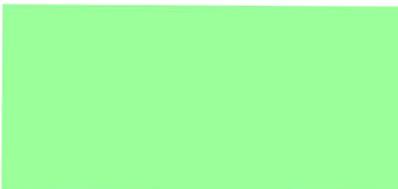




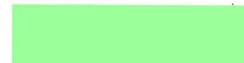
U.S. Citizenship
and Immigration
Services

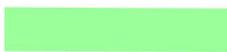
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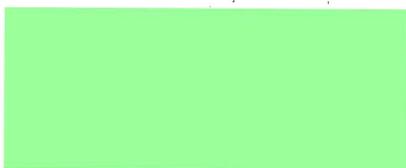
Office: VERMONT SERVICE CENTER

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:

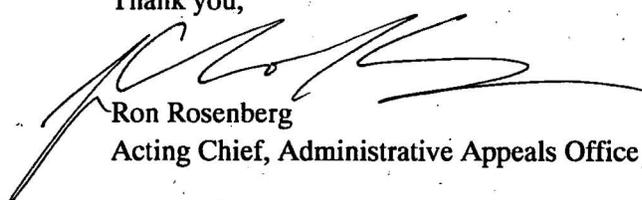


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition. The AAO dismissed a subsequent appeal. The matter is now before the Administrative Appeals Office (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 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 her United States citizen spouse.

The director denied the petition for failure to establish that the petitioner had jointly resided with her spouse and he subjected her to battery or extreme cruelty during their marriage. The AAO affirmed the director’s decision and dismissed a subsequent appeal. On motion, the petitioner, through counsel, reasserts her eligibility and submits additional evidence.

Applicable 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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.

The evidentiary 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:

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.

Facts and Procedural History

The petitioner, a citizen of India, married Z-M,¹ the claimed abusive spouse, on April 17, 2009 in India. She last entered the United States on September 10, 2010 with a K-3 visa. The petitioner filed the instant Form I-360 on January 24, 2011. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the totality of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established she had jointly resided with her spouse or that he subjected her to

¹ Name withheld to protect the individual's identity.

battery or extreme cruelty during their marriage. The petitioner, through former counsel, timely appealed. The AAO dismissed the appeal. The petitioner, through current counsel, has now filed a motion to reopen and reconsider with the AAO, which satisfies the requirements and will be 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 as supplemented on motion fails to establish the petitioner's eligibility. The decision to dismiss the appeal will be affirmed for the following reasons.

Joint Residence

In its August 14, 2012 decision, the AAO determined that the record failed to establish that the petitioner jointly resided with her spouse during their marriage. In reaching this determination, the AAO found that the petitioner had not provided detailed information regarding her claim of joint residence with her spouse in India and Chicago. The AAO stated that the petitioner had not provided a detailed description of the claimed residential building, the couple's apartment, their home furnishings, her place within the claimed residence, any of the jointly-owned belongings, or any of the daily routines within the residence. The AAO concluded that the record did not include sufficient probative evidence establishing that the petitioner resided with her spouse.

On motion, counsel asserts that the AAO "unreasonably rejected credible evidence submitted." Counsel fails to articulate, however, how the relevant evidence demonstrates that the petitioner resided with her husband. Counsel submits a statement from the petitioner, the petitioner's sister, [REDACTED] and the petitioner's brother-in-law, [REDACTED]. The petitioner briefly recounts that she resided with her husband in India for one month in April 2010 and then moved with him to Chicago when she obtained her K-3 visa. The petitioner, however, does not describe their home or shared residential routines in any detail, apart from the alleged abuse. The petitioner's sister indicates that she has "personal knowledge" of her sister's joint residence, but does not offer any further explanation. The petitioner's brother-in-law briefly states that he spoke with the petitioner "several times" when she resided with her spouse in Chicago. He also does not offer any other details to establish his personal knowledge of the petitioner's joint residence. Accordingly, the petitioner has failed to demonstrate that she jointly resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In its August 14, 2012 decision, the AAO also determined that the record failed to establish that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage. The AAO found that the petitioner failed to provide probative details of the alleged physical abuse. The AAO stated that the petitioner submitted a letter from her brother-in-law, which contained an account of how the petitioner left her husband that significantly differed from the petitioner's own testimony. The AAO further stated that the letter the petitioner submitted from her friend, [REDACTED], concluded that the petitioner was battered by her husband, but failed to describe [REDACTED] knowledge of any incidents of physical abuse in the petitioner's marriage.

The AAO also found that the petitioner had not established that she was subjected to extreme cruelty because the relevant evidence did not indicate that her husband's behavior involved threats of 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 AAO stated that the petitioner submitted a handwritten letter from an unnamed police official in India that did not include sufficient identifying information to assess its validity and the letter provided no probative details. The AAO noted that the statement the petitioner submitted from the domestic violence support group, Manavi, discussed incidents of alleged abuse reported by the petitioner that she did not mention in her own personal statement. The AAO further noted that the medical letter the petitioner submitted from [REDACTED] made no mention of the alleged abuse in the petitioner's marriage.

On motion, counsel asserts that the petitioner failed to provide probative details because in her culture it is inappropriate to discuss marital issues. While we understand the cultural barriers to discussing domestic violence, the petitioner must still meet her burden of proof. Here, the petitioner has not provided detailed, consistent and probative evidence of the alleged abuse. In the petitioner's statement submitted on motion, she recounts that her husband beat her, raped her, kept her isolated in their apartment and threatened to kill her. The petitioner, however, failed to describe these incidents in probative detail. The petitioner's sister, [REDACTED] briefly stated that the petitioner informed her that her husband had beaten her and raped her. The petitioner's sister, however, failed to describe her knowledge of the abuse in any detail or provide any substantive description of her contemporaneous observations of the effects of any abuse on the petitioner. The petitioner's brother-in-law stated that he met the petitioner the day after she left her husband and noticed that she had "red and swollen eyes," which to him indicated she had been crying. His statement also fails to discuss any specific incident of abuse that he had knowledge of from the petitioner. 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 motion, the petitioner has failed to establish that she resided with her husband and he subjected her to battery or extreme cruelty. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) 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.

ORDER: The AAO's decision, dated August 14, 2012, is affirmed. The appeal remains dismissed. The petition remains denied.