



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **AUG 28 2013** 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 (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
Chief, Administrative Appeals Office

DISCUSSION: The Service Center Director (the director) revoked approval of the immigrant visa petition after properly notifying the petitioner. A subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the appeal will be dismissed.

The petitioner seeks immigrant classification under 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 citizen of the United States.

The director revoked approval of the petition on the basis of his determination that the petitioner had failed to establish that she entered into marriage with her spouse in good faith, they resided together, and he subjected her to battery or extreme cruelty during their marriage. On April 29, 2013, the AAO summarily dismissed an appeal because counsel failed to file a brief or any additional evidence with the appeal.

On motion, counsel asserts that she filed a brief with the Vermont Service Center instead of directly with the AAO. Counsel submits a copy of her appeal brief and a FedEx airbill as evidence that it was timely filed with the Vermont Service Center. The motion will be granted.

Applicable Law

Section 205 of the Act, 8 U.S.C. § 1155, states the following:

The Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 204. Such revocation shall be effective as of the date of approval of any such petition.

The regulation at 8 C.F.R. § 205.2(a) states, in pertinent part, the following:

Any Service officer authorized to approve a petition under section 204 of the Act may revoke the approval of that petition upon notice to the petitioner on any ground other than those specified in § 205.1 [for automatic revocation] when the necessity for the revocation comes to the attention of [U.S. Citizenship and Immigration Services].

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(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, a citizen of the United Kingdom, was admitted to the United States on July 10, 2002 under the Visa Waiver Program. She wed M-M-¹, a U.S. citizen, on August 16, 2002 in Denver, Colorado. The petitioner filed two Form I-360 petitions based on her marriage to M-M-. The petitioner's first Form I-360 petition was denied on November 27, 2007. The AAO summarily dismissed a subsequent appeal and then dismissed a motion to reopen and reconsider as untimely. The petitioner filed the instant Form I-360 on September 17, 2010. The Form I-360 petition was approved on June 23, 2011.

On September 22, 2011, the petitioner appeared at the Denver District Office in connection with the adjustment of status application she filed based upon the approved Form I-360.² Subsequent to that interview, questions arose regarding the petitioner's good-faith entry into marriage with M-M-, their shared residence, and the alleged battery and extreme cruelty. The director issued a Notice of Intent to Revoke (NOIR) on April 18, 2012, and requested that the petitioner provide evidence to resolve numerous inconsistencies in the record. The petitioner, through counsel, submitted a timely response, which the director found to be insufficient. The director revoked approval of the petition on October 19, 2012.

¹ Name withheld to protect individual's identity.

² Form I-485, Application to Adjust Status, Receipt Number [REDACTED] filed September 17, 2010 and denied October 19, 2012.

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 on motion do not overcome the director's determinations and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to demonstrate that she entered into her marriage in good faith. In the petitioner's initial affidavit dated November 6, 2006, she briefly recalled that her brother introduced her to M-M-. She recounted in a one-sentence statement that during their courtship M-M- would take her out and they had "a lot of fun together." The petitioner failed to describe her wedding ceremony, joint residence with her spouse or any of their shared experiences, apart from the alleged abuse. Although the petitioner stated in her affidavit that she became pregnant with M-M-'s child after their marriage, she did not provide evidence of having a child with M-M-. The director correctly determined that the birth certificate the petitioner submitted shows that her son was born almost one year after her marriage to M-M-, but it does not state that M-M- is her son's father. The director correctly noted that the hospital "confirmation of birth" the petitioner submitted contains an alteration with M-M-'s name handwritten into the typed form.

The petitioner submitted below letters from her brother, [REDACTED] cousin, [REDACTED] and 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 with the couple in detail or otherwise provide detailed information establishing their personal knowledge of the relationship.

The petitioner submitted the following documentary evidence below: joint federal tax returns for 2002 and 2003; a joint state tax return for 2004; a bank statement for a joint account; collection notices for returned checks; joint cable, telephone and utility bills; a mail order receipt addressed to the couple; and evidence that M-M- is the beneficiary of the petitioner's life insurance policy. These documents are addressed to the petitioner and M-M- at apartments on [REDACTED] in Denver, Colorado and [REDACTED] in Aurora, Colorado. However, the probative value of these documents is undermined by derogatory evidence in the record, of which the petitioner was made aware in both the NOIR and the revocation notice. The petitioner submitted joint leases for [REDACTED] and [REDACTED] which as correctly determined by the director, were both altered. The first lease was for [REDACTED] for the period of September 1, 2002 until February 28, 2004. The petitioner's name was handwritten onto the lease with a notation that she was "added" on February 21, 2003. United States Citizenship and Immigration Services (USCIS) officers contacted the landlord of this property and learned that M-M- was the only name listed on the lease according to the apartment complex records. The officers also learned that M-M- was evicted from the property in April 2003 for non-compliance with the apartment complex rules. The petitioner, however, had provided on her biographic information sheet (Form G-325A), dated October 4, 2004, that she resided at the apartment on [REDACTED] from September 2002 until February 2004. The second lease was for [REDACTED] for the period of August 1, 2004 until January 31, 2005. The lease shows both the petitioner and M-M-'s signatures and

initials. USCIS officers contacted the landlord of this property and learned that the petitioner resided at this property with a child and a man named "[REDACTED]" The landlord also stated that the lease on record with the apartment complex does not include the initials or signature of M-M-.

