

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

[Redacted]

Bq

Date: **DEC 19 2012** Office: VERMONT SERVICE CENTER File: [Redacted]

IN RE: Self-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:

[Redacted]

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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner resided with her husband, entered into marriage with her husband in good faith, and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits letters from a psychotherapist, the petitioner, and the petitioner's spouse.

Applicable Law

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, 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 further 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 further explicated 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 further explicated 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.

* * *

(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.

* * *

(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 citizen of Colombia who entered the United States on August 8, 2004, as a nonimmigrant visitor. The petitioner married a U.S. citizen on January 10, 2007, in Indiana. The petitioner filed the instant Form I-360 on December 7, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage, shared residence, and her husband's battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish her eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits letters from the petitioner, a psychotherapist, and the petitioner's husband. No brief was submitted. On the Form I-290B, counsel claims that evidence United States Citizenship and Immigration Services (USCIS) considered false was, in fact, the result of error. Though counsel cites to the attached statements, none of the statements address or describe any said errors.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The evidence submitted on appeal does not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. The petitioner submitted an affidavit in which she stated that she had a bad marriage and that she wants to stay in the United States. The petitioner did not describe how she met her husband, their courtship, engagement, wedding, or their marriage in her affidavit. The petitioner also failed to describe her intentions in entering the marriage or any of their shared experiences.

The petitioner submitted letters from seven friends and relatives who mentioned that the petitioner was married and that her husband moved out because he was homosexual, but provided no probative information regarding the petitioner's good faith in entering the relationship. In her affidavit, [REDACTED] stated that when she went to their apartment on a daily basis she saw the petitioner and her husband "living as any ordinary husband and wife," but she does not describe the visits in probative detail or provide any other substantive information regarding her observations of the petitioner's interactions and relationship with her spouse prior to and during their marriage. The director correctly concluded that these affidavits provided no specific information demonstrating that the petitioner married her husband in good faith.

The petitioner also submitted a report written by [REDACTED], a psychotherapist, dated November 10, 2008. In her report, the psychotherapist briefly stated that the petitioner related that she

met her husband at a party and that immediately after they met, the petitioner's husband asked her to move in with him. ██████████ stated that the petitioner and her husband married on January 10, 2006, not 2007, as stated on the petitioner's marriage certificate. In another letter, ██████████ a psychotherapist, reports that the petitioner and her husband married and enjoyed entertaining at home and spending time with friends and family. The petitioner herself did not mention these details in her affidavit. The psychotherapists' brief descriptions of the petitioner and her husband's relationship are of little probative value and do not demonstrate that the petitioner married her husband in good faith.

The director also accurately assessed the other relevant documents submitted below. The petitioner submitted a lease agreement that her husband did not sign until October 15, 2007, and which lists his move in date as October 15, 2007. The petitioner, however, claimed to have been living with her husband at that address since January of 2007. The utility bills submitted were obtained shortly after the petitioner and her husband's immigration interview. The evidence submitted failed to show that the petitioner and her husband had joint accounts or other similar, shared responsibilities. The petitioner submitted three photographs of herself and her husband on one unspecified occasion that are not accompanied by any explanation of their significance. The petitioner's 2008, unsigned income tax forms which she filed as "married filing separately" do not show that the petitioner entered into her marriage in good faith. The evidence submitted is insufficient to establish that the petitioner entered into the marriage in good faith.

Regardless of these deficiencies, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." 8 C.F.R. § 204(c)(2)(vii). In this case, however, the testimonial evidence submitted does not demonstrate the petitioner's entry into her marriage in good faith. In her affidavit the petitioner does not describe she and her husband's courtship, wedding or any of their other shared experiences in probative detail. The letters from friends and relatives acknowledge the marriage but do not substantively discuss their observations of the petitioner's interactions with or feelings for her husband during their courtship or marriage. Furthermore, on appeal the petitioner submitted an affidavit from her husband in which he claimed that the petitioner knew that he was homosexual when they were married, and that they always lived separately. When viewed in the aggregate, the relevant evidence is insufficient to show that the petitioner entered into the marriage in good faith. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The relevant evidence submitted below and on appeal also fails to demonstrate that the petitioner resided with her husband. In her affidavit, the petitioner did not describe their homes or shared residential routines in any detail. The petitioner's friends do not describe any visit to her and her husband's residence in probative detail. In the statement from her husband that the petitioner submitted on appeal, he stated that he and the petitioner never lived together as husband and wife and that they always lived separately. The other relevant documents submitted were insufficient to show joint

residence, as discussed in the preceding section. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. In her affidavit, the petitioner generally stated that she had a bad marriage in which her husband's morals were very different from hers and that her life became bad and painful. The petitioner failed to provide any information regarding any specific incident of battery. The petitioner also did not describe behavior that involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted letters from four friends and relatives who mentioned that the petitioner was married and that her husband moved out because he was homosexual, but provided no probative information regarding any abuse. In her affidavit, ██████████ stated that the petitioner discovered that her husband was bisexual and that he "became verbally aggressive," but she does not provide any details of any aggression and does not describe any particular incident of abuse. The other affidavits submitted similarly do not describe any specific incidents of battery or extreme cruelty against the petitioner.

In her 2008 report, ██████████ stated that the petitioner's husband brought male friends to their home, that he was not interested in being intimate with the petitioner, and that he insulted the petitioner. She emphasized her finding that the petitioner's major issue was that she was living through a "strenuous culture shock" because of her limited English abilities and because she was living in a culture dissimilar to her own. In a later report, dated October 13, 2011, ██████████ stated that the petitioner reported that her husband was "verbally and physically abusive to her," and that the petitioner's husband threatened, beat, humiliated, harassed and intimidated her, but she did not provide any details or describe any particular incident of battery or extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner herself did not discuss any of these forms of abuse in her own affidavit. Similarly, the letters from ██████████ described how the petitioner had to work three jobs to pay the bills and that she caught her husband cheating on her with a man, but did not describe any battery or extreme cruelty.

On appeal, the petitioner submitted another letter from Dr. ██████████, a copy of the petitioner's affidavit, and an affidavit from her husband, none of which address any abuse or extreme cruelty. The relevant evidence does not establish that the petitioner's husband battered her or that his behavior involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determinations that she did not establish the requisite entry into the marriage in good faith, joint residence with her husband, and

battery or extreme cruelty. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.