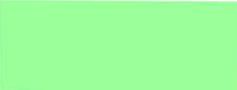


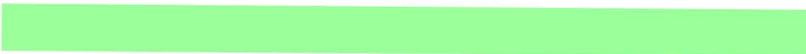


U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **JUL 10 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:

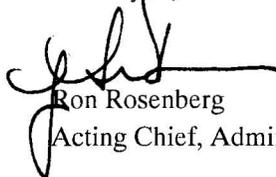


INSTRUCTIONS:

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
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) revoked approval of the immigrant visa petition after properly notifying the petitioner 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 United States citizen spouse.

The director revoked approval of the petition on the basis of his determination that the petitioner failed to establish that her husband was a United States citizen, that she maintained a qualifying relationship with him, that she resided with him, that she was a victim of battery or extreme cruelty, and that she entered into the marriage in good faith. On appeal, the petitioner, through counsel, submits a brief and additional evidence.

Relevant Law and Regulations

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 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:

(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 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:

(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.

(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. . . .

(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 Uzbekistan, married C-B¹, a claimed citizen of the United States, on February 21, 2006. She filed the instant Form I-360 on March 9, 2009 and it was approved on April 14, 2010. The director issued a Notice of Intent to Revoke (NOIR) approval of the self-petition on July 31, 2012, and notified the petitioner that evidence contained in the record as well as statements made by the petitioner during her adjustment of status interview called into question the appropriateness of the approval of her Form I-360. The director stated that after a full review of the administrative record, the petitioner had failed to establish that her former husband was a U.S. citizen, that she jointly resided with C-B- during their marriage, that she was subjected to battery or extreme cruelty by him, and that she married him in good faith. The petitioner, through counsel, submitted a timely response which the director found insufficient to overcome his proposed grounds for revocation. The director revoked approval of the petition on September 21, 2012.

The AAO conducts appellate review on a *de novo* basis. *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 and approval of the petition will remain revoked for the following reasons.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director correctly determined that the record below failed to demonstrate that the petitioner had a qualifying relationship with a United States citizen and was eligible for immediate relative classification. The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires that the petitioner submit evidence of C-B-'s U.S. citizenship. The record below contained a letter from the Social Security office

¹ Name withheld to protect the individual's identity.

addressed to C-B-, a copy of C-B-'s social security card, a copy of C-B-'s school record, and a record of C-B-'s criminal history. This evidence was found to be insufficient to overcome the grounds for revocation.

On appeal, the petitioner submits an undated and unsigned letter from [REDACTED] vice-president of investigations at [REDACTED] who claims to have been unsuccessful in his attempts to obtain proof of C-B-'s U.S. citizenship. Mr. [REDACTED] did not give specific, probative details about the efforts made or when such efforts were made. He further states that his office attempted to identify C-B-'s parents through West Virginia census records and that these attempts were also unsuccessful; however, Mr. [REDACTED] does not state the reasons why the attempts failed or otherwise provide information about his company's research methods. Accordingly, the petitioner has not established that she had a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act.

Joint Residence

The director correctly determined that the record below failed to demonstrate that the petitioner resided with C-B-. The petitioner stated on her Form I-360 that she resided with C-B- from February 14, 2006 to February 18, 2008. The record contains the following: the petitioner's affidavit; affidavits from friends; joint bank statements and utility bills; and photographs of the petitioner and C-B- on several, unidentified occasions. The director correctly reviewed and addressed the deficiencies of the record. The joint bank statements and bills indicated that C-B-'s name was on the accounts but did not establish that he resided with the petitioner. The photographs showed that the petitioner and C-B- were pictured together on different occasions but also did not indicate a shared address. In response to the NOIR, the petitioner submitted an additional affidavit and affidavits from friends.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's joint residence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-petitioner may submit "affidavits or any other type of relevant credible evidence of residency." *See* 8 C.F.R. § 204.2(c)(2)(iii). The petitioner, in either of her affidavits, did not describe her shared residence with C-B- in any probative detail. In her first affidavit, the petitioner stated that she moved in with C-B- after their marriage in February of 2006. She did not describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with C-B- after their marriage. In her second affidavit, the petitioner repeated her earlier statements and again failed to provide probative information regarding their shared residence apart from the claimed abuse. The affidavits from the petitioner's friends attested to knowing the petitioner and C-B- as a married couple but did not describe any specific visit in probative detail or otherwise provide information about their shared marital residence.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) failed to evaluate the petitioner's evidence using the any credible evidence standard and that the record below established the petitioner's joint residence with C-B-. No additional evidence is submitted on appeal. The petitioner's affidavits do not provide any probative information regarding her joint residency with C-B-. Further, a review of the administrative record shows contradicting information regarding the dates they

resided in Florida and New York which are not adequately explained by the petitioner other than to claim that the petitioner's former representative was at fault for the inconsistencies. The petitioner did not then describe her joint residence with C-B-, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with C-B- after their marriage. The lack of probative detail in the petitioner's self-affidavits, the affidavits from her friends, and the deficiency of the record provided the director with good and sufficient cause to revoke approval of the instant petition. In sum, the preponderance of the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The director correctly determined that the petitioner failed to establish that she married C-B- in good faith. The record contains the petitioner's affidavits, affidavits from friends, joint bank statements and utility bills, and photographs. The bank statements and utility bills demonstrated that C-B-'s name was placed on these accounts but did not establish the petitioner's good-faith intentions upon marrying him. The photographs showed that the petitioner and C-B- were together on several occasions but also did not establish that the petitioner married C-B- in good faith.