On appeal, counsel asserts that the petitioner resided at different addresses because of the couple's "money problems." Counsel contends that although the petitioner clearly made mistakes in accurately reporting the dates and addresses of her residence with M-M-, she has submitted "ample evidence" to show that the marriage was in good faith. Counsel, however, does not address the director's determination that the two joint leases submitted by the petitioner were altered and that the landlords of these properties had no knowledge of the couple's joint residence. The determination that the leases were altered and that the petitioner never resided with M-M- at the claimed addresses provided the director with good and sufficient cause to revoke approval of the instant petition after the petitioner failed to address these inconsistencies in response to the notice of intent to revoke.

The remainder of the petitioner's evidence also does not demonstrate that she entered into marriage with M-M- in good faith. The petitioner in her affidavit failed to describe in probative detail her courtship with M-M-, their wedding ceremony, their joint residence or any of their shared experiences, apart from the alleged abuse. None of the petitioner's friends or family members discussed in probative detail their observations of the petitioner's interactions with or feelings for her former 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.

Joint Residence

The director also correctly determined that that the record fails to demonstrate that the petitioner resided with M-M-. On the Form I-360, the petitioner stated that she resided with M-M- from August 2002 until May 2006 and their last joint address was at [REDACTED] in Aurora, Colorado. In the NOIR, the director informed the petitioner that she submitted no documentation to establish her residence at this address and her Form G-325A, dated June 28, 2010, does not reflect this address. The director noted that the record contains a birth certificate for the petitioner's daughter who was born on December 26, 2005 in Denver, Colorado, which shows that the petitioner had a child outside of her marriage to M-M-. The father's name listed on the birth certificate is "[REDACTED]"³. The director stated that public records reveal that the petitioner and "D-O-" resided together during this time at [REDACTED] in Aurora, Colorado. In response to the NOIR, counsel asserted that the petitioner incorrectly stated on her Form I-360 that her last date of joint residence with M-M- was May 2006. Counsel stated that the petitioner corrected this date at her adjustment of status interview on September 22, 2011. However, the record does not show an amended date on the Form I-360 and counsel did not provide the corrected date in response to the NOIR.

Counsel submitted in response to the NOIR, copies of five mail envelopes addressed to M-M- at [REDACTED]. As discussed, the petitioner also previously submitted: joint tax returns; a bank statement; collection notices for returned checks; joint cable, telephone and utility bills; a mail order receipt; and a life insurance policy. However, the probative value of these documents is undermined

³ Name withheld to protect the individual's identity.

by the aforementioned derogatory evidence, which shows that the lease for [REDACTED] was altered to include M-M-'s initials and signature and the landlord recalled that the petitioner resided at this property with a man named [REDACTED]. The probative value of the documents is further undermined by derogatory evidence that shows the lease for the apartment on [REDACTED] was altered to include the petitioner's name as the landlord stated that only M-M- was listed on the lease.

The petitioner failed to specify in her affidavit the addresses of her residence with M-M-. Nor did she describe their home(s) or shared residential routines in any detail, apart from the alleged abuse. The petitioner's friends and family members, [REDACTED] and [REDACTED] also do not describe any visit to the couple's residence(s) in probative detail.

The petitioner recounted in her initial affidavit that she resided with M-M- until May 2006 when he "disappeared and did not return." This account of events is in conflict with counsel's assertion in her reply to the NOIR that the petitioner made a mistake on her Form I-360 and she ended her relationship with M-M- before she started a relationship with D-O- in 2005. On appeal, counsel asserts that although the petitioner had a child with D-O- and they were in a relationship, M-M- "continued to drift in and out of her life." Counsel, however, has not supported this claim with a new or amended statement from the petitioner. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). 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

The director also correctly reviewed and assessed the evidence of abuse and determined that the record does not show that M-M- subjected the petitioner to battery or extreme cruelty. In her affidavits dated November 6, 2006 and October 11, 2007, the petitioner briefly recounted that M-M- called her names, threatened her and her son, and physically abused her. The petitioner submitted copies of five photographs of scars on her arms and leg she claims were a result of the alleged abuse and the medical report for her visit to a hospital in February 2005 for chest pain. The petitioner's testimony, however, fails to describe in probative detail the alleged incidents of abuse. The petitioner claimed that the incidents of abuse occurred at her residence with M-M-, but, as discussed, she failed to establish their joint residence. The petitioner also claimed that some of the incidents of alleged abuse occurred in 2006; however, counsel now asserts that the petitioner had ended her relationship with M-M- and started a new relationship with D-O- in 2005.

In their statements, [REDACTED] and [REDACTED], briefly asserted that M-M- hit the petitioner, called her names and threatened her. They do not, however, discuss any specific incident of battery or extreme cruelty that they claimed to have knowledge of in probative detail, or provide any substantive description of their contemporaneous observations of the effects of any abuse on the petitioner.

The petitioner also submitted a psychological evaluation dated September 11, 2007 from [REDACTED]. [REDACTED] diagnosed the petitioner with Post Traumatic Stress Disorder (PTSD) and stated that she suffered from physical abuse, verbal abuse and threats during her marriage to M-M-. Although we are not questioning [REDACTED] expertise, her determination is based on the petitioner's testimony, which, as discussed above, is undermined by material inconsistencies and derogatory evidence in the record.

Counsel contends that the director used an "improper evidentiary standard" and incorrectly disregarded credible evidence, including the psychological evaluation and supporting affidavits because they were based on the petitioner's testimony. 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). 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. Here, the material inconsistencies and derogatory evidence in the record detract from the credibility of the petitioner's testimony and the weight given to evidence that is based upon that testimony. 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 establish that she entered into marriage with her husband in good faith, they resided together, and he subjected her to battery or extreme cruelty during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The motion is granted. The appeal is dismissed and approval of the petition will remain revoked.