



U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **OCT 22 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 (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 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 submits 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:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of . . . section 204(g) of the Act

(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 Guyana who entered the United States on January 17, 2002 as a B-2 visitor. She married J-I-¹, a U.S. citizen, on May 30, 2009 in [REDACTED] Florida. The petitioner filed the instant Form I-360 on July 25, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite joint residence, battery or extreme cruelty, and entry into marriage with J-I- 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-I-. The petitioner stated on her Form I-360 that she resided with J-I- from May of 2009 to November of 2010 in Florida. The relevant evidence on the record contains the petitioner's letter, a copy of the petitioner's and J-I-'s lease, and a mailer addressed solely to the petitioner, which does not indicate that J-I- resided with her. The lease shows that the petitioner and J-I- were listed as tenants but is insufficient evidence to show that the two actually resided together during their marriage.

On appeal, the petitioner submits joint bank statements from the Bank of America. Although jointly addressed, many of the statements are dated after the petitioner stated that she separated from J-I- in November of 2010. Additionally, a review of the administrative record shows that the petitioner, on her Form G-325A, Biographic Information dated October 3, 2011, stated that she has resided in New York since November of 2010 and not at the Florida address indicated on the statements. The administrative record also contains AT&T cellular telephone statements and copies of Florida driver's licenses for the petitioner and J-I-. While these documents list the same Florida address for the petitioner and J-I-, the AT&T statements indicate telephone usage only for the petitioner.

¹ Name withheld to protect the individual's identity.

Nonetheless, 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). In her letter submitted in response to the RFE, the petitioner did not describe her shared residence with J-I- 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-I- after their marriage. The petitioner submits no additional personal statement on appeal. Consequently, the petitioner has not demonstrated that she resided with J-I- 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. The relevant evidence in the record contains the petitioner's letter and letters from friends [REDACTED]

In her letter, the petitioner stated that J-I- was a good person at first but that drugs made him physically abusive. She stated that he physically and sexually attacked her and also threatened her when she did not give him money for drugs. The petitioner stated that on one occasion, J-I- hit her back. She did not give further probative details about this incident nor did she describe any other specific incidents of abuse. [REDACTED] stated that the petitioner told her that J-I- was abusive and on drugs. She stated that the petitioner showed her the bruises she received from her husband. [REDACTED] stated that she noticed bruises on the petitioner's body who broke down and admitted that they were caused by her husband. The petitioner's friends did not describe these incidents in probative detail or provide any other substantive information about the claimed abuse.

On appeal, the petitioner submits a letter from her brother [REDACTED] and second letters from [REDACTED]. Mr. [REDACTED] states that his sister has suffered a lot and that he never knew that J-I- threatened her. The letters from [REDACTED] repeat their earlier statements. None of the petitioner's family and friends describe any incident in probative detail or provide any substantive information about the claimed abuse. 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-I- in good faith. In her letter, the petitioner briefly described first meeting J-I- in 2007 at a park. She stated that they became good friends and spoke a lot over the telephone. She stated that she moved to New York for a job and later returned to Florida over a year and a half later when her employment ended. She stated that she had become close to J-I- against the wishes of her family and when J-I- was fired from his job, the two got married and lived at the house of her brother's mother-in-law. She did not

describe in further detail their courtship, wedding ceremony, shared residence and experiences apart from the claimed abuse.

On appeal, the petitioner submits bank statements and copies of photographs previously filed with her Form I-360. The photographs show that the petitioner and J-I- were pictured together on three unidentified occasions and do not establish the petitioner's marital intentions. The bank statements show minimal activity in their account and do not indicate that the petitioner and her husband used it for shared financial interests. Further, many of the statements are dated around the time that the two were separated and do not demonstrate that the petitioner entered the marriage in good faith. On appeal, the petitioner submits no additional personal statement describing her marital intentions. 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, 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 and the petition remains denied.