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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W. MS 2090
Washington, DC 20529-2090



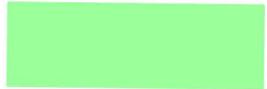
U.S. Citizenship
and Immigration
Services



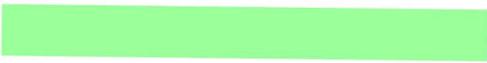
Date: **JUL 23 2013**

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 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 for failure to establish that she resided with her U.S. citizen husband, that she entered into marriage with him in good faith, and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, the petitioner, through counsel, submits a brief 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 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)(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 or the self-petitioner's child, 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.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of Uganda who entered the United States on April 3, 2007 as a B-2 visitor.¹ She married J-P-², a U.S. citizen, on February 6, 2008 in [REDACTED] California. The petitioner filed the instant Form I-360 on October 28, 2010. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's residence with J-P- during their marriage, the requisite battery or extreme cruelty, and entry into marriage with J-P- 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.

Joint Residence

The record fails to demonstrate that the petitioner resided with J-P-. The petitioner stated on her Form I-360 that she resided with J-P- from January of 2008 to August of 2010 in [REDACTED] California. The relevant evidence on the record contains the following: the petitioner's affidavit; copies of joint utility bills; 2008 and 2009 unsigned and undated federal income tax returns showing their filing status as married filing jointly; 2008 and 2009 tax transcripts showing their filing status as married filing jointly; a letter from apartment manager [REDACTED] affidavits from friends [REDACTED] and [REDACTED]; and letters from the Employment Development Department addressed to J-P- at the shared address. The joint utility bills show that both the petitioner and J-P-'s names are on the account but are insufficient to show that the two resided together. The earliest bill is dated in December of 2009, more than a year after the two were married and several of the submitted statements are dated after the petitioner separated from J-P-. With the exception of one letter, the remaining letters from the Employment Development Department are dated after the two separated. As such, little evidentiary weight is to these documents as evidence that the two resided together after their marriage. The tax returns and transcripts alone are insufficient to establish joint residence. Furthermore, a review of the administrative record shows that the petitioner and J-P- submitted a 2007 federal income tax return as married filing jointly prior to being married and prior to residing together. Accordingly, this diminishes the evidentiary weight of the 2008 and 2009 tax returns.

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

¹ The petitioner subsequently departed and was paroled into the United States on September 24, 2010.

² Name withheld to protect the individual's identity.

“affidavits or any other type of relevant credible evidence of residency.” See 8 C.F.R. § 204.2(c)(2)(iii). In her affidavit, the petitioner stated that she moved in with J-P- after the two became engaged in January of 2008. She did not describe her shared residence with J-P- in any probative detail apart from the claimed abuse. She did not, for example, describe their home, shared belongings, and residential routines or provide any other substantive information sufficient to demonstrate that she resided with J-P- after their marriage. Instead, the petitioner recounted that J-P- spent two nights a week staying at his ex-girlfriend’s home to take care of the son he had with her. She also recounted that in May of 2008, J-P- was arrested and incarcerated for approximately six months. She stated that when he was released from jail, he moved in with his mother to take care of her because she was ill and also to be closer to his son.

In her brief affidavit, the apartment manager [REDACTED] stated that she did meet J-P- and gave an application to the petitioner to add J-P-’s name on the lease. She also stated that she did not recognize J-P- in a picture that was shown to her by two Department of Homeland Security officers who were attempting to verify that the petitioner and J-P- resided together because he looked younger in the photograph. She did not further describe their apartment or provide any other information regarding the petitioner and J-P-’s shared apartment. The affidavits from the petitioner’s friends also did not provide probative details regarding the marital residence to overcome the lack of traditional forms of joint documentation. In her affidavit, [REDACTED] stated that she has visited the petitioner at home and has seen the petitioner and J-P- in their apartment. [REDACTED] stated that he attended a party at the petitioner and J-P-’s apartment to celebrate their marriage. Neither affidavit contained any probative information about the petitioner and J-P-’s shared residence or described any particular visit in detail.

On appeal, counsel argues that the director erroneously dismissed the affidavits without reasonable explanations and that the petitioner submitted sufficient evidence to corroborate her residence with J-P- during their marriage but fails to demonstrate how. On appeal the petitioner submits an affidavit from her mother, [REDACTED] and her sister, [REDACTED] Ms. [REDACTED] states that she spoke to J-P- several times on the telephone. Ms. [REDACTED] states that she visited the petitioner’s apartment that she shared with J-P- and that the three went on outings together. Neither individual describes the apartment or any visit in probative detail or otherwise establishes her knowledge of their marital residence. Section 101(a)(33) of the Act defines the term “residence” as a person’s “principal, actual dwelling place in fact, without regard to intent.” Based on the petitioner’s description, J-P- resided elsewhere during the marriage and made brief, periodic visits to the petitioner’s home. 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

