

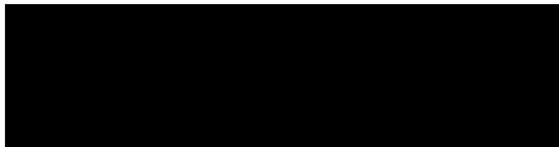
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



B9

Date: **MAR 20 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 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 husband in good faith and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief.

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 Mexico who was admitted to the United States on July 9, 2006 as a nonimmigrant visitor. The petitioner married D-A¹, a U.S. citizen, on March 5, 2009 in Hollywood, Florida. The petitioner filed the instant Form I-360 on September 8, 2010. The director

¹ Name withheld to protect the individual's identity.

subsequently issued a Request for Evidence (RFE) of, *inter alia*, 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 fails to establish the petitioner's eligibility. Counsel's claims 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

We find no error in the director's determination that the petitioner failed to establish her entry into the marriage in good faith. In response to the RFE, the petitioner submitted an affidavit, dated February 23, 2011. In her affidavit, the petitioner stated that she met D-A- in December 2008 through a mutual friend. She briefly recounted that D-A- proposed to her on February 20, 2009, they moved to an apartment together in March 2009, and they wed on March 5, 2009. The petitioner did not describe her courtship with her husband, their wedding ceremony, joint residence or any of their shared experiences, apart from the alleged abuse.

In response to the RFE, the petitioner also submitted letters from four friends, [REDACTED] and her mother, [REDACTED] who 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 correctly determined that these letters provide no probative information regarding the petitioner's good faith in entering the relationship.

The director also accurately assessed the relevant documents submitted below. In response to the RFE, the petitioner submitted a residential lease, bank statements, an application for accidental death insurance coverage, a 2008 tax return, a driver's license suspension notice and various invoices. These documents are insufficient evidence of the petitioner's good faith marriage for the following reasons: the residential lease is not signed by the petitioner or her spouse; the bank statements show that the petitioner and her spouse maintained separate bank accounts; the application for accidental death insurance coverage is blank; the 2008 tax return reflects that it was filed only by the petitioner's spouse; and the various invoices were issued to the petitioner's spouse only.

On appeal, counsel asserts that the director failed to examine the petitioner's evidence under the "any credible evidence" standard. Counsel states that under this standard, petitioners are not required to demonstrate that primary or secondary evidence is unavailable. For self-petitioning abused spouses and children, the statute prescribes an evidentiary standard, which mandates that USCIS "shall consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). See also 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). This evidentiary standard is not equivalent to the petitioner's burden of proof. When determining whether or not the petitioner has met his or her burden of proof, USCIS shall consider any relevant, credible evidence. However, "the determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's]

sole discretion.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii); 204.2(c)(2)(i). Accordingly, the mere submission of evidence that is relevant may not always suffice to establish the petitioner’s credibility or meet the petitioner’s burden of proof.

On appeal, counsel does not specifically identify any error in the director’s determination that the petitioner did not enter her marriage in good faith. A full review of the relevant evidence submitted below does not reveal any error in the director’s determination. 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

The relevant evidence submitted below fails to demonstrate that the petitioner’s husband subjected her to battery or extreme cruelty. In her affidavit, the petitioner briefly recounted that her husband called her names, threatened her with deportation, punched her on one occasion, threatened her with violence, and had extramarital affairs. The petitioner, however, failed to describe specific instances of abuse with probative detail.

The petitioner’s friends, [REDACTED] and her mother briefly assert that her husband abused her. They do not, however, discuss any specific incident of battery or extreme cruelty that they witnessed or have knowledge of. Nor do they provide any substantive description of their contemporaneous observations of the effects of any abuse on the petitioner.

In the psychological evaluation, [REDACTED] attributed the petitioner’s anxiety disorder to domestic abuse in her marriage. While we do not question [REDACTED]’s professional expertise in assessing the petitioner’s mental health, [REDACTED] did not provide probative, detailed information of specific instances of abuse to establish that the petitioner’s husband’s behavior constituted extreme cruelty or battery. The petitioner also submitted a letter from a licensed counselor, [REDACTED] dated February 18, 2011, which confirmed that she has been seeing him for mental health counseling since February 16, 2010. [REDACTED] stated that the petitioner “is dealing with certain stress problems in her life,” but he provided no other information regarding her reasons for obtaining counseling. His letter fails to indicate that the petitioner suffered battery or extreme cruelty during her marriage to D-A-

The petitioner also submitted in response to the RFE, an order from the Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida, reflecting that on August 26, 2010 her husband was convicted of possession of burglary tools and burglary of an unoccupied structure and was ordered to pay restitution to another individual residing in Miami, Florida. These convictions occurred over eight months after the petitioner reports separating from her husband, and moving to Jacksonville, Florida. She has shown no connection between her husband’s convictions and the alleged abuse.

On appeal, counsel asserts that “[t]he director’s attempt to disqualify the probative evidence of a psychological evaluation because the psychologist was not a direct witness to the abuse is not in compliance with the ‘any credible evidence’ standard set forth by Congress.” 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), 204.2(c)(2)(i) (“The self-petitioner may, but is not required to demonstrate that preferred primary or secondary evidence is unavailable.”). Counsel fails to articulate, however, how the relevant documentation provides probative, detailed information on the alleged abuse. 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 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.