

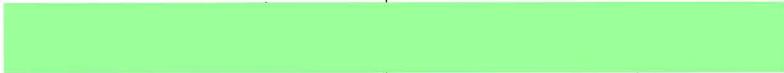


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **FEB 04 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:

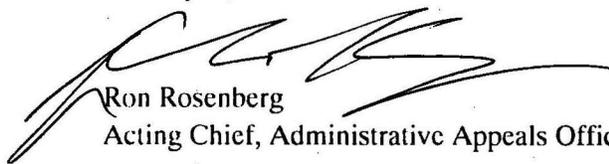
SELF-REPRESENTED

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 director (“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)(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.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty during their marriage and that she entered into their marriage in good faith. On appeal, the petitioner submits additional evidence.

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.

Facts and Procedural History

The petitioner is a citizen of Jamaica who entered the United States as an H-2B nonimmigrant on March 21, 2002. She married N-G¹, a U.S. citizen, on October 16, 2002 in [REDACTED], South Carolina. The petitioner filed the instant Form I-360 on March 28, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty and entry into marriage with N-G- in good faith. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The director correctly determined that the petitioner's husband did not subject her to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. The petitioner did not file evidence regarding battery or extreme cruelty with her original submission. In response to the RFE, the petitioner submitted a personal statement, several police incident reports, and affidavits from two friends. The police incident reports indicated that the petitioner received harassing phone calls from N-G-. The director correctly reviewed the police reports and determined that they did not provide probative information regarding specific incidents of abuse to establish that the petitioner was subjected to battery or extreme cruelty.

Regardless of these deficiencies, traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include... other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). In her affidavit submitted below, the petitioner stated that she cannot remember how she and N-G- got "sidetracked" but that there was a "gradual degradation" of their love and marriage over the years. She stated that in 2003, N-G- started to make questionable charges on their joint bank account and that this behavior continued until 2006 when he over drafted on the account. She stated that on several occasions, N-G- left their marital home for long periods of time without communicating with her and she heard that he is now living with another woman with whom he has a child. The petitioner's statements do not demonstrate that her husband ever 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).

The petitioner also submitted affidavits from friends [REDACTED] [REDACTED] stated that she is friends with the petitioner and witnessed the petitioner in "her time of abuse and intimidation." She did not describe the basis for this observation or recount whether she witnessed any specific incidents of abuse. [REDACTED] stated that she is acquainted with the

¹ Name withheld to protect the individual's identity.

petitioner and that the petitioner described N-G- as verbally abusive. She did not provide probative information regarding any specific incidents of abuse. The director was correct in finding these letters insufficient to demonstrate the petitioner's battery or extreme cruelty at the hands of N-G-.

On appeal, the petitioner submits a brief letter with an attached copy of a bank statement showing a negative balance, and letters from her son [REDACTED] neighbor [REDACTED] and friend [REDACTED]. In her letter, the petitioner explains that the reason why the checking account is overdrawn is because N-G- took the money out to buy alcohol and cigarettes. The petitioner does not further provide probative information regarding any specific instances of abuse. [REDACTED] states that the petitioner told him after the fact about the abuse she suffered but that he never witnessed N-G- abuse his mother. [REDACTED] stated that the petitioner is sad and that it is no secret that the petitioner "was married to man who was abusive to her even in public." [REDACTED] does not state whether she witnessed any specific incidents of abuse or how she became aware of N-G-'s abusive behavior towards the petitioner. [REDACTED] very briefly states that N-G- called the petitioner frequently during work hours which was not permitted but does not describe any particular incident in any detail. When viewed in the aggregate, the relevant evidence submitted below and on appeal is insufficient to establish that N-G- battered the petitioner or that his behavior constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). 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.

Entry into the Marriage in Good Faith

We further find no error in the director's determination that the petitioner failed to establish that she married N-G- in good faith. The record contains the petitioner's affidavit, a copy of a lease, copies of jointly issued utility bills, bank statements, an insurance document, a 2005 federal income tax return showing their filing status as married filing jointly, 2005 W-2 Wage and Tax Statements for the petitioner and N-G-, furniture rental certificates, a letter from the manager at the Rent-A-Center, photographs of several unidentified occasions, and letters from friends. There is no indication that the 2005 tax return showing the petitioner and N-G- as married filing jointly was actually filed and the attached W-2 forms show two different addresses. These documents contain little evidentiary value in determining the petitioner's good-faith intentions upon marrying N-G-. Additionally, the furniture rental certificates and letter from the Rent-A-Center manager showed that the petitioner and N-G- resided together but did not demonstrate the petitioner's marital intentions. The photographs alone were insufficient to establish that the petitioner married N-G- in good faith. The director also correctly reviewed the administrative record and determined that the additional evidence on file further failed to establish the petitioner's good-faith intent in marrying N-G-.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). In her affidavit, the petitioner stated that she went on an evening stroll with a friend and passed N-G- on the street. She stated that she stopped to meet him, immediately knew that they would be

together for a long time and that they were married twelve months later. She generally stated that they shared financial responsibilities that reflected their trust in each other. She then listed activities that they did together such as eating out at Chinese restaurants, taking walks on the beach, and going to amusement parks. The petitioner did not describe in further probative detail their courtship, wedding ceremony, shared residence and experiences apart from the alleged abuse. The letters from the petitioner's friends submitted below also did not contain probative information regarding the petitioner's intentions in marrying N-G-. The petitioner's friends all attested to knowing the petitioner and her husband as a married couple, but they did not describe any particular visit or social occasion in probative detail or otherwise provide detailed information establishing their personal knowledge of the relationship. On appeal, the petitioner explains that her husband overdrew their bank account by making withdrawals on his debit card and that his 2005 Form W-2 lists his parents' address because he did not want to change it after they were married. The petitioner's letters and the other evidence submitted on appeal do not discuss her intentions in marrying her husband. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.