

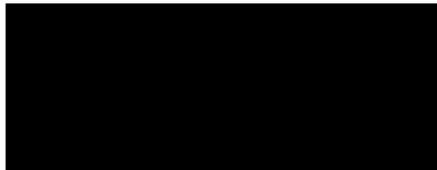
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

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**U.S. Citizenship
and Immigration
Services**



39

Date: **MAY 31 2012**

Office: VERMONT SERVICE CENTER File: 

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

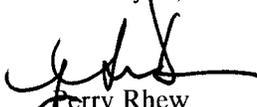


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a 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 motion 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 any motion to 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 under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

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

On appeal, counsel submits additional evidence.

Relevant Law and Regulations

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the permanent resident 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 for classification under section 203(a)(2)(A) of the Act as the spouse of a lawful permanent resident, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(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)(B)(ii) 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.

* * *

(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.

* * *

(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 Haiti who was admitted to the United States on July 29, 2004, as a nonimmigrant visitor. The petitioner married J-E-, a lawful permanent resident, on October 12, 2004 in New York, New York.¹ The petitioner received a judgment of divorce from J-E- on March 31, 2011 at the New York State Supreme Court of New York County.

The petitioner filed the instant Form I-360 on November 29, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good-faith entry into the marriage, their joint residence, 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. The evidence submitted on appeal does not fully 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 relevant evidence submitted below fails to demonstrate the petitioner's entry into her marriage in good faith. The petitioner did not initially submit any evidence to demonstrate her good faith intentions in entering the marriage with J-E-, other than a copy of an approval notice for a Form I-130, Alien Relative Petition, filed by J-E- on her behalf. Approval of a Form I-130 is not *prima facie* evidence of the beneficiary's good-faith entry into marriage with her husband under section 204(a)(1)(B)(ii) of the Act. In self-petitions under section 204(a)(1)(B)(ii) of the Act, the alien bears the burden of proof to establish that she or he entered into the marriage in good faith, and the regulation specifically defines the term "good faith marriage" and what types of evidence will suffice to meet that eligibility criterion. 8 C.F.R. §§ 204.2(c)(1)(ix), (c)(2)(vii). Hence, the fact that a self-petitioner was the beneficiary of an approved Form I-130 filed by his or her spouse will not establish that the petitioner actually entered into the marriage in good faith.

In response to the RFE, the petitioner submitted four undated photographs of herself and J-E-, two of which appear to be of their marriage ceremony at a courthouse, and two of which are at an unspecified location. The petitioner also submitted a letter from her bank stating that she has maintained a joint bank account with J-E- since December 11, 2006. The petitioner provided three bank statements for

¹ Name withheld to protect the individual's identity.

their joint account, dated May 2010 through September 2010. The director correctly determined that these statements are of no probative value because the petitioner indicated on her Form I-360 that she separated from J-E- in 2006.

The petitioner provided an affidavit stating that her home was destroyed in a fire and her documents were lost. She submitted letters from the American Red Cross and a New York Fire Department Incident Report as evidence of a fire at her apartment building on October 18, 2008. While we acknowledge that the petitioner's documentation may have been destroyed in the fire, we agree with the director's finding that the petitioner provided no evidence of her attempt to retrieve documentation from sources to establish her good faith entry into the marriage, such as lease agreements, tax records and evidence of joint automobile and health insurance.

The director notified the petitioner that she failed to provide an affidavit detailing her courtship and relationship with J-E-. On appeal, the petitioner failed to provide this affidavit, or any other additional evidence of her good-faith entry into the marriage. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Joint Residence

The record also fails to demonstrate that the petitioner resided with her former husband. On the Form I-360, the petitioner stated that she lived with her husband from October 2004 until 2006 and that their last joint address was in Brooklyn, New York. The director correctly determined that the petitioner submitted no evidence of her joint residence with J-E- during this time period. The bank statements are dated May 2010 through September 2010 and the undated photographs are not identified as having been taken at any specific residence that the petitioner shared with her husband.

As stated, the petitioner asserted in an affidavit that her home was destroyed in a fire and her documents were lost. She provided documentary evidence from the American Red Cross and a New York Fire Department Incident Report as evidence of a fire at her apartment building on October 18, 2008. The director correctly found that the petitioner provided no evidence of her attempt to retrieve documentation from sources to establish that she resided with J-E-, such as lease agreements, tax records and evidence of joint automobile and health insurance. The director also properly found that the petitioner failed to describe her residence with J-E- and their shared residential routines.

On appeal, the petitioner has not provided any additional evidence of her joint residence with J-E-. Accordingly, the record does not establish that the petitioner resided with her former husband, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The director determined that the record does not contain satisfactory evidence to demonstrate that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. The petitioner initially submitted two photographs of herself with an injury on her arm. She submitted a petition for a

protection order she filed with the Family Court of the State of New York, County of Kings, dated September 10, 2010, in which she recounted that two days prior J-E- had asked her for money, accused her of doing voodoo on him and threatened to kill her. She indicated that J-E- had been threatening and harassing her for the previous six years and he has a serious drug and alcohol addiction problem. The petitioner provided a copy of an *ex parte* temporary protection order issued against J-E- by the Family Court of the State of New York for the County of Kings for the period of October 27, 2010 until November 9, 2010. She also submitted an invoice issued to her from the New York City Fire Department for emergency ambulance service care to Kings County Hospital on October 4, 2010.

In response to the RFE, the petitioner submitted a court record from the Criminal Court of the City of New York that shows on March 25, 2009, J-E- was charged with a controlled substance possession offense and granted an adjournment in contemplation of dismissal for this offense. She also provided a copy of a temporary protection order issued against J-E- by the New York City Criminal Court, Kings County Branch for the period of April 13, 2011 until May 13, 2011. The protection order shows that J-E- was charged with multiple counts of assault, harassment, larceny, robbery, menacing and criminal possession of a weapon.

On appeal, the petitioner submits another petition for a protection order she filed with the Family Court of the State of New York, County of Kings, dated October 27, 2010, in which she recounted that on October 4, 2010, J-E- arrived at her home asking for money and then attempted to take her pocketbook. She recalled that J-E- physically assaulted her by punching her in the head and choking her before cutting her upper right arm. The petitioner stated that she had to seek medical treatment at the Kings County Hospital emergency room. The petitioner indicated that she filed a criminal complaint and J-E- was charged with 3rd degree assault. The petitioner also provides her complaint for a divorce action filed in the Supreme Court of the State of New York, County of New York. In the complaint, dated November 13, 2010, the petitioner claimed cruel and inhuman treatment by J-E- for physically abusing her on September 8, 2010 and October 4, 2010.

De novo review of the record establishes that the petitioner was subjected to battery by her former spouse. When viewed in the totality, the preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner was battered by J-E- during their marriage. The petitioner submitted her petition for a protection order in which she recalled that on October 4, 2010, J-E- physically assaulted her by punching her in the head and choking her before cutting her upper right arm. She submitted photographs of injuries from this assault as well as evidence that she was transported by ambulance to Kings County Hospital. The temporary protection order issued to the petitioner in April 2011 reflects that J-E- was charged with multiple counts of assault, among other offenses. Accordingly, the petitioner has established that her former husband subjected her to battery during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has established that she was subjected to battery during her marriage. However, she has failed to overcome the director's determinations that she did not establish her entry into the marriage in good faith and residence with her husband. She is consequently ineligible for immigrant classification under section 204(a)(1)(B)(ii) 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.