

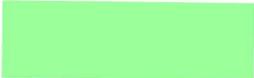
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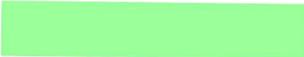


**U.S. Citizenship
and Immigration
Services**



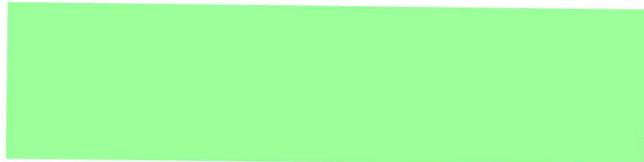
Date: **JUL 09 2014** Office: VERMONT SERVICE CENTER

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:



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,

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 sustained.

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 his U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s spouse subjected her to battery or extreme cruelty during their marriage.

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 are further explained 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.

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.

Facts and Procedural History

The petitioner is a citizen of Nigeria who last entered the United States on July 23, 2010 as a visitor. She married S-A-¹, a U.S. citizen, on August 10, 2009 in [REDACTED] New York.² The petitioner filed the instant Form I-360 on January 30, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty. 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).

Battery or Extreme Cruelty

The petitioner stated in her initial letter, dated January 7, 2012, that after she and S-A- were married her husband became physically aggressive during arguments and threatened not to proceed with her and her son's immigration papers. She stated that S-A- was physically hostile towards her during an argument in January 2011 and she called 911, but S-A- left before the police arrived. She stated that the police took her statement, and she went to the hospital for medical attention. She stated that S-A- and his friends and relatives asked her not to file charges, but in April he was charged with domestic violence. She stated that she pleaded with the prosecutor to drop the charges because her husband was a changed

¹ Name withheld to protect the individual's identity.

² Although the petitioner indicated on the Form I-360 that her spouse was a lawful permanent resident, records of the Service indicate that her spouse was naturalized on July 5, 2011.

man and she wanted to give her marriage a second chance, but his case was adjourned three times and finally dismissed in July 2011. The petitioner stated that after S-A- naturalized and was a U.S. citizen he called her names, threatened to “set me up,” and to have someone harm her. The petitioner stated that she has not seen S-A- after he moved out on October 25, 2011, but that he once called her and threatened to have her and her son deported if she contacted the police or the family court.

The petitioner’s second notarized letter, dated May 23, 2013, repeated the statements previously made in her initial letter. The petitioner provided the domestic incident report. The police incident report, dated January 24, 2011, stated that the petitioner had no visible injury, but complained of pain caused by her husband. The hospital record, dated January 24, 2011, indicated that the petitioner complained of an assault by her husband and muscular pain. The petitioner also submitted a police incident report, dated October 26, 2011, which indicated that the petitioner stated that on October 25, 2011, S-A- moved out of their house after an argument in which he threatened to harm her or have her arrested on false charges. In the second page of the incident report the petitioner stated that her quarrels with S-A- started again after the January 2011 domestic violence case against S-A- was dismissed. The petitioner was granted a temporary order of protection against S-A- on November 18, 2011, and she withdrew the family offense petition at the court hearing on January 12, 2012.

stated that the petitioner told him that S-A- was physically aggressive and threatened to have her deported, and that she obtained a protection order against him. stated that he is an elder and a leader, and in 2011 the petitioner and her husband asked for help with their marriage. stated that in January 2011 he asked the petitioner not to file charges against S-A-, and that the petitioner called him in October 2011 and told him that she called the police after S-A- was physically aggressive during an argument and had moved out of the house. Dr. briefly stated that S-A- and the petitioner separately called him, upset, in January 2011, and that in October 2011 the petitioner called him, crying, because S-A- was angry and threatened her and had moved out of their home.

The petitioner’s statements, the supporting affidavits from others, and the documentation in the record establish by a preponderance of the evidence 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, and the director’s contrary decision is withdrawn.

Conclusion

In these proceedings, 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 been met. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.