



U.S. Citizenship
and Immigration
Services

(b)(6)

Date:

MAY 24 2013

Office: VERMONT SERVICE CENTER

File:

IN RE:

Self-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 our 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 request 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 that any motion must 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 resided with her husband, entered into marriage with her husband in good faith, and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief.

Applicable Law

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:

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.

* * *

(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.

* * *

(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 Eritrea who entered the United States on June 12, 2010, with a fiancée visa. The petitioner married her U.S. citizen fiancé on July 7, 2010, in Illinois. The petitioner filed the instant Form I-360 on February 28, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage, shared residence, and her husband's battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

On appeal, counsel submits a brief, copies of an American Immigration Lawyers Association (AILA) document, "VAWA Self-Petitioning Questions" dated November 2003, and a portion of U.S. Citizenship and Immigration Service's (USCIS) Field Manual. No additional evidence was submitted. In the brief, counsel claims that the petitioner has submitted sufficient evidence to establish her eligibility and that USCIS ignored agency policy in arriving at its decision.

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 brief and documents submitted on appeal, fails to establish the petitioner's eligibility. Counsel's contentions on appeal do not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith and Joint Residence

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith or that she resided with her husband. In her affidavit, dated February 17, 2011, the petitioner recalled that she met her husband through her sister and that they exchanged email messages. The petitioner stated that her husband came to visit her in Dubai and proposed. The petitioner recounted that when she came to the United States, she discovered that her husband had deceived her about having a job and where he lived, and she moved in with her husband and her husband's mother. After a few weeks, the petitioner's husband moved to the East Coast and abandoned her, and the petitioner moved in with her sister. The petitioner did not describe in probative detail how she met her husband, their courtship, engagement, wedding, or any of their shared experiences. Similarly, the petitioner did not describe their home or shared residential routines in any detail. The director correctly concluded that this evidence is insufficient to demonstrate that the petitioner married her husband in good faith and resided with him.

The petitioner also submitted four statements from friends and relatives and a psychological assessment. The petitioner's sister, [REDACTED] stated that the petitioner met her husband on the internet and he went to visit her in Dubai where he proposed. [REDACTED] noted that the petitioner moved in with the petitioner's husband and his mother, and that after two months, the petitioner came to live with her in her home. In his affidavit, [REDACTED] reported that the petitioner started a pen-pal relationship with her husband and they were engaged when her husband went to visit the petitioner in Dubai. He

also stated that the petitioner came to the United States to join her husband and that once her husband moved to the East Coast, she was uncomfortable living with her mother-in-law without her husband in the home. In their affidavits, [REDACTED] did not provide any substantive information regarding the affiants' observations of the petitioner's interactions and relationship with her husband prior to and during their marriage, nor did they describe any visits to the petitioner and her husband's claimed joint residence or explain the basis of their knowledge. In their statements, [REDACTED] and [REDACTED] stated that they met the petitioner's husband when he came to visit her in Dubai, but they did not provide any probative information regarding the petitioner's good faith in entering the relationship. The director correctly concluded that these letters provided no specific information demonstrating that the petitioner married her husband in good faith or resided with him.

The petitioner also submitted an exchange of email messages purportedly between herself and her husband prior to their marriage and some photographs. Neither the photographs nor the messages provide any evidence that they shared a joint residence. They also fail to establish that the petitioner entered into her marriage in good faith as the email messages from the petitioner are short and general, and the photographs of the petitioner with her husband on a few unspecified occasions are not accompanied by any explanation of their significance. Accordingly, the record does not establish 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, or that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

On appeal, counsel asserts that the affidavits submitted are sufficient to show good faith marriage and joint residence. Although the director incorrectly stated in his decision that no evidence of good faith marriage or joint residence had been provided, the two affidavits that counsel refers to in her brief are insufficient to meet the petitioner's burden of proof in showing she entered into her marriage in good faith as they do not provide any probative descriptions of the petitioner and her husband's interactions or the petitioner's intentions in entering into the marriage. Similarly, as discussed above, the petitioner's sister and brother in law did not describe the petitioner and her husband's alleged joint residence or any visits there, or explain the basis of their knowledge. Though counsel claims that the counselor's evaluation discussed the devastating effects on the petitioner of her husband abandoning their joint residence, the counselor did not state that the petitioner and her husband shared a joint residence. Rather, she described the effects of the petitioner's husband's deception and misrepresentation, and noted that the petitioner did not know where her husband was and had no way of contacting him.

In this case, the testimonial evidence submitted does not demonstrate the petitioner's entry into her marriage in good faith or that she shared a joint residence with her husband. The petitioner has submitted no probative, detailed account of her intentions in marrying her husband and their relationship or joint residence. The petitioner's and affiants' brief statements are insufficient to sustain the petitioner's burden of proof in this matter. When viewed in the aggregate, the relevant evidence fails to overcome these two grounds for denial of the petition. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her husband in good faith or that she shared a residence with him, as required by sections 204(a)(1)(A)(iii)(I)(aa) and (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 arguments made on appeal fail to overcome this ground for denial. In her affidavit, the petitioner stated that after she arrived in the United States, she discovered that her husband had deceived her and that he had lost his job and moved in with his mother. She recalled that after a few weeks, the petitioner's husband moved to the East Coast and stopped contacting her. The petitioner does not contend that her husband battered her, and she does not describe behavior that 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). [REDACTED] also confirmed that the petitioner found out that her husband did not have a job and lived with his mother, and that he eventually moved to the East Coast and left the petitioner. [REDACTED] do not discuss any incidents of battery or extreme cruelty.

The record also contains a letter from [REDACTED], a licensed clinical professional counselor, who reported that the petitioner told her that her husband deceived her and that in August, 2010, he moved to the East Coast. The counselor stated that the petitioner's husband's betrayal has made her depressed and withdrawn. [REDACTED] summarizes the petitioner's account of her husband's behavior and opines that he deceived and abandoned her causing her unspecified trauma, but [REDACTED] provides no diagnosis of the petitioner's mental health. While we do not question [REDACTED] expertise as a counselor, her letter provides no additional probative information of battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, counsel contends that the director ignored agency policy and cites to the AILA document that describes what type of evidence is considered when evaluating extreme cruelty. Counsel asserts that the petitioner submitted this type of evidence. Counsel, however, only quotes portions of [REDACTED] letter and the affidavits of the petitioner and her sister. Although the director failed to mention [REDACTED] psychosocial assessment, this oversight has not prejudiced the petitioner. The AAO has reviewed [REDACTED] assessment and the other relevant evidence on appeal, and as explained above, the record is insufficient to show that the petitioner was subjected to battery or extreme cruelty by her husband. The relevant evidence does not establish that the petitioner's husband battered her or that his 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). 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 appeal, the petitioner has failed to overcome the director's determinations that she did not establish the requisite entry into the marriage in good faith, joint residence with her husband, and his 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

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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.

ORDER: The appeal is dismissed.