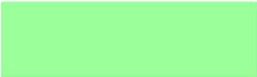




U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **OCT 03 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)

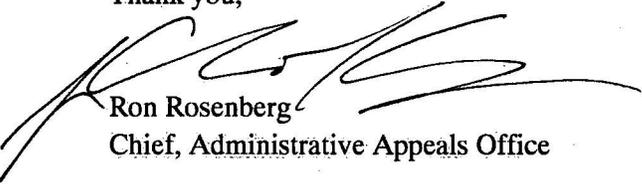
ON BEHALF OF PETITIONER:

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
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 entered into marriage with her United States citizen spouse 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 statement of the Form I-290B Notice of Appeal or Motion, 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:

(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.

* * *

(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 Jamaica who claims she entered the United States on January 11, 2011 as a nonimmigrant visitor. She married F-B¹, a U.S. citizen, during a previous visit on September 27, 2010 in Margate, Florida. The petitioner filed the instant Form I-360 on May 16, 2011. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty and entry into marriage with F-B- 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 on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

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 evidence submitted on appeal fails to overcome this ground for denial. The relevant evidence in the record contains the petitioner's affidavits, letters from family and friends, a letter from [REDACTED] and [REDACTED] with [REDACTED] a police report, F-B-'s petition for protection against domestic violence by the petitioner, a court order dismissing F-B-'s petition for protection, and a medical report. The director correctly determined that the letter from [REDACTED] petition for protection, and medical report did not provide any additional evidence regarding the claimed abuse. The letter stated only that the petitioner registered for the [REDACTED] on March 28, 2011 and that to date, she attended three self-esteem groups and two survivor support groups. [REDACTED] and [REDACTED] did not provide any substantive information regarding the claimed abuse nor did they indicate that the petitioner's participation in the program was due to battery or extreme cruelty at the hands of F-B-. The copy of F-B-'s petition for protection against the petitioner and the subsequent court order dismissing the petition also did not provide probative details regarding any abuse or extreme cruelty inflicted by F-B- upon the petitioner. Further, the medical report showed that the petitioner was diagnosed with an infection and a sexually transmitted disease (STD). The report did not indicate that the petitioner attributed her medical condition to F-B- nor did it demonstrate that the cause of her condition was due to battery or extreme cruelty by F-B-.

Nonetheless, 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 first affidavit, the petitioner stated that after the two were married on September 27, 2010, she returned to England to make arrangements to move back to Florida in December. The petitioner stated that F-B- began requesting that she send him money in order to help with his mortgage payment and became angry if she was unable to comply. She stated that because she sent F-B- money on two occasions, she could not afford to buy a plane ticket and return to the United States in December as she originally

¹ Name withheld to protect the individual's identity.

planned. She recounted that when she was able to travel to Florida on January 10, 2011, F-B- asked her how long she was staying and again asked for more money. When she was unable to comply, the petitioner stated that F-B- became angry and verbally abusive towards her. She stated that he would not give her money to buy food or give her a key to the house but continued to demand money from her to stay at the house. She stated that on one occasion, they got into an argument because the petitioner refused to leave and F-B- slammed a sliding glass door which hit her foot. She explained that because she did not have her cellular telephone, she could not call the police and was forced to walk to her cousin's house for help. Although the petitioner provided details about the events that occurred after the claimed incident of battery, she did not provide substantive information about the specific incident itself. The petitioner mentioned another argument when F-B- raised his hand as if to hit her but was stopped by one of his tenants. She did not further describe this incident or provide probative details about any other incident to demonstrate that her husband ever battered her, or that his behavior 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). In the petitioner's second affidavit, she stated that her first affidavit was sufficiently detailed and that her original statement should be reviewed at the supervisory level. She did not add any substantive information regarding the claimed abuse other than to assert that F-B- gave her a bacterial infection.

