little information regarding any behavior of the petitioner's spouse except as it relates to forced sexual abuse. The absence of any reference to sexual abuse by the petitioner in her statement to United States Citizenship and Immigration Services (USCIS) undermines the credibility of the petitioner's statements to [REDACTED]. In addition, [REDACTED] findings were based upon a single interview with the petitioner and, as such, they fail to reflect the insight and elaboration commensurate with an established relationship with a mental health profession. We find that the absence of an established relationship between the petitioner and [REDACTED] renders [REDACTED] report and findings speculative and diminishes the value of her evaluation. The escalation in the type and severity of the alleged abuse amounts to inconsistent testimony on the part of the petitioner, which undermines the credibility of her testimony.

Based upon a review of the totality of the evidence in the record, the petitioner has not established that she was subjected to battery perpetrated by her spouse. Neither has the petitioner provided probative evidence that she was subjected to verbal or mental abuse or that her husband's conduct constituted extreme cruelty. Upon review of the petitioner's initial testimony, she does not provide a credible detailed account of specific incidents or events that constitute extreme cruelty as defined in the statute and regulation. Although the petitioner indicated that her husband threatened to divorce her and that immigration would deport her if she did not give him money, her statement is general and does not include probative detail of the circumstances surrounding the alleged threat.

Upon review of the petitioner's testimony, the testimony of the individuals who submitted statements on her behalf, and the evaluation, the record does not provide probative credible information that demonstrates that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that C-M-'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 C-M-'s actions constitute extreme cruelty as defined in the statute and the regulation. The petitioner has failed to establish that C-M-'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 C-M-'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 credible 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 C-M- and failed 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 year that the petitioner claims the couple was married. The petitioner does not provide the requisite information regarding her interactions with C-M- subsequent to the marriage, except as it relates to the claimed abuse.

The bank statement submitted does not include evidence of the underlying transactions that occurred on the account and the receipt of two bills at an address does not assist in establishing the petitioner's intent when entering into the marriage. Although the record includes photocopies of photographs, the photographs do not include identifying information and are insufficient to establish the petitioner's intent when entering into the marriage.

On appeal, counsel for the petitioner submits the petitioner's daughter's statement and the statements of [REDACTED] and [REDACTED]. The petitioner's daughter's

statement does not provide any probative details that assist in establishing her mother's intent in entering the marriage with C-M-. Similarly, the statements of [REDACTED] and [REDACTED], although indicating that they know the petitioner, do not include probative details regarding their observations of the petitioner's allegedly good faith entry into marriage with C-M-.

Upon review, the petitioner's statement fails to provide substantive information regarding her courtship with and marriage to C-M-, 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 statement to USCIS and the record does not include documentary 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 C-M- 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.