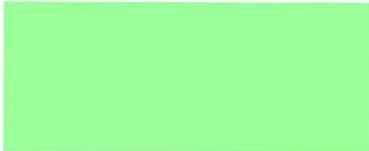


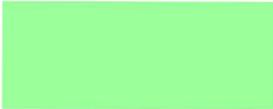
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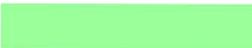


U.S. Citizenship
and Immigration
Services



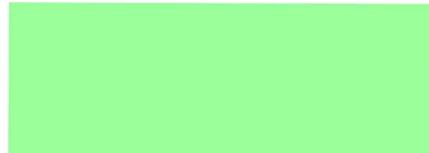
Date: **JUL 18 2014**

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:

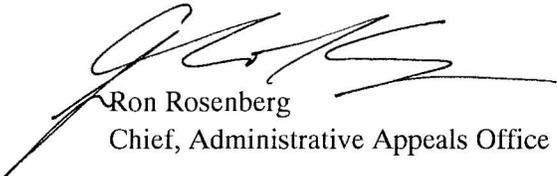


INSTRUCTIONS:

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. 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 Director, Vermont Service Center, (“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 entered into marriage with her husband in good faith and that he subjected her to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits 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).

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 is a citizen of Ghana who entered the United States on November 23, 2010 as the K-1 fiancée of a U.S. citizen, G-A-¹. The petitioner married G-A- in New Jersey on April 29, 2011. The petitioner filed the instant Form I-360 on April 13, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's good-faith entry into the marriage and her husband's battery or extreme cruelty. The petitioner, through counsel, timely responded with

¹ Name withheld to protect the individual's identity.

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*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, does not overcome all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

In her initial affidavit, the petitioner recounted that she met G-A- in 2007 during his visit to Ghana. She stated that they were introduced through G-A-'s parents who attended her family's church in Ghana. She discussed her long-distance courtship with G-A-, their engagement, and the plans she made with G-A- for her residence in the United States. In the petitioner's third affidavit, she discussed the plans she made with G-A- about continuing her education in the United States. The petitioner's statements about her first meeting, courtship and engagement with G-A- are also detailed in the psychological evaluation she submitted from [REDACTED]. The petitioner probatively described how she first met G-A-, their courtship, engagement and shared experiences.

The letters from the petitioner's mother, [REDACTED] her father, [REDACTED] and her friend, [REDACTED] also describe the petitioner's good-faith entry into the marriage. The petitioner's parents', who reside in Ghana, provided probative, credible details of the petitioner and G-A-'s first meeting in Ghana, the couple's courtship, and their involvement in consenting to the couple's marriage. [REDACTED] stated that she and the petitioner attended college together in Ghana when the petitioner first met G-A-. Ms. [REDACTED] described her personal observations of the couple's interactions prior to their marriage. The petitioner also submitted evidence of her correspondence with G-A- during their courtship.

The director determined that the petitioner failed to provide sufficient details of her courtship and failed to submit evidence of commingling of resources and shared financial responsibilities. However, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, 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." 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner explained her inability to provide joint documentation and she provided a probative, credible description of how she was introduced to G-A-, their courtship, their engagement and shared experiences. The petitioner's parents and her friend also discuss in probative detail their personal knowledge of the petitioner's relationship with G-A-. When viewed in the totality, the preponderance of the evidence demonstrates that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

Although the petitioner has established her good-faith entry into marriage with her husband, we find no error in the director's determination that the petitioner's husband did not subject her to battery or

extreme cruelty. In her initial affidavit, the petitioner recounted that shortly after she entered the United States with a fiancée visa, she and G-A- had arguments about finances and he wanted her to work. She stated that she could not work because G-A- refused to marry her and she did not have employment authorization. The petitioner recounted in March 2011, G-A- was upset with her because she received medical treatment at a hospital and put his name on the hospital records. The petitioner stated that after their April 2011 marriage, G-A- refused to help her with her immigration paperwork and told her that she would get in trouble with the police because her visa had expired. In her affidavit submitted in response to the RFE, the petitioner recounted that after she arrived in the United States, G-A- refused to allow her to attend college and he wanted her to work as a live-in caregiver for the elderly. She recounted that G-A- handled all of their finances and would not allow her to run errands with him. The petitioner stated that G-A- threatened her. The petitioner submitted a third affidavit in which she stated that G-A- threatened and emotionally abused her. She stated that she was frightened because G-A- was not helping her gain legal status in the United States. The petitioner's brief descriptions of her husband's threats lack credible, probative details to establish that she was subjected to extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

In response to the RFE, the petitioner submitted a psychological evaluation, dated May 21, 2013, from [REDACTED] a licensed psychologist. Dr. [REDACTED] diagnosed the petitioner with depression. He stated that the petitioner reported that G-A- yelled at her, did not provide her with money, isolated her, criticized her, and pressured her to look for employment. Dr. [REDACTED] opined that the petitioner became depressed because of her husband's mistreatment and her inability to pursue a college education.

The petitioner submitted a letter from her friend, [REDACTED] who stated that the petitioner was in an emotionally abusive relationship because her husband wanted her to work in "remedial positions" instead of attending school. The behavior described by Mr. [REDACTED] does not constitute battery or extreme cruelty, as that term is defined in the regulation.

On appeal, the petitioner discusses G-A-'s failure to pay for her medical treatment when she was sick prior to their marriage. She stated that after their marriage, G-A- stopped buying groceries and she could only eat what was left in their home until her neighbor helped her find a job at a beauty supply store. She stated that she hid her position from G-A- because she did not want him to take her money or punish her for working outside the house. The petitioner recounted that in July 2011, G-A- found out about her position and wanted her earnings to pay their household bills. The petitioner submits a letter from her friend, [REDACTED] who stated that she arranged for the petitioner to speak to a counselor at a community college and to meet with a lawyer after she learned of the petitioner's "difficult circumstance."

A full review of the evidence submitted below and on appeal fails to demonstrate the petitioner's eligibility. In the affidavits submitted below, the petitioner focused on the arguments she had with G-A- because he wanted her to work and not attend college. Dr. [REDACTED] stated that G-A- pressured the petitioner to look for employment and [REDACTED] stated that G-A- wanted the petitioner to work in remedial positions. However, on appeal the petitioner asserts that she had to hide her employment from G-A- because he would punish her for working outside the house. The petitioner does not clarify the inconsistency between these two statements. The petitioner's statements do not establish that her

husband's behavior involved battery or threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulation. Accordingly, the petitioner has not established that her 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 that she entered into marriage with her husband in good faith. However, she has failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The appeal is dismissed.