

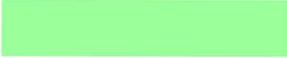
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U.S. Citizenship
and Immigration
Services

Date: **JUL 03 2014**

Office: VERMONT SERVICE CENTER File: 

IN RE: Self-Petitioner: 

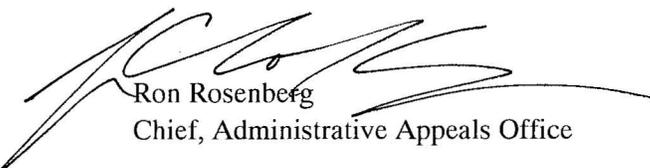
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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 the petitioner entered into marriage with her former spouse, a United States citizen, in good faith, that she resided with him, and that he subjected her to battery or 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) 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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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, a citizen of Ghana, entered the United States on February 26, 2006 as the nonimmigrant fiancée of A-D-¹, a United States citizen. On March 30, 2006 she married A-D- in ██████████ New York. They divorced on August 11, 2010 in Illinois. The petitioner filed the instant Form I-360 on August 18, 2010. The director subsequently issued a Request for Evidence (RFE) of the requisite qualifying relationship, joint residence, battery or extreme cruelty, good moral character and entry into marriage with A-D- 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 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. Beyond the director's decision, the petitioner has also not established that she had a qualifying relationship with her former spouse and is eligible for immediate relative classification based upon that relationship.² The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The petitioner submitted no evidence of battery or extreme cruelty with her Form I-360 initially and in response to the director's RFE. On appeal, the petitioner submits her own statement, and three letters – two from friends and one from a pastor. In their joint letter, ██████████ and ██████████ state that the marriage between the petitioner and her former spouse ended “due to a family misunderstanding” when A-D- sent the petitioner packing because “he don't want to marry her any longer for no apparent reason.” ██████████ writes that “some unfortunate things happened in their marriage which ended up in a divorce,” and that the petitioner “relocated to Chicago to avoid further problems and safety of her life.” Rev. ██████████ states that the petitioner relocated to Chicago “as a result of marital issues.” Rev. ██████████ writes that the petitioner had difficulties after her divorce and received church counseling and financial support. The petitioner's friends and pastor do not state that the petitioner experienced domestic violence during her marriage. While Mr. ██████████ indicates that the petitioner moved to Chicago for her safety, he does not state that she was endangered by A-D-'s battery or extreme cruelty during their marriage.

Counsel for the petitioner asserts on appeal that the record is being supplemented with “Appellant's expanded Statement.” However, the record contains no previous statement by the petitioner related to her Form I-360, and the single-page document submitted on appeal is her only statement discussing abuse by A-D-. The petitioner briefly writes that A-D- became emotionally alienating, refused to talk to her, ignored her, attempted and once threatened to physically assault her, and threatened her with deportation. She states that he withheld sexual relations because he no longer found her attractive. The

¹ Name withheld to protect the individual's identity.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. sup. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

petitioner also notes that, at one point, A-D- refused to bring groceries home, leaving her with nothing to eat. She indicates that she confided telephonically in her sister in California to whom A-D- confirmed that he felt like strangling the petitioner and wanted her to move out of his apartment, but the petitioner submitted no affidavit from her sister. The petitioner writes that A-D- refused her sister's request to visit them in New York, after which her sister purchased a plane ticket for the petitioner to join her in California. The petitioner traveled to California in August 2006 and states that a few days later, her pastor from ██████ requested that she return so that she and A-D- could receive marriage counseling and work out their issues. She writes that A-D- called and threatened her with harm if she returned. The petitioner indicates that she did not return to ██████ and fears that if A-D- finds out where she lives he will have her deported or otherwise harm her. While the petitioner contends that she was forced to move out of A-D-'s apartment in ██████ "due to intense physical, emotional and verbal abuse," she does not describe any particular incident of battery or extreme cruelty in detail. The brief statements of the petitioner, her friends and pastor do not establish, by a preponderance of the evidence, that her former spouse subjected her to battery or extreme cruelty during their marriage.

