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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



B9

DATE: JAN 11 2012 OFFICE: VERMONT SERVICE CENTER

FILE:

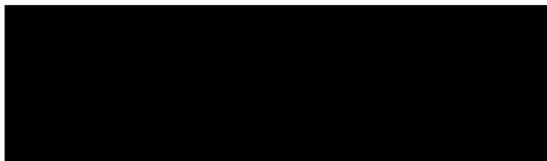


IN RE: Petitioner:



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 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 husband subjected her to battery or extreme cruelty during their marriage; and (2) that she is a person of good moral character. On appeal, counsel submits a brief argument made on the Form I-290B, Notice of Appeal or Motion.¹

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,

¹ Counsel marked the box at section two of the Form I-290B to indicate that a brief and/or additional evidence would be sent within 30 days. However, to date, more than three months later, we have not received an additional brief or evidence. Accordingly, we deem the record complete and ready for adjudication.

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.

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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for

six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Pertinent Facts and Procedural History

The petitioner, a citizen of Ghana, married G-C-,² a citizen of the United States, on June 20, 2008. The petitioner filed the instant Form I-360 on July 23, 2010.³ The director issued a subsequent request for additional evidence, to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to his request for additional evidence, the director denied the petition on September 8, 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

As evidence that D-C- abused the petitioner during their marriage, the record contains the petitioner's self-affidavit and an affidavit from [REDACTED]. In her July 12, 2011 self-affidavit, the petitioner stated that although the couple "started a good life together," and attended many cultural events together, D-C-'s attitude toward her changed. She claimed that D-C- began drinking and staying out late with his friends and, when she was working, D-C- and his friends often came to the couple's apartment to drink and smoke, leaving messes for her to clean. According to the petitioner, although D-C- at one point apologized for refusing to attend her immigration interview because he had a doctor's appointment and he promised to change his ways, he did not follow through on that promise. The petitioner explained that D-C- continued smoking and drinking, insulted and criticized her "all the time," and criticized her cooking. Finally, he left the marriage, taking her money and most of her documents with him.

In his June 30, 2011 affidavit, [REDACTED] recounted that he had been saddened to observe that the couple's once "romantic and amicable relationship" had "turned to violent confrontations." He claimed that D-C- and the petitioner argued over frivolous matters, that D-C- criticized the petitioner's cooking, and that he subjected her to both emotional and physical abuse, although [REDACTED] described no specific incident of any such abuse.

² Name withheld to protect individual's identity.

³ The petitioner remains in immigration proceedings before the Immigration Court in Hartford, Connecticut and her next hearing is scheduled for January 31, 2012.

When viewed in the aggregate, the relevant evidence fails to demonstrate that D-C- subjected the petitioner to battery or extreme cruelty during their marriage. On appeal, counsel asserts that the director “applied the wrong standard” and erroneously determined that the abuse was “marital difficulties . . . encountered in many marriages.” While the director’s reference to “marital difficulties” was unnecessary, we find no error in his ultimate assessment of the relevant evidence. In this case, 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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The petitioner has not met this burden.

Although [REDACTED] stated that D-C- subjected the petitioner to physical abuse and that that the couple’s relationship devolved into “violent confrontations,” the petitioner herself made no claims of physical abuse. This inconsistency in the testimony of record is not acknowledged or explained, and its presence diminishes the probative value of the testimony of both [REDACTED] and the petitioner regarding any alleged physical abuse by D-C-. The petitioner has not established that she was subjected to battery by D-C-.

Nor does the relevant evidence establish that D-C- subjected the petitioner to extreme cruelty during their marriage. To qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the non-physical cruelty be extreme. *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)). As described by the petitioner and [REDACTED] actions did not involve psychological or sexual abuse, threatened violence, or an overall pattern of violence, or otherwise constitute extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Considered in the aggregate, the relevant evidence fails to demonstrate that D-C- 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 Moral Character

Primary evidence of a petitioner’s good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. 8 C.F.R. § 204.2(c)(2)(v). The record in this case establishes that the petitioner lived in both Connecticut and Massachusetts during this qualifying three-year period, which began in July 2007 and ended in July 2010.

As evidence of her good moral character, the petitioner submitted a criminal background check issued by the State of Connecticut Department of Public Safety. However, despite the fact that the petitioner also resided in Massachusetts during the relevant three-year period, she did not submit similar evidence to cover her period of residence in that state. As such, the director determined that the petitioner had failed to demonstrate her requisite good moral character.

On appeal, counsel erroneously asserts that the director should have issued a NOID before denying the petition on the basis of the petitioner's failure to demonstrate her requisite good moral character. The regulations do not require the issuance of a NOID prior to denying a petition for classification under section 204(a)(1)(A)(iii) of the Act.⁴ Moreover, the petitioner has twice been notified of the missing, requisite evidence: first by the director's April 27, 2011 request for additional evidence; and second by his September 8, 2011 decision denying the petition. Despite counsel's assertion on appeal that the petitioner is able to submit a police clearance from Massachusetts, she has not submitted this requisite evidence.

The petitioner's failure to submit a local police clearance or state-issued criminal background check covering her residence in Massachusetts during the three-years preceding the filing of her petition precludes a finding that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that D-C- subjected her to battery or extreme cruelty and that she is a person of good moral character. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁴ Although 8 C.F.R. § 204.2(c)(3)(ii) previously required the director to issue a NOID prior to denying a self-petition, that requirement was eliminated effective June 18, 2007. *See* 72 Fed. Reg. 19100 (Apr. 17, 2007).