



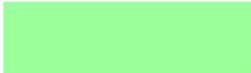
U.S. Citizenship
and Immigration
Services

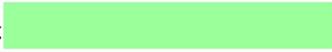
(b)(6)



Date: **DEC 18 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:

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 Acting 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 the petitioner entered into marriage with her United States citizen spouse in good faith, and that he battered or subjected her to extreme cruelty during their marriage.

Relevant Law and Regulations

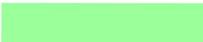
Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, 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 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 the United Kingdom who entered the United States as a tourist on July 15, 1998. She married T-P¹, a U.S. citizen, on July [REDACTED]. The petitioner filed the instant Form I-360 on April 18, 2013. The director subsequently issued Requests for Evidence (RFE) of, among other things, the requisite battery and extreme cruelty, and entry into marriage in good faith. The petitioner timely responded with additional evidence, which the director found insufficient and denied the petition on those grounds. The petitioner timely appealed.

¹ Name withheld to protect the individual’s identity.

We review these proceedings *de novo*.

Battery or Extreme Cruelty

In her affidavits, the petitioner stated that after their first year of marriage, she and T-P- started to have problems. She explained that T-P- worked in construction and was not able to find jobs and became angry and frustrated. She stated that he started to drink alcohol excessively, and stopped trying to find a job. She described in detail an incident in which T-P- flew into a rage, “smacked” her across the face, insulted her, and then grabbed his coat and left. She stated that the next morning T-P- apologized, but when he started drinking again they would argue and he would beat her with his fists or kick her. She recounted an incident in detail in which T-P- burned her chest with an iron because she argued with him about going out with his friends. The petitioner stated that she told T-P- to leave, but he refused. She indicated that upon her return to her apartment one afternoon in December 2011, she found that T-P- ransacked her home, took her jewelry and money, and left her. She stated that her friend, [REDACTED] helped reorganize her home, and that she did not report the incident to the police because she was afraid of T-P-.

The petitioner also provided affidavits from her friends. [REDACTED] stated that she has known the petitioner for six years and has been her friend and colleague. She confirmed that the petitioner “started coming in to work with bruises.” [REDACTED] stated that he is a friend of T-P- and that he met the petitioner at a birthday celebration. He recounted that he noticed that the petitioner had “some injuries and when anyone asked about them she would say she knocked into something or somehow injured herself.” [REDACTED] stated that he has known the petitioner for 15 years, and that the petitioner mentioned to him that T-P- was aggressive towards her.

The petitioner also submitted a psychological assessment report from [REDACTED] Ph.D., [REDACTED] Ms. [REDACTED] provided more detailed information about an incident of abuse described in the petitioner’s affidavits. Ms. [REDACTED] also stated that the petitioner told her that T-P- burned her with an iron, and Ms. [REDACTED] noted that the petitioner had “a visible mark on her chest.” Ms. [REDACTED] opined that the petitioner continued to suffer symptoms consistent with a diagnosis of depression due to the effects of the domestic violence she experienced during her marriage. The petitioner also provided photographs of her injuries.

On appeal, the petitioner provides new affidavits from [REDACTED] Mr. [REDACTED] states that the petitioner told him that T-P- pushed her down and kicked her in the leg when she tried to talk to him about his drinking. He states that the petitioner told him that T-P- burned her with an iron and showed him the scar. He recounts that she did not report T-P- to the police because she did not want him to go to jail and was afraid due to her immigration status. He states that the petitioner told him that T-P- left and took her jewelry, money, and pictures. Mr. [REDACTED] states that he noticed bruises on the petitioner’s face and leg, and that he confronted T-P- about the abuse. The petitioner also submits an affidavit from her daughter, [REDACTED] who states that she saw T-P- kick and punch the petitioner.

