



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 24 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:

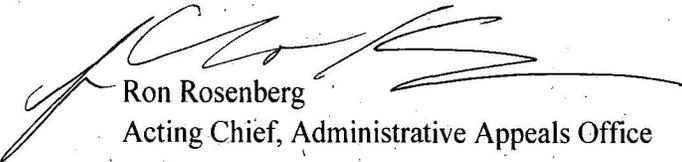
SELF-REPRESENTED

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 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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.

The director denied the petition for failure to establish that the petitioner is a person of good moral character and her husband subjected her to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a statement and 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.

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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Pertinent Facts and Procedural History

The petitioner is a citizen of Uzbekistan who was admitted to the United States on September 18, 2005 as a nonimmigrant visitor. The petitioner married [REDACTED], a U.S. citizen, in Tennessee on March

30, 2007.¹ The petitioner filed the instant Form I-360 on April 2, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good moral character and her husband's battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to fully establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The petitioner's claims and the evidence submitted on appeal do not overcome all of the director's grounds for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

In her initial statement, the petitioner recounted that her husband did not file an immigration petition for her, came home late, demanded money from her, insulted her, beat her, and had an extramarital affair. A significant portion of the petitioner's testimony is vague and fails to provide probative details of the abuse. In response to the RFE, the petitioner reiterated that her husband beat her, refused to give her money, called her names and refused to file her immigration petition. The director correctly determined that the petitioner failed to describe these alleged instances of abuse with sufficiently detailed and probative testimony.

The petitioner's friends attested to her troubled marriage, but their statements fail to demonstrate that the petitioner's husband subjected her to battery or extreme cruelty. [REDACTED] stated that the petitioner and her husband argued and had "family problems." [REDACTED] stated that the petitioner's husband had an extramarital affair and asked the petitioner for money. [REDACTED] stated that the petitioner and her husband had "some issues in their marriage." [REDACTED] stated that the petitioner and her husband were "having problems." None of these letters indicate that the petitioner's husband's behavior involved battery, 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 petitioner's adult son, [REDACTED], stated that the petitioner was upset when her husband had to leave for a job in Ohio. He recounted that his stepfather would "use physical strength" against the petitioner. [REDACTED] statement fails to discuss any specific incident of battery or extreme cruelty that he witnessed in probative detail, or provide any substantive description of his contemporaneous observations of the effects of any abuse on the petitioner.

The petitioner submitted a psychological evaluation from [REDACTED], dated March 24, 2010. Dr. [REDACTED] diagnosed the petitioner with major depressive disorder and having "marital problems." She briefly stated that the petitioner reported emotional, verbal and physical abuse by her husband. Dr. [REDACTED] however, failed to describe any alleged incidents of abuse. In response to the RFE, the petitioner submitted another psychological evaluation from Dr. [REDACTED] dated June

¹ Name withheld to protect the individual's identity.

15, 2010. Dr. [REDACTED] stated that the petitioner was receiving medication to treat her major depressive disorder and she had shown significant improvement. Dr. [REDACTED] indicated that the petitioner was suffering from "marital problems" and a "lack of support" in her marriage, but she did not discuss the petitioner's claims of alleged abuse.

The petitioner submitted a criminal and traffic record for her husband dated November 20, 2007, which reflects that her husband had been arrested on numerous occasions prior to their marriage, but which does not indicate that the petitioner was the victim of any of his listed offenses.

In denying the petition, the director stated that the petitioner's evidence did not provide sufficient detail or describe specific acts of the alleged abuse. On appeal, the petitioner reiterates her previous statements, but does not offer any probative details to substantiate her claims. The petitioner submits letters from her friends, [REDACTED] and [REDACTED], and an additional letter from [REDACTED] stated that the petitioner and her husband "started having problems, like arguing, having disputes, just couldn[t] get along together." [REDACTED] letter does not indicate that the petitioner was ever battered or subjected to extreme cruelty by her husband. [REDACTED] briefly stated that she saw marks on the petitioner's face after the petitioner contacted her husband and when [REDACTED] visited the petitioner in "July - August 2009." However, in her statements, the petitioner only mentions one incident when her husband allegedly beat her in February 2009. She does not discuss any battery which occurred in July or August 2009, as indicated by [REDACTED] reiterated that the petitioner is suffering from major depressive disorder related to her marital problems. Although [REDACTED] letter states that the petitioner has "marital problems," she does not indicate that the petitioner suffered from battery or extreme cruelty during her marriage. 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.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character includes local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in April 2007 and ending in April 2010).

The record reflects that the petitioner resided in Nashville, Tennessee and Brooklyn, New York during the requisite period. As evidence of her good-moral character, the petitioner initially submitted a police clearance from the New York City Police Department based upon her fingerprints. The police clearance, dated June 7, 2010, reflects that the petitioner has no criminal record with the New York City Police Department. The director determined that this police clearance alone was insufficient evidence of the petitioner's good moral character because the record showed that she also resided in Tennessee during the requisite period. On appeal, the petitioner submits a police clearance from the Nashville, Tennessee Metropolitan Police Department conducted upon the petitioner's name and date of birth. The police clearance, dated December 2, 2010, reflects

that the petitioner does not have an arrest record within the jurisdiction. Accordingly, the petitioner has established that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has established that she is a person of good moral character. However, she has not established that she was subjected to battery or extreme cruelty during her marriage. 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. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.