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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave. N.W. MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: DEC 22 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. 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 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 married her spouse in good faith and that her spouse battered or subjected her to extreme cruelty 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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner was born in Ethiopia, and entered the United States as a B-2 nonimmigrant visitor on [REDACTED]. The petitioner married T-P-¹, a U.S. citizen on [REDACTED]. The petitioner filed the instant Form I-360 on [REDACTED]. The director subsequently issued Requests for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage, and the requisite battery or extreme cruelty. The petitioner responded with additional evidence that the director found insufficient and the director denied the petition on those grounds.

¹ Name withheld to protect individual's identity.

We review these proceedings *de novo*.

Battery or Extreme Cruelty

In her initial affidavit, the petitioner indicated that T-P-'s behavior changed in July 2011. She stated that she told T-P- that she did not want to have sex on Saturday nights because she attended church on Sunday mornings, but that he would sexually force himself on her and tell her that she "did not have to go to church and she was his wife and [he] would do what he wanted." The petitioner also claimed that she was dependent on T-P- to drive her to school and church and that he stopped giving her rides. She stated that T-P- argued with her and told her not to speak her language at home or with her family. The petitioner recounted that T-P- called her worthless, pushed her, and did not visit her while she was at the hospital with pneumonia because he did not want to be responsible for her bills. She stated that she obtained a job at a hair salon, and he would call her on the phone and scream at her and threaten to have her deported. She indicated that although T-P- never wanted to establish joint finances with her, he always took the money she earned. The petitioner recounted that she was afraid to call the police when T-P- screamed at her and her family did not want to interfere in her marriage.

In addition to her own affidavit, the petitioner provided affidavits from her cousin, [REDACTED] and his spouse [REDACTED]. In their affidavits, Mr. [REDACTED] and Ms. [REDACTED] indicated that the petitioner and T-P- moved into their basement after they were married, and that a year after their marriage, they would hear T-P- scream and yell at the petitioner and threaten the petitioner with "going home." They stated that T-P- refused to give rides to the petitioner and would get angry if they offered to drive her. They indicated that they believed that the petitioner often cried.

On appeal, the petitioner submits a new letter in which she states that her Christian Orthodox beliefs require that if she intends to go to church on Sunday morning, she must not have sex on Saturday night. She again claims that T-P- would force her to have sex on Saturday nights so that she would not be able to go to church on Sunday. The petitioner also states that T-P- intimidated her many times. She claimed that he would slap her across her face, and put his face next to her face and shout and make a fist like he was going to hit her. The petitioner states that she wanted to call the police, but T-P- would threaten her or hit the phone out of her hand and then force her to have sex. She again recounts that he would take the money she earned at the hair salon and not allow her to buy necessities for herself.

The petitioner also provides a letter from a friend and an affidavit from her employer. The petitioner's friend and classmate, [REDACTED] states that the petitioner would cry at school and come to her house in the middle of the night. She recounts that the petitioner told her that T-P- was abusive and would get drunk and take her money. The petitioner's employer, [REDACTED] states that the petitioner used to cry whenever T-P- would call her, and that the petitioner told her that T-P- would abuse her and take her money.

Lastly, the petitioner submitted evidence of T-P-'s criminal convictions. Qualifying abuse, however, must be perpetrated against the petitioner during the marriage. 8 C.F.R. § 204.2(c)(1)(vi). Although T-P-'s convictions reflect his criminal past, the petitioner has not demonstrated that any of these convictions relate to her.

Upon a full review of all the relevant and credible evidence, the petitioner has failed to demonstrate that she was subjected to battery or extreme cruelty during her marriage to T-P-. The petitioner generally alleged that she was physically and sexually abused by T-P- but does not describe any particular incident in detail. Similarly, the statements from her friend, her employer, her cousin, and her cousin's wife, although describing her emotional state, do not indicate that they witnessed any acts of battery, nor do they describe with any specificity, behavior on the part of T-P- to establish that she was subjected to extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the preponderance of the evidence does not demonstrate that T-P- 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

In her affidavit dated April 22, 2013, the petitioner recounted that she first met T-P- at her cousin's house in Minnesota, where they were celebrating the Ethiopian New Year in September 2010. She stated that her cousin introduced her to T-P-, and that she and he exchanged phone numbers and "began to communicate right away." She stated that five days later they went to a restaurant for dinner. She recounted that T-P- inquired if she was in a relationship in Ethiopia, and when she told him that she was not in a relationship he convinced her to close the hair salon that she owned in Ethiopia so that she could live with him in Minnesota. The petitioner indicated that T-P- was nice to her, treated her well, and that she had never been in a relationship before. She generally claimed that when he proposed to marry her, after a couple of months she accepted his offer of marriage because she loved him. The petitioner recounted that within two months of meeting they were married on [REDACTED] at the [REDACTED] Courthouse, and afterwards they went to a restaurant with her brother, cousin, and a family friend. The petitioner stated that she and T-P- moved in together in [REDACTED]. The petitioner, however, did not discuss in probative detail the first time she met T-P-, her courtship and subsequent engagement, decision to marry, marriage ceremony and reception, marital residence, joint belongings with T-P-, or any other shared experiences, apart from the claimed abuse.