Counsel claims that A-D- isolated the petitioner from family and community, but letters submitted on appeal show that the petitioner was actively involved in church and with friends in ██████ and her own statement indicates that she traveled to California to visit her sister. Counsel asserts that the petitioner has experienced cultural humiliation as a result of A-D-'s abandonment and emotional abuse, but the petitioner has not addressed such issues herself. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner's brief statement and letters by others do not provide sufficient, probative information to establish the claimed abuse. Accordingly, the petitioner has not shown that her former spouse subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As the petitioner has failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Good-Faith Entry into the Marriage

The director correctly determined that the petitioner failed to establish that she married A-D- in good faith, as she submitted no relevant evidence below. On appeal, the petitioner submits her statement and the letters from her friends and pastor. On appeal, the petitioner states that she met A-D- in Ghana in 2004 through a mutual friend, A-D- filed a fiancée visa petition for her, she joined him in the United States in February 2006, and they married a month later at city hall. The petitioner does not describe her first meeting with A-D-, their courtship, wedding ceremony, shared residence, or their experiences apart from the claimed abuse. The friends' letters indicate that they shared meals

with the petitioner and A-D- when they were married, but they do not describe any such occasion in detail or otherwise establish their personal knowledge of the petitioner's relationship with A-D-. The pastor indicates that he met the petitioner in 2010, four years after the petitioner states that she separated from her former spouse, and he does not indicate that he has any personal knowledge of the petitioner's relationship with A-D-.

Counsel contends that the bonafides of the petitioner's marriage to A-D- were "established by the American Consulate in Accra, Ghana" by its approval of the Form I-129F, Petition for Alien Fiance(e). Approval of a Form I-129F, under section 214(d) of the Act is not prima facie evidence of the beneficiary's good-faith entry into the subsequent marriage under section 204(a)(1)(A)(iii) of the Act. The statutory and regulatory framework for fiancé(e)s significantly differs from the requirement that self-petitioners under section 204(a)(1)(A)(iii) of the Act demonstrate that they entered into the marriage with the abusive U.S. citizen in good faith. The U.S. citizen petitioner bears the burden of proof in fiancé(e) cases to establish prospectively that the petitioner and beneficiary intend to and are able and willing to enter a valid marriage. Section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). The corresponding regulation does not, however, define what constitutes a "bona fide intention to marry" under section 214(d)(1) of the Act, 8 U.S.C. § 1184(d)(1). In contrast, for self-petitions under section 204(a)(1)(A)(iii) of the Act, the alien bears the burden of proof to establish that she or he entered into the marriage in good faith and the regulation specifically defines the term "good faith marriage" and what types of evidence may suffice to meet that eligibility criterion. 8 C.F.R. §§ 204.2(c)(1)(ix), (c)(2)(vii). While evidence submitted with the Form I-129F may be relevant to a determination of the self-petitioner's good faith marriage under section 204(a)(1)(A)(iii) of the Act, the fact that a self-petitioner was the beneficiary of an approved Form I-129F filed by his or her abusive spouse will not necessarily establish that the alien actually entered into the marriage in good faith.

In this case, the record contains an undated, handwritten statement signed by the petitioner and submitted in connection with her fiancée petition. She explains that in July 2003, her sister told her that a friend would be visiting Ghana. When the friend arrived he told the petitioner about his younger brother, A-D- and she agreed to marry him. They began communicating over the phone and he traveled to Ghana where they first met in April 2004. She indicates that they took a liking to each other, she enjoyed spending time with him shopping and visiting each other's families, and she missed him after he departed to the United States. The petitioner states that she wrote to A-D- to apply for a K-1 visa so she could join him in the United States and get married. The petitioner does not describe any of these experiences in detail, and none are discussed in her statement submitted on appeal in support of her Form I-360 self-petition. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her former spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The director correctly determined that the petitioner failed to establish that she resided with her former spouse, as she submitted no relevant evidence below. On the Form I-360, the petitioner stated that she resided with A-D- from February 26, 2006 to May 1, 2006. However, in her statement on

appeal, the petitioner indicates that she was residing with A-D- until August 2006 when she went to visit her sister in California. The [REDACTED] account statement submitted on appeal lists the [REDACTED] address where the petitioner claimed to reside with A-D- but it covers the period of August 16, 2006 through September 19, 2006 after the petitioner states she left their home, and it reflects an account held solely by the petitioner. An interim identification card and a Social Security-related document also submitted on appeal list the same [REDACTED] address, but both are undated and addressed to the petitioner alone. In the petitioner's statement, she does not specify the dates or address at which she resided with her former spouse nor describe their home or shared residential routines in any detail. The petitioner's friends state that they shared meals with her and her former spouse, but do not describe any particular visit to their marital home or otherwise discuss the petitioner's claimed residence with A-D-. Accordingly, the record does not establish that the petitioner resided with her former spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) 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 former spouse during their marriage, that she entered into their marriage in good faith, and that she resided with him. Beyond the director's decision, the petitioner has also not established a qualifying relationship with her former spouse and her corresponding eligibility for immediate relative classification based on such a relationship. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these five 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.

ORDER: The appeal is dismissed.