Upon a full review of all the relevant and credible evidence, the petitioner has demonstrated that she was subjected to battery and extreme cruelty during her marriage. The petitioner credibly described

in probative detail the battery and extreme cruelty that she endured from T-P- during her marriage. The petitioner also provided statements from three friends that credibly described her emotional state and injuries; and from her daughter, who credibly described witnessing first-hand the abuse. The petitioner has provided a detailed evaluation from a therapist who substantively discusses how the petitioner continues to suffer symptoms of depression due to her husband's abuse. The preponderance of the evidence demonstrates that the petitioner's husband subjected her to battery and 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

In her affidavits, the petitioner stated that she first met T-P- at a birthday party in the summer of 2007. She generally recounted that she was attracted to him, he invited her to dance, and afterwards they talked. The petitioner stated that they exchanged telephone numbers, and a few days later he called her and since then have been inseparable, going to dinners, the movies, and picnics at [REDACTED]. The petitioner generally recounted that T-P- cooked meals for her and brought her gifts, which made her feel special. The petitioner generally claimed that they became intimate, and she fell more in love. The petitioner stated that she spent a weekend with T-P- and met his mother, who approved of their relationship. The petitioner cursorily claimed that she was "so happy" being with T-P- that she asked him to move in with her. She stated that T-P- helped with the children, made repairs to the apartment, and contributed financially. The petitioner recounted that a year later T-P- proposed to marry her and she accepted. She stated that they had a small ceremony in New York on July [REDACTED]. The petitioner indicated that during the first year of their marriage T-P- cooked for them and she prepared cultural dishes. Apart from the claimed abuse, the petitioner only generally described her first meeting with T-A-, their courtship and subsequent engagement, marriage ceremony, joint residence and common routines, and shared experiences.

Regarding the affidavits from her friends, [REDACTED] generally claimed that the petitioner was happier after meeting T-P-. [REDACTED] generally claimed that the couple "looked great together," and the petitioner was a good influence on T-P-. [REDACTED] cursorily claimed that he was able to "witness the growth of the relationship" between the petitioner and T-P-. He generally claimed that he visited the couple and saw "happiness" in their relationship. The general statements of Ms. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] do not provide detailed, substantive information to establish the petitioner's relationship with T-P- and good-faith marital intent.

The petitioner also provided joint documents. The apartment lease agreement lists the petitioner and T-P- as occupants of an apartment located at [REDACTED]. The 2008 income tax return transcript and the 2009 income tax return (which contains no evidence of filing with the Internal Revenue Service (IRS)) and are in the name of the petitioner and T-P name and reflect their filing status as Married filing jointly." Without a probative account from the petitioner regarding her relationship with T-P-, the evidence of affidavits from friends, a shared residence, and joint income tax returns are not sufficient to demonstrate her good-faith intent at the time of her marriage.

On appeal, the petitioner submits a new affidavit in which she generally claims that she loved T-P- and did not marry him to obtain citizenship. She claims that before they were married she told T-P- that she was not a citizen so he would not think their relationship was under false pretenses, and she

further claims that she did not pressure him to go to immigration or retain an attorney on her behalf. Although the petitioner claims that she married T-P- in good faith, she has not provided a detailed account of her relationship, and her intentions at the time of marrying.

In her affidavit, [REDACTED] states that she was not initially aware that the petitioner was dating T-P-. She indicates that T-P- moved into their home in December [REDACTED] and recounts that he prepared breakfast for them. She states that the petitioner and T-P- had a small wedding ceremony in the summer of [REDACTED] and that their lives “were good for about a year,” but does not further provide probative information to establish the petitioner’s good-faith marital intent. In his affidavit, [REDACTED] states that the petitioner invited him to Thanksgiving dinner in [REDACTED], and he claims that the petitioner “was very happy” and that the petitioner and T-P- “looked at each other lovingly and spoke kind, affectionate words to each other.” [REDACTED] states that he first met the petitioner in March [REDACTED] and that she was a good influence on T-P-. He recounts that the second time he saw the petitioner was on her wedding day, and he generally claims that the petitioner “seemed really happy.” Mr. [REDACTED] and Mr. [REDACTED] make only general observations about the petitioner and T-B-, and provide no detailed substantive information to establish the petitioner’s good-faith intent in marrying.

In regards to joint documentation, the petitioner explains that due to her husband’s behavior she was not able to provide the evidence described at 8 C.F.R. § 204.2(c)(2)(vii) of the regulations to demonstrate her good-faith intent. Traditional forms of joint documentation such as joint bank accounts are not required to demonstrate a self-petitioner’s entry into the marriage in good faith. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). 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.” See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner’s statements do not provide a detailed account of her relationship with T-P-. Likewise, the affidavits from her daughter and friends provide no detailed, probative information to demonstrate her good-faith marital intent. The petitioner has not established by a preponderance of the evidence that she entered into marriage with T-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has demonstrated that she was battered and subjected to extreme cruelty by her husband during their marriage, but she has not demonstrated that she married her husband in good faith.

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.