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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
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Services

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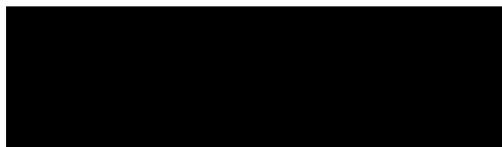


IN RE: Petitioner:



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:

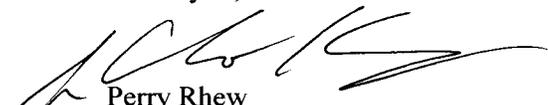


INSTRUCTIONS:

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 the \$630 fee. 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, (“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 entered into marriage with her spouse in good faith and that she was subjected to battery or extreme cruelty during their marriage.

On appeal, counsel submits a statement reasserting the petitioner’s eligibility and additional evidence.

Relevant 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, 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:

(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.

* * *

(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 is a citizen of Saint Lucia who was admitted to the United States on March 28, 2007 as a nonimmigrant visitor. The petitioner married V-M-¹, a U.S. citizen, on August 24, 2007 in New York. The petitioner filed the instant Form I-360 on February 2, 2010. The director subsequently

¹ Name withheld to protect the individual's identity.

issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage and her husband's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

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. Counsel's claims and the evidence submitted on appeal do not overcome the director's grounds for denial and 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. In her initial affidavit, dated April 30, 2010, the petitioner stated that she met V-M- during her September 2005 visit to the United States. The petitioner recalled that during her December 2006 visit to the United States she met V-M-'s family and he proposed to her. She stated that they were wed on August 24, 2007 in the City Hall of Queens. The petitioner recalled that they were initially happy and in December 2007 she traveled to Florida to meet V-M-'s family members. In her statement submitted in response to the RFE, the petitioner added that in the beginning of her relationship with V-M-, they would cook and wash laundry together and go to the movies and restaurants for dinner. The petitioner did not describe how she initially met V-M- or provide probative details on her nearly two-year courtship with V-M-.

The petitioner submitted affidavits from her friends, [REDACTED] and [REDACTED] who briefly discussed the petitioner's marriage, but spoke predominately of the alleged abuse and provided no probative information regarding the petitioner's good faith in entering the relationship. The petitioner's friends all attest to knowing the petitioner and her husband as a married couple, but they do not describe any particular visit or social occasion in detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

The director also accurately assessed the relevant documents submitted below. The petitioner stated on her Form I-360 petition that she resided with her husband from 2007 until October 2009. The petitioner initially submitted: a checking account statement in her name only issued after her separation from her husband; a copy of the petitioner's 2009 Income Tax Return completed as married filing separately; a self-storage agreement issued after the petitioner's separation from her husband; the petitioner's earnings and deductions statements dated one year after their separation; a copy of the petitioner's life insurance policy obtained a few months prior to their separation; and several photographs of the petitioner with her husband and individuals she identified as her husband's family members. On appeal, the petitioner asserts that because her husband did not have a good credit history, they did not have utility bills under his name. The petitioner submits their joint checking account statements and safe deposit box rental agreement; and her life insurance policy reflecting that her husband has remained a beneficiary of the policy almost two years after their separation.

On appeal, counsel asserts that the petitioner has submitted supporting documentation and affidavits from her friends to establish her good faith in entering the marriage. A full review of the relevant

evidence submitted below and on appeal fails to reveal any error in the director's determination. The relevant documents show that the petitioner opened a life insurance policy a few months prior to her separation from her husband; they held a joint bank account and safe deposit box; and were photographed together on several occasions. However, in her statements, the petitioner did not describe how she initially met her husband or provide probative details on her nearly two-year courtship with her husband. None of the petitioner's friends discuss in probative detail their personal observations of the petitioner's interactions with her husband during their courtship or marriage. 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.

Battery or Extreme Cruelty

We find no error in the director's ultimate determination that the petitioner's husband did not subject her to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In her first statement, the petitioner recalled that V-M- physically assaulted her on four occasions. She recounted that V-M- would come home late at night, would not eat the food she cooked, brought home take-out food, and refused to be physically intimate. In her statement issued in response to the RFE, the petitioner added that her husband once grabbed her phone and threw it on the floor, refused to give her money, changed the channels on the TV and turned off her music, on one occasion locked her in the house, had his cousin watch her while she was working, and physically assaulted her on five other occasions.

The petitioner submitted statements from her friends, [REDACTED] which discuss the abuse in the petitioner's marriage to V-M-. [REDACTED] stated that during the petitioner's 25th birthday party, they witnessed V-M- shaking the petitioner. However, the petitioner does not mention this incident in her own affidavits. [REDACTED] and [REDACTED] reported hearing V-M- swear at the petitioner while she was on the phone with them, but their statements do not indicate that V-M-'s behavior 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 several photographs, which she claims are evidence of the injuries she suffered as a result of the alleged physical abuse. The director correctly noted that the petitioner dated photographs of the alleged abuse as injuries from December 11, 2007 and December 20, 2007, but she did not provide any details of these incidents in her statements. On appeal, the petitioner asserts that the alleged incidents of abuse began in November 2007. This new timeline of events, however, differs from the petitioner's initial statement and the statement she submitted in response to the RFE, in which she recalled that the alleged abuse began in her marriage a few months after her January 2008 return home from Florida. The petitioner does not explain this discrepancy on appeal.

The petitioner also submitted after-care instructions from a medical center, dated November 28, 2008, which state that she was diagnosed with costochondritis. However, the evidence does not explain the significance of this diagnosis or link it to the alleged abuse.

On appeal, the petitioner asserts that she did not file a complaint with the police about the physical abuse she suffered or report the abuse to the medical staff at the hospital because she was afraid that the abuse would escalate if her husband was arrested and then released from jail. Counsel asserts that “there is no requirement that the abuse has to be witnessed by a third party in order for it to be a valid claim for an I-360 petition.” Counsel further asserts that “the [petitioner] should not be prejudiced for not submitting medical or police reports to substantiate her abuse.” To the extent that the director’s decision indicated that corroborative evidence of battery or extreme cruelty was required, such portions of his decision are hereby withdrawn. The regulations do not require a self-petitioner to submit primary, corroborative evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i) (“The self-petitioner may, but is not required to demonstrate that preferred primary or secondary evidence is unavailable.”). However, the petitioner herself has not provided a consistent, probative account of the alleged abuse. The relevant evidence, when viewed in the aggregate, does not establish that the petitioner’s 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 grounds for denial. 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.