



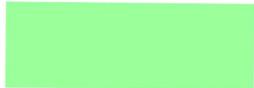
U.S. Citizenship
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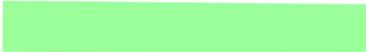


Date: **DEC 05 2014**

Office: VERMONT SERVICE CENTER

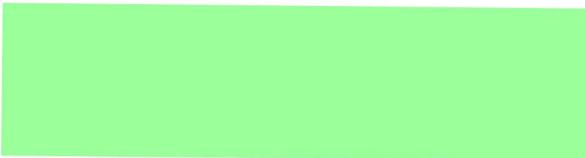
FILE: 

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 (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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center acting 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 sustained and the petition will be approved.

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 was subjected to battery or extreme cruelty by her husband 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)(I) 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:

(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.

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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Haiti who entered the United States on September 16, 2012, on a K-1 fiancée visa. The petitioner married her fiancé F-C-¹, a U.S. citizen, in [REDACTED] Pennsylvania on November [REDACTED]. The petitioner filed the instant Form I-360 self-petition July 30, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite abuse inflicted upon her by F-C- during their marriage. The petitioner, through counsel, 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.

We review these proceedings *de novo*. Upon a full review of the record as supplemented, the petitioner has overcome the director's grounds for denial. The appeal will be sustained for the following reasons.

Battery or Extreme Cruelty

The record contains the petitioner's affidavit and an affidavit from her cousin, [REDACTED]. In her affidavit, the petitioner stated that during their courtship and engagement, F-C- was loving and she did not see any signs of abuse. However, upon her arrival to the United States, the petitioner stated that F-C- completely changed. She stated that she was not allowed to see or speak to her family in the United States and he would only permit her to call her family in Haiti if he was listening in on the conversation. The petitioner recounted that he cursed at her daily, frequently threatened to have her deported, and would not allow her outside of their home. She further described not being allowed to sit down when

¹ Name withheld to protect the individual's identity.

F-C- was at home or express that she was tired, and that this behavior did not change even after she became pregnant in December of 2012. When the petitioner contacted her cousin for help, F-C- bought the petitioner an airline ticket and attempted to force her to return to Haiti in January of 2013. When the petitioner missed the flight, F-C- kicked her out of their home. In her affidavit, Guerdie Anglade stated that the petitioner currently resides with her and that she can attest to the petitioner's isolation caused by F-C-.

On appeal, the petitioner submits a second personal affidavit, a second affidavit from her cousin, [REDACTED] and a letter from Dr. [REDACTED] M.D. In her affidavit, the petitioner adds that in addition to the verbal abuse, F-C- was physically abusive. She states that she was advised by her doctor and her pastor to report the abuse but that she was afraid to because she thought she would be deported. The petitioner states that even though they are now separated, F-C- continues to be abusive, threatens to have her deported, and wants to take her baby away from her by suing her for custody of their child in the State of Pennsylvania, claiming to that court because the petitioner is "illegal" she should not have any custody rights. In her second affidavit, [REDACTED] states that although she did not directly witness F-C- physically abuse the petitioner, she sees the aftermath of F-C-'s abusive treatment of the petitioner. Ms. [REDACTED] further states that F-C- continues to verbally abuse the petitioner and threaten to have her deported. In his letter, Dr. [REDACTED] states that he provided prenatal care for the petitioner on April 17, 2013. He states that during her appointment, the petitioner had complaints of domestic violence and that he referred her to Social Services.

Upon a full review of all the relevant and credible evidence submitted below and on appeal, the petitioner has overcome the basis of the director's denial. The petitioner has submitted affidavits that describe in probative detail the extreme cruelty she suffered by her husband and a letter from her doctor that she reported the domestic abuse during her prenatal visit. Accordingly, the preponderance of the evidence demonstrates that the petitioner's 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 established her eligibility 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. See Section 291 of the Act, 8 U.S.C. § 1361; see also *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has been met. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.