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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

Date: **AUG 09 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the previous decision of the AAO will be affirmed.

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.

On August 30, 2010, the director denied the petition on the basis of his determination that the petitioner had failed to establish that her former husband subjected her to battery or extreme cruelty during their marriage. On January 7, 2011, the AAO dismissed the petitioner’s appeal.

On motion, the petitioner submits a statement and an affidavit.

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 or the self-petitioner's child and must have taken place during the self-petitioner's marriage to the abuser.

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Suriname, married J-L-¹, a citizen of the United States, on September 6, 2006. The petitioner filed the instant Form I-360 on March 12, 2010, which is now before the AAO on a motion to reopen and reconsider its prior decision dismissing the appeal. The motion 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 decision to dismiss the appeal will be affirmed for the following reasons.

Battery or Extreme Cruelty

In its January 7, 2011 decision, the AAO reviewed the record and concluded that the relevant evidence failed to establish that J-L- subjected the petitioner to battery or extreme cruelty during their

¹ Name withheld to protect the individual's identity.

marriage. The relevant evidence submitted below was discussed in detail in our prior decision, incorporated here by reference. In summary, the AAO stated that the petitioner did not claim, and the record did not establish, that J-L- battered her. The AAO further stated that the record did not demonstrate that J-L-'s behavior constituted extreme cruelty because the statements of J-L-'s maltreatment were generalized and lacked detailed, probative information regarding specific instances of alleged abuse. The AAO also found that the petitioner's claims of alleged abuse were inconsistent with a Record of Sworn Statement she made before U.S. Citizenship and Immigration Services (USCIS) on June 4, 2009. In her sworn statement, the petitioner recounted that she had never been abused. The AAO determined that this inconsistency detracted from the probative value of the petitioner's testimony as well as the findings of her psychological evaluation, which was based upon her testimony.

On motion, the petitioner asserts that she was not given a copy of her June 4, 2009 sworn statement and should be given the opportunity to examine the sworn statement and respond to it. In her affidavit submitted on motion, the petitioner also asserts that she does not recall testifying in her sworn statement that her husband did not abuse her. She states that since she is not a native English speaker, the sworn statement may be questionable. She also requests a copy of her sworn statement.

Upon a review of the record, we find that there was no error in the AAO's prior decision. The record reflects on June 4, 2009, the petitioner attended an adjustment of status interview at the [redacted] Field Office and requested a withdrawal of her application for adjustment of status (Form I-485) based on an underlying alien relative petition (Form I-130) filed by her husband. The petitioner stated in writing that she was withdrawing the adjustment of status application because her husband disappeared and abandoned her. She also gave a sworn statement, which she reviewed and signed on June 4, 2009. In her sworn statement, the petitioner recounted how her husband abandoned her and she stated, "he never got a chance to abuse me." The record reflects that the petitioner was hand delivered a copy of her withdrawal notice and the sworn statement on June 4, 2009. Because the sworn statement is derogatory evidence that the petitioner was aware of, the AAO was not required to provide her with another copy of the sworn statement per 8 C.F.R. § 103.2(b)(16)(i). Nonetheless, as the petitioner indicates that she does not recall her statement, the AAO now provides her with a courtesy copy of her sworn statement attached to this decision. *De novo* review of the record 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 motion, the petitioner has failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion is granted. The AAO's decision to dismiss the appeal, dated January 7, 2011, is affirmed.