We find no error in the director’s determination that the petitioner’s husband did not subject her to battery or extreme cruelty and the brief submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner’s affidavit, a psychological evaluation from Dr. [REDACTED] Ph.D., an affidavit from [REDACTED] Licensed Marriage and Family Therapist (LMFT), documents pertaining to J-P-’s arrest, and affidavits from friends. In the psychological

evaluation, Dr. [REDACTED] diagnosed the petitioner with Post-Traumatic Stress Disorder (PTSD) and Anxiety Disorder. He also found her to have symptoms of depression and concluded that the petitioner had been domestically abused. Dr. [REDACTED] also concluded that much of the petitioner's current stress and anxiety was a result of her immigration issues. While we do not question Dr. [REDACTED]'s professional expertise, his evaluation is based on his interview of the petitioner and largely repeated the statements from the petitioner's affidavit. It provided no further, substantive information regarding the claimed abuse. The one paragraph letter from [REDACTED] is a summary of what the petitioner presented and also does not add probative information regarding the claimed abuse. Likewise, the submitted documents regarding J-P-'s criminal history failed to identify any abusive behavior towards the petitioner by him.

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, the petitioner stated that her problems with J-P- began in April of 2008 when he started staying over at his ex-girlfriend's home and the petitioner suspected he was cheating on her. She stated that around this time, J-P- lost his job and that he would drink heavily on occasion. She stated that he would call her derogatory names, steal money from her, and force himself on her sexually. She stated that she became pregnant twice, he forced her to have abortions both times, and passed on a sexually transmitted disease to her. She also recounted that the Internal Revenue Service retained their refund one year because J-P- owed child support payments to a second child that she knew nothing about. The director determined that, as it was found that the petitioner and J-P- did not reside together, the petitioner's claims of battery and/or extreme cruelty were diminished.

In his affidavit, [REDACTED] stated that the petitioner told him that J-P- cut off part of her hair out of anger and that Mr. [REDACTED] advised her to end the relationship. He also described one occasion when he witnessed J-P- call the petitioner a name and accused Mr. [REDACTED] of trying to have an affair with her. Mr. [REDACTED] stated that he gave the petitioner a ride to a clinic where she had an abortion and also picked her up from the airport when she returned from a trip to Uganda. He did not provide further, substantive information regarding any of these incidents or describe other specific acts of abuse. Lourdes Rodriguez stated that she saw a bruise on the petitioner's leg that the petitioner said was caused by J-P-. Ms. [REDACTED] also stated that she witnessed the petitioner crying because J-P- was harassing her for money but she did not describe whether specific incidents of abuse were personally witnessed or otherwise establish her knowledge of such abuse.

On appeal, counsel asserts that the director "improperly negated" the petitioner's evidence of battery and extreme cruelty but she does not address their deficiencies. The petitioner submits an affidavit from her sister, [REDACTED] who states that she witnessed the petitioner and J-P- have fights. She does not provide any probative details regarding specific incidents of abuse. When viewed in the aggregate, the record does not demonstrate that the petitioner's husband ever battered her 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.

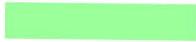
Good-Faith Entry into the Marriage

The director further correctly determined that the petitioner failed to establish that she married J-P- in good faith. The relevant evidence on the record contains the petitioner's affidavit, joint utility bills, payment receipts, 2008 and 2009 federal income tax returns and transcripts, medical documents, and photographs of the petitioner and J-P- on their wedding and various other occasions. The utility bills are dated over a year after the petitioner and J-P- were married and several are dated after they were separated. As such, the statements have little probative value in demonstrating that the petitioner entered into her marriage in good faith. The photographs showed only that the petitioner and J-P- were pictured together and also did not establish the petitioner's marital intentions. Likewise, the medical documents showed that the petitioner was pregnant but did not reference J-P- or further demonstrate that the petitioner married him in good faith. The federal income tax returns and transcripts alone were insufficient to establish that the petitioner married J-P- in good faith.

Nonetheless, 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 met J-P- at a Ugandan club and they connected immediately. She stated that although he lived an hour away, they tried to see each other often and she fell in love. She stated that he proposed and the two were married in a small ceremony on February 6, 2008. The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. The affidavits from the petitioner's friends, [REDACTED] briefly stated that they knew the petitioner and J-P- as a married couple but 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, counsel asserts that the director erred in implying that evidence establishing paternity of her baby should have been submitted. To the extent the director indicated that such documentary evidence was required, that portion of his decision is hereby withdrawn. Nevertheless, we find no error in his ultimate determination that the petitioner failed to establish her good faith marital intentions. On appeal, the petitioner also submits affidavits from her mother and sister but these affidavits contain no probative information regarding the petitioner's intentions in marrying her spouse. In this case, the statements of the petitioner and her family and friends submitted on appeal and below, do not provide sufficient probative information to establish her good-faith intent upon marrying J-P-. 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

The petitioner has not overcome the director's grounds for denial on appeal. She has not demonstrated that she resided with her husband during their marriage, entered into marriage with him in good faith, and was subjected to battery or extreme cruelty by him during their marriage. Accordingly, the



petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these three grounds.

The burden of proof in these proceedings rests solely with the petitioner. 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 petition will remain denied for the above-stated reasons, with each considered an independent and alternative basis for denial.

ORDER: The appeal is dismissed.