The petitioner's friends and family attested to her troubled marriage, but their letters also failed to demonstrate that the petitioner's husband subjected her to battery or extreme cruelty. [REDACTED] (last name illegible) stated that she overheard F-B- call the petitioner names during telephone conversations and that the petitioner related to her that she had to walk everywhere. [REDACTED] stated that F-B- repeatedly threatened to divorce the petitioner and once put her suitcases outside. [REDACTED] also stated that F-B- did not give the petitioner a copy of their marriage certificate when the petitioner requested it. [REDACTED] stated that F-B- was unkind to the petitioner and put her bags out on the porch. [REDACTED] stated that the petitioner told him that F-B- would get mad if she did not give him money and that F-B- did not send the petitioner a copy of their marriage certificate. [REDACTED] also stated that F-B- locked the petitioner out of the house and placed her belongings outside. The petitioner's friends did not describe witnessing specific incidents of abuse, observing contemporaneous effects of the abuse on the petitioner, or otherwise establish their knowledge of such abuse. [REDACTED] described helping the petitioner when F-B- placed her suitcases outside and locked her out of the house. She stated that she urged the petitioner to call the police and that when F-B- returned to the home, he became loud and cursed at his wife saying that the petitioner came to Florida without first asking for his permission. She stated that she never spoke to F-B- after that night but that she maintained contact with the petitioner who said that F-B- once tried to hit her. She did not give further probative details about this incident nor did she describe any other specific incidents of abuse. [REDACTED] described residing at F-B-'s home until December of 2010 and witnessing F-B- act abusively towards the petitioner when she moved to Florida in January of 2011. [REDACTED] stated that when he arrived home, he overheard F-B- tell another friend that he placed the petitioner's belongings outside. [REDACTED] also stated that he witnessed the petitioner go to sleep in the bedroom while F-B- slept in the dining room. He did not further provide probative details about these incidents nor did he explain how he knew of the claimed abuse against the petitioner when he did not reside with F-B- at the time of the petitioner's arrival from England.

On appeal, counsel asserts that the director erred in finding that the petitioner did not contain sufficient details of battery or extreme cruelty and failed to consider the incidents described by the petitioner. However, the petitioner's affidavits and the statements provided by her family and friends failed to provide probative information to establish the claimed abuse. On appeal, the petitioner submits a brief letter but does not speak to the claimed abuse. When viewed in the aggregate, the relevant evidence submitted below and counsel's statements on appeal are insufficient to establish that F-B- subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and 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 F-B- in good faith. The relevant evidence submitted below includes telephone statements, money transfer receipts, photographs of the petitioner and F-B- on their wedding day, and a copy of an undated Christmas card from the petitioner to F-B-. The telephone statements show that the petitioner called the United States, but do not identify F-B- as the recipient. The [REDACTED] receipts show that the petitioner twice sent F-B- money in November and December of 2010. The photographs picture the petitioner and F-B- on their wedding day and with the Christmas card, depict just two events in the petitioner's marriage. This evidence is insufficient to show the petitioner married F-B- 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 first met F-B- about 25 years ago and reconnected with him in September of 2010 when she went to Florida to attend her niece's graduation. She stated that during her vacation, they spoke daily and on September 23, 2010, they met for lunch and he proposed marriage. She accepted and they were married on September 27, 2010 in a small ceremony. She explained that she traveled back to England the next day with the intention of returning to Florida in December. The petitioner did not describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse. In her second affidavit submitted in response to the RFE, the petitioner stated that she did not have additional evidence to submit because her marriage to F-B- was brief and that he prevented her from having access to their documents. She stated that they decided to get married after only a brief courtship because they have known each other for many years and reminded each other of "younger, simpler days." She did not provide further probative information regarding her marital intentions. The letters from her family and friends submitted below were also insufficient to establish the petitioner's good faith in marrying F-B-. Her family and friends described knowing the petitioner and F-B- as a happy couple but they did not describe any visit or social occasion in detail or otherwise provide probative information establishing their personal knowledge of the relationship.

On appeal, the petitioner submits another personal letter reasserting that her marriage to F-B- was real. She repeats her earlier statements and adds that she married him quickly because she knew him for many years and because they were both getting older and F-B- said he needed a wife. She states that even when she went back to England, F-B- was happy that the two had gotten married and told his friends. She did not further describe their courtship, wedding ceremony, shared residence and experiences. 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 was subjected to battery or extreme cruelty by her husband during their marriage and that she entered into marriage with him in good faith. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.