



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **APR 18 2013** 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:

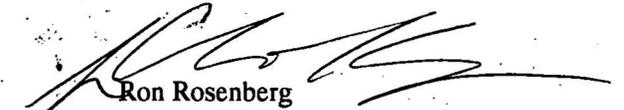
[REDACTED]

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 in accordance with the instructions on 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center, (“the director”), denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal and affirmed its decision upon granting the petitioner’s motion to reconsider. The matter is now before the AAO on a second motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain denied.

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 a United States citizen.

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:

(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)(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.

* * *

(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 was born in Ghana and entered the United States as a B-2 visitor on June 2, 2002. She married H-W¹, a U.S. citizen, on [REDACTED] in Los Angeles, California. The petitioner filed the instant Form I-360 on August 10, 2010. The director denied the petition for failure to establish that she resided with H-W-, was subjected to battery or extreme cruelty by him during their marriage, and entered into their marriage in good faith. The petitioner, through counsel, timely appealed and the AAO dismissed the appeal on April 5, 2012. On August 15, 2012, the AAO affirmed its decision upon granting the petitioner's motion to reconsider. The petitioner timely submitted a motion to reopen and a second motion to reconsider.

Counsel asserts that the AAO's prior decisions imposed a standard of proof higher than the applicable standard of a preponderance of the evidence. Counsel does not, however, cite to binding case law or precedent decisions to establish that the AAO's prior decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy, as required for a motion to reconsider at 8 C.F.R. § 103.5(a)(3). Counsel's brief also fails to establish that the AAO's prior decision was incorrect based on the evidence of record at the time. *See id.* (prescribing this additional requirement). Consequently, the motion to reconsider must be dismissed. *See* 8 C.F.R. § 103.5(a)(4).

Counsel's submission does, however, meet the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). Counsel asserts that the petitioner resided with H-W-, that he subjected her to battery and extreme cruelty during their marriage, and that the petitioner entered into her marriage with H-W- in good faith. On motion, counsel's assertion is supported by additional affidavits from the petitioner, her sister, and her nephew. Accordingly, the motion to reopen is granted.

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. The petitioner's claims and the new evidence submitted on motion do not overcome the director's grounds for denial. The appeal will remain dismissed for the following reasons.

Joint Residence

In its April 5, 2012 decision on appeal and August 15, 2012 decision on the prior motion, the AAO determined that the petitioner had not established that she resided with H-W- during their marriage. The AAO's previous discussions and determinations regarding the deficiencies of the record are incorporated here. On present motion, the petitioner submits a fourth self-affidavit and an affidavit from her nephew, [REDACTED]. Upon review of the petitioner's affidavit, the petitioner does

¹ Name withheld to protect the individual's identity.

not expand upon the nature of the residence where she claims she lived with H-W-. She repeats much of her earlier statements and does not further describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with H-W- after their marriage. The petitioner also submits an affidavit from her estranged nephew and alleged former landlord, [REDACTED] Mr. [REDACTED] states that he allowed the petitioner and H-W- to reside with him in his two bedroom house. He states that the petitioner paid what she could for rent but that he did not keep a record of her payments. He further states that the petitioner and H-W- lived together like a married couple but also states that at the time, he worked long hours and has no direct knowledge of H-W-'s treatment of the petitioner. He does not further describe any routines, observations or otherwise provide probative details regarding the living arrangement.

Counsel asserts on motion that the additional affidavit from Mr. [REDACTED] together with the record below, establishes that the petitioner resided with H-W- and that written documentation is not necessary to establish joint residency. Traditional forms of joint documentation are not required to demonstrate a self-petitioner's residence with an abusive spouse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." 8 C.F.R. § 204.2(c)(2)(iii). Here, the record does not include sufficient consistent and probative testimony to establish that the petitioner jointly resided with H-W- during the marriage. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In its April 5, 2012 decision on appeal and August 15, 2012 decision on the prior motion, the AAO discussed the deficiencies of the record with regards to the petitioner's claims of battery or extreme cruelty and these decisions are incorporated here. On this second motion, the petitioner submits a fourth self-affidavit and an affidavit from her sister [REDACTED]. The petitioner reiterates that a year into their marriage, H-W-'s attitude towards her changed and that he was frequently gone. She repeats much of her earlier statements and does not add probative information regarding any specific incident of abuse to establish that H-W- subjected the petitioner to battery or extreme cruelty. She states that she did not initially mention that H-W- sexually assaulted her because of her cultural beliefs. However, in a previously submitted affidavit, the petitioner described being sexually assaulted by H-W- but did not provide probative details surrounding the incidents. Her prior statements and the other relevant evidence was considered and found insufficient to establish the requisite abuse. On the instant motion, the petitioner does not add substantive information regarding the claimed abuse and further fails to demonstrate that H-W- battered her, or that his 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). Additionally, the affidavit from her sister, [REDACTED] fails to provide details regarding specific incidents of abuse and the record on motion does not include further testimony or evidence establishing that the petitioner was subjected to behavior perpetrated by her husband that constitutes extreme cruelty as set out in the regulation.

Good-Faith Entry into Marriage

In its prior decisions, the AAO determined that the petitioner had not established that she entered into marriage with H-W- in good faith because she failed to provide probative details regarding their courtship, engagement, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. The AAO decisions on April 5, 2012 and August 15, 2012 are incorporated here. Although the petitioner submits a fourth affidavit with this motion, she does not add any probative information to the affidavits she submitted previously. Likewise, her sister's affidavit also fails to add probative information regarding the petitioner's good-faith marital intent and does not demonstrate that her sister had personal knowledge of the relationship. Therefore the evidence submitted on motion fails to establish that the petitioner entered into marriage with H-W- in good faith as defined at 8 C.F.R. § 204.2(c)(1)(ix).

Conclusion

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. Upon reopening, the prior decisions of the AAO will be affirmed. The appeal will remain dismissed and the petition will remain denied.

ORDER: The appeal remains dismissed and the petition remains denied.