Mr. [REDACTED] and Ms. [REDACTED] recounted that the petitioner and T-P- first met at the Ethiopian New Year's party at their home. Mr. [REDACTED] stated that the petitioner called him "old[-]fashioned" when he told her that T-P- is significantly older than the petitioner and from a different culture, and he claimed that she "was very happy" that she was going to marry T-P-. Mr. [REDACTED] and Ms. [REDACTED] stated that they attended the marriage ceremony at the [REDACTED] Courthouse and afterwards went to Applebee's for dinner. Ms. [REDACTED] generally claimed that the petitioner and T-P- "loved each other and were happy to be together." Their statements, however, provide only general observations of the couple and give no detailed, substantive information to establish the petitioner's relationship with T-P- and her good-faith marital intent.

In addition to the affidavits, the petitioner submitted photographs of herself and T-P- on their wedding day, a document showing the renewal of her Ethiopian trading license for hair dressing for the year 2000, a copy of the Petition for Alien Relative (Form I-130) filed by T-P- on her behalf, her Application to Register Permanent Residence or Adjust Status (Form I-485), a subpoena dated [REDACTED] from the Field Office Director, and the director's February 28, 2013 Notice of Intent to Deny (NOID) the Form I-130.

The director denied the petition, in part noting that the affidavits from the petitioner and those submitted on her behalf, as well as the documentary evidence, failed to establish her marriage was entered into in good faith. The director also made reference to the site visit conducted by USCIS officers in June 2011 which the director previously raised in her second RFE.

On appeal, regarding the director's reference to the site visit, the petitioner asserts that although the director determined that she is not credible, the director failed to articulate any discrepancies. The petitioner contends that the Form I-130 and Form I-485 previously submitted into the record provide additional proof that she married T-P- in good faith because the interviewing officer did not make any notation of inconsistencies on these forms and the related in-person interviews with the petitioner and T-P-. The petitioner is seeking classification as an abused spouse under section 204(a)(1)(A)(iii) of the Act. In Form I-130 proceedings, the U.S. citizen petitioner bears the burden of proof to establish the bona fides of the marriage; whereas in the instant proceeding the self-petitioner bears the burden of proof to establish, in part, her own good-faith entry into the marriage. Section 204(a)(1)(A)(iii)(I)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(aa). The regulations for self-petitions under section 204(a)(a)(A)(iii) of the Act further explain the statutory requirement of the self-petitioner's good-faith entry into the marriage or qualifying relationship. 8 C.F.R. §§ 204.2(c)(1)(ix), 204.2(c)(2)(vii).

The petitioner further argues that as the director found joint residence between the petitioner and T-P-, the petitioner's good-faith must also be established. However, section 204(a)(1)(A)(iii) of the Act prescribes five distinct statutory eligibility requirements. Although the same or similar evidence may be submitted to demonstrate residence and entry into a good-faith marriage, meeting one eligibility requirement will not necessarily demonstrate the other.

In addition, the petitioner provides a new letter in which she again describes the first time she met T-P- and recounts that T-P- telephoned her a week later and asked her out on a date. She states that they met at her brother's home in [REDACTED] but that it was very hard for them to understand each other because she understood only a little English. The petitioner indicates that T-P- proposed to marry her in [REDACTED] and even though she had known T-P- for only a short period, and would have to give up her hair salon in [REDACTED] the petitioner "felt he was a good person" and that he loved her and wanted to have a family with her. The petitioner claims that her mother told her to marry T-P- if she loved him. The petitioner indicates that they were married in [REDACTED] on [REDACTED] and afterwards moved into her cousin's basement. She recounts that T-P- started to change in July 2011, and he moved out of their home in January 2013.

The petitioner also submits a new letter from [REDACTED] who generally states that the petitioner claimed that T-P- was a good husband and that she loved him, but she provides no detailed, probative information to establish the petitioner's relationship with T-P- and good-faith marital intent.

The petitioner submits a [REDACTED] account balance verification form which shows that an account in the name of the petitioner and T-P- was opened on [REDACTED] but which had an average ledger balance for the last 12 months of "1." In addition, the petitioner provides her 2012 and 2013

income tax returns which reflect her filing status as “Married filing separately.” The petitioner explains that although she does not have joint documents with T-P- such as insurance policies and vehicle insurance, her affidavit and detailed letter on appeal sufficiently demonstrate her good-faith intent in marrying T-P-. She also asserts that Mr. [REDACTED] and Ms. [REDACTED] did not have intimate knowledge about her relationship with T-P- prior to her marriage, but that they were aware of the petitioner’s “happy, cooperative marriage during the first year,” from which her good-faith intent “can be inferred.” Although the petitioner lacks joint documents with T-P-, joint documentation such as insurance policies and vehicle insurance 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. All credible relevant evidence will be considered.” Section 204(a)(1)(J) of the Act, 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner has not provided a detailed account of her relationship with T-P-. For instance, she does not discuss in detail her courtship and engagement, marriage ceremony, joint residence, or shared belongings and experiences. Similarly, the affidavits from her family, friends and employer provide only general statements and lack detailed, substantive information to establish the petitioner’s relationship with T-P- and good-faith intent. Accordingly, the preponderance of all the relevant evidence in this case fails to establish that the petitioner married T-P- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage and that she entered into the marriage with him in good faith. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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.