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 this case, the petitioner's affidavits do not provide sufficient detail to adequately address her good-faith intent upon marrying C-B-. In her first affidavit, the petitioner stated that she first met C-B- on December 25, 2005 at a home improvement store in New York while she was visiting her friend. She stated that C-B- walked her and her friend to the bus stop and gave them his business card. The petitioner stated that she next met C-B- while at her friend's house when he came to repair the plumbing in the kitchen. The petitioner stated that C-B- took her telephone number and called her the next week to ask her out to dinner. On the night that they were supposed to go on a date, the petitioner was not feeling well so he came to visit her at her friend's house instead. The petitioner recounted that C-B- then came every week to bring her flowers, cake, and other groceries. She stated that she met his family in Long Island and that he spoke with her children in Uzbekistan on a weekly basis. She stated that he proposed on January 15, 2006 and told her that he wanted to take her to live in Florida where he owned a home. The petitioner stated that they moved to Florida on January 20, 2006, got married on February 14, 2006, and that things were good for the first two years. She did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the alleged abuse. In her second affidavit, the petitioner corrected her marriage date but did not provide any probative information establishing that she married C-B- with good-faith intentions. The affidavits from her family and friends likewise spoke predominantly of the abuse and did not further describe in probative detail the petitioner's relationship with C-B- and her intentions upon marrying him.

On appeal, counsel asserts that the discrepancies of the record result from mistakes made by the petitioner's previous counsel and other, unscrupulous representation. Counsel further asserts that the director failed to apply the any credible evidence standard in revoking the petitioner's approved self-petition. No additional evidence was submitted on appeal. 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.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal does not demonstrate that the petitioner was subjected to battery or extreme cruelty by her husband. In her first affidavit, the petitioner stated that the first two years were good but then he started drinking a lot of alcohol and smoking marijuana. She stated that he began verbally abusing her and sexually assaulted her. She further stated that he stole from her, cheated on her with his former girlfriend, and threatened her with deportation. In her second affidavit, the petitioner stated that her problems with C-B- started in July of 2006 and not 2008 as earlier stated. She blamed this inconsistency on O-M-², a woman who helped her fill out and submit the Form I-360. The petitioner claimed that O-M- never read back her affidavit in Russian and so the petitioner was unaware of the incorrect information. The petitioner also stated that she found out she was pregnant with C-B-'s child in July of 2006 and that he assaulted her when he found out, causing her to have to terminate the pregnancy.

The record also includes letters from family and friends, a psychological evaluation from Dr. [REDACTED] M.D., an updated comprehensive psychiatric report from Dr. [REDACTED] a letter from Dr. [REDACTED], medical documents, and photographs of the petitioner in the hospital and of various bruising on her body. The letters from her family and friends stated that the petitioner suffered from physical and sexual abuse by C-B- but did not provide probative information about any specific acts. [REDACTED] stated that the problems in the marriage began in February of 2008 when the petitioner found pictures of C-B- with another woman. [REDACTED] stated that she saw the petitioner in April of 2008 who told her that the petitioner and C-B- were having marriage problems. Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] did not describe any specific acts of abuse in any probative detail or otherwise establish their personal knowledge of the alleged abuse. [REDACTED] stated that in August of 2006, the petitioner informed them that C-B- had beaten her up after he found out she was pregnant. Ms. [REDACTED] and Ms. [REDACTED] described taking the petitioner to the hospital and back home where they witnessed C-B- kick the petitioner in the stomach several days later. They stated that this caused the petitioner to terminate the pregnancy because of the threat of a miscarriage. Neither Ms. [REDACTED] nor Ms. [REDACTED] further described this incident or provided additional, probative information regarding other specific incidents of abuse.

In his psychological evaluation dated November 28, 2009, Dr. [REDACTED] stated that the petitioner and C-B- had a good relationship during the first two years of marriage. In his comprehensive psychiatric report dated August 22, 2012, Dr. Isakov stated that soon after the petitioner and C-B- moved back to New

² Name withheld to protect the individual's identity.

York in July of 2006, C-B- became verbally and emotionally abusive. This is inconsistent with his earlier report and no explanation was given for this inconsistency. While we do not question Dr. [REDACTED] professional expertise, his assessments of the abuse are based on his interviews of the petitioner, and they provide no further, substantive information regarding the claimed abuse nor do they explain the petitioner's inconsistent statements regarding the abuse. The medical documents from August of 2006, including a letter from Dr. [REDACTED], M.D. confirmed that the petitioner was pregnant and terminated her pregnancy. The medical documents from April of 2007 indicated that the petitioner complained of abdominal pain and that tests were run. The medical documents and Dr. [REDACTED]'s letter did not mention the petitioner's husband or any domestic violence as a causative factor of her physical health conditions. In addition, photographs of the petitioner's bruising on her body and her stay at the hospital failed to demonstrate that C-B- was the cause of her injuries.

On appeal counsel argues that the director does not have good and sufficient cause to revoke the petitioner's approved self-petition because the discrepancies can be explained by O-M-'s misrepresentation of the petitioner's claim. However, this assertion fails to explain the discrepancies found in Dr. [REDACTED]'s reports, whose reports were based on interviews with the petitioner, and in the affidavits from friends submitted below. The petitioner does not submit additional evidence on appeal regarding the claimed abuse. A review of the record fails to establish that C-B- 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.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the approval of the petition will remain revoked for the reasons stated above, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.