

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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

B9

[REDACTED]

DATE: **FEB 28 2012** OFFICE: VERMONT SERVICE CENTER FILE: [REDACTED]

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:

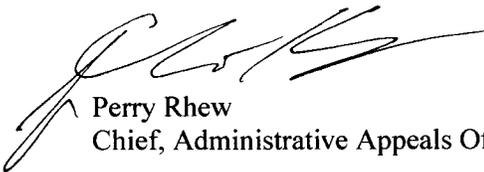
SELF-REPRESENTED

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 service center director (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 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 denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that her ex-husband subjected her to battery or extreme cruelty during their marriage; and (2) that she married him in good faith. On appeal, the petitioner submits a brief and additional evidence.

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of the Philippines, entered the United States on September 30, 2007. She married [REDACTED] a citizen of the United States, on [REDACTED] and the marriage was lawfully terminated on May 19, 2008. The petitioner filed the instant Form I-360 on December 24, 2007. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through prior counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to his RFE, the director denied the petition on June 23, 2011.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, we find that the petitioner has failed to overcome the director's grounds for denying this petition.

Battery or Extreme Cruelty

The director properly reviewed and addressed the deficiencies contained in the petitioner's statements dated December 10, 2007 and May 6, 2011, which do not establish that she was subjected to battery or extreme cruelty by [REDACTED] during their marriage. Nor does the remainder of the relevant evidence submitted below establish [REDACTED] abuse: neither the materials from the [REDACTED] nor the letters from [REDACTED] and [REDACTED] describe any specific incidents of abuse perpetrated by [REDACTED].

On appeal, the petitioner submits a letter, printouts of electronic mail correspondence from [REDACTED], and evidence she has filed a bar complaint regarding the performance of prior counsel. In her August 15, 2011 letter she claims that [REDACTED] drove her to a motel and left her there alone, and that when she returned to their apartment later that night, [REDACTED] told her he had filed an eviction notice against her and that if she continued knocking on the door he would call the police. She recounts spending that night in the basement of their apartment building and alleges that when she tried to get into the apartment the following morning [REDACTED] physically assaulted her.

Most of the electronic mail (e-mail) messages are not in the English language and therefore do not support the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). The November 17, 2007 message from [REDACTED] was sent to several unidentified individuals and informs them that he locked the petitioner out of his apartment and filed for annulment of their marriage after he learned of her infidelity. The November 18, 2007 message from [REDACTED]² was sent to [REDACTED] in response to that e-mail, and in it he chastises [REDACTED] for spying on the petitioner and for locking her out of the apartment.

None of the new evidence submitted on appeal establishes that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner's own statements and the e-mails of [REDACTED] lack detailed descriptions of specific instances of abuse.

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

Although the petitioner states on appeal that she will submit a copy of a police report made in connection with an instance of alleged battery by [REDACTED] the record contains no such report. She also makes several allegations impugning prior counsel's representation. However, any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved party setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the individual in this regard; (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond; and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Although the record contains a copy of the legal services agreement contracted between the petitioner and prior counsel, as well as evidence she has brought a civil action against him in the Duval County, Florida County Court, the record does not establish that the petitioner complied with the second *Lozada* requirement.

The relevant evidence fails to establish that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage. Although she alleges battery by [REDACTED] on one occasion, she does not describe the incident in probative detail. Nor does the relevant evidence establish that [REDACTED] behavior constituted extreme cruelty. The relevant evidence does not establish that [REDACTED] behavior involved psychological abuse or exploitation, was part of an overall pattern of violence, or that it was otherwise comparable to any of the types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty. 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)).

Considered in the aggregate, the relevant evidence fails to establish that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Marriage

The petitioner's testimony does not establish that she married [REDACTED] in good faith. In her December 10, 2007 declaration, she did not describe the relationship apart from the alleged abuse. In her May 6, 2011 letter, she stated only that [REDACTED] visited her in the Philippines on two occasions; that she knew she loved him and felt comfortable with him; and that she took him to visit her family. She did not otherwise describe their courtship, wedding ceremony, and shared residence and experiences, apart from the alleged abuse. Nor does she provide any further, probative information on appeal.

The e-mail messages submitted by the petitioner on appeal speak to the intentions of those who wrote them rather than to those of the petitioner, and the same is true with regard to the letters she submits from [REDACTED]. The joint tax return does not establish her good-faith entry

Page 6

into the marriage because it was filed on October 22, 2008, five months after the couple divorced and nearly a year after they ceased living together.

Considered in the aggregate, the relevant evidence does not establish that the petitioner married [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has failed to overcome the director's grounds for denial and has not established that [REDACTED] subjected her to battery or extreme cruelty during their marriage and that she married him in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and the appeal will be dismissed.

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). The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.