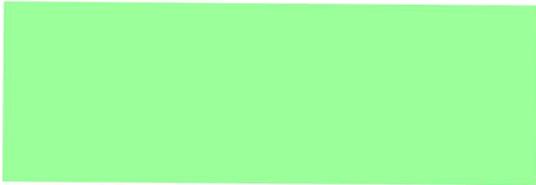




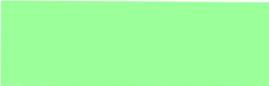
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: Office: VERMONT SERVICE CENTER

FILE:



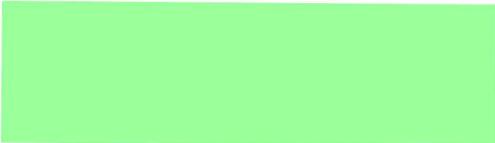
NOV 05 2014

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:

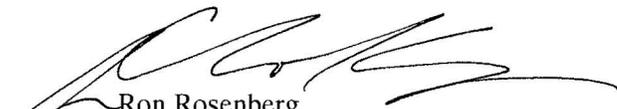


INSTRUCTIONS:

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,


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 and the petition will remain denied.

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 based on the petitioner's failure to establish that she was battered or subjected to extreme cruelty by her husband, and that she married him in good faith.

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 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 December 22, 2001 as a nonimmigrant visitor. The petitioner married D-R¹, a U.S. citizen, on October [REDACTED] D-R- filed a Form I-130 immigrant visa petition for the petitioner, which was approved on January 25,

¹ Name withheld to protect the individual's identity.

2010. The petitioner filed the instant Form I-360 self-petition on February 19, 2013. Upon review of the initial submission, the director issued a Request for Evidence (RFE) of battery or extreme cruelty, and the petitioner's good-faith entry into the marriage, among other issues. The petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility, and denied the petition. The petitioner, through counsel, subsequently appealed the director's decision.

We review 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 all of the director's grounds for denial. The appeal will be dismissed for the following reasons.

Good-Faith Entry into the Marriage

The petitioner has established that she married D-R- in good faith. In an undated statement submitted with the Form I-360 self-petition, the petitioner credibly described her first meeting with D-R- while on a visit to a friend in Illinois, and her initial reluctance to commence a relationship with him. The petitioner described visiting D-R- in Illinois on several occasions between April 2008 and September 2008, indicating that D-R- paid for her flights from Maryland to Chicago. The petitioner recounted that the couple became engaged in September 2008, and married in October [REDACTED] Virginia. The petitioner asserted that D-R- was a truck driver, and rented an apartment for the couple after they married, having previously slept in the cab of his truck. The petitioner stated that she then joined D-R- in Illinois. The petition provided a lease in the name of D-R- for an apartment in [REDACTED] Illinois, commencing on November 1, 2008, shortly after she and the petitioner married. The petitioner described accompanying D-R- in his truck on his driving assignments to Michigan in the early part of their marriage. The petitioner submitted a copy of a waiver signed by D-R-'s trucking company, authorizing the petitioner to ride as a passenger in D-R-'s truck. The petitioner also submitted a photograph of her and D-R- at a truck stop. The petitioner provided an affidavit from her friend [REDACTED] dated November 30, 2012, describing the petitioner's first meeting with D-R- in her home. In addition, the petitioner provided affidavits from her sister and nephew recounting the petitioner's move from Maryland to Chicago to reside with D-R-. The petitioner also submitted affidavits from her cousin and from her longtime friend attesting to the petitioner introducing D-R- to them as her husband early in the petitioner's marriage. The record also contains the petitioner's and D-R-'s federal income tax return for 2009 with a filing status of "Married filing jointly."

On appeal, the petitioner provided evidence of her ownership of a life insurance policy, and payments on that policy, with D-R- as the beneficiary. In addition, the petitioner's administrative record contains joint checking account statements showing an active account, and satellite television bills in the names of both the petitioner and D-R- for the [REDACTED] apartment.

Under section 204(a)(1)(A)(iii) of the Act, 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). Here, the petitioner provided credible testimony

regarding her courtship and shared experiences with D-R-. Her statements are supported by third-party affidavits, evidence of an active joint checking account, jointly filed federal income taxes, a joint satellite television account, a waiver executed by D-R-'s employer allowing the petitioner to ride in D-R-'s truck, and a paid life insurance policy. The petitioner has thus established that she married D-R- in good faith by a preponderance of the evidence as required by section 204(a)(1)(A)(iii) of the Act.

Battery or Extreme Cruelty

The appeal may not be sustained, however, because the preponderance of the relevant evidence does not establish that T-F- battered the petitioner or subjected her to extreme cruelty. In her initial undated personal affidavit, the petitioner stated that several months into the marriage, she and D-R- began to experience marital problems due to issues with their intimate relations. The petitioner asserted that D-R-'s drug usage resulted in his erratic behavior. The petitioner recounted that D-R- insulted her physical appearance, threatened her, yelled and threw things, and declined to engage in intimate relations with the petitioner; however, she did not describe any specific incidents of abuse. The petitioner also stated that D-R- accused her of having relations with other men. The petitioner recounted leaving the home for periods when D-R- was angry, but ultimately returning to him after he apologized. She indicated that their relationship continued in this intermittent fashion until D-R- ordered the petitioner to leave their home in August of 2010. The petitioner stated that D-R- threatened her and did not allow her to take her belongings with her, but did not provide specifics regarding the incident. The petitioner stated that D-R- began to harass her during 2011, but did not describe what the harassment specifically entailed.

The petitioner also asserted that she went to a shelter in Chicago on July 18, 2011 because D-R- was threatening the friend with whom she was residing, but the petitioner did not describe D-R-'s threats. The petitioner provided a letter dated July 22, 2011 entitled "Verification of Homelessness," which states that the petitioner was staying at a women's shelter, but did not indicate the reasons for her homelessness. The petitioner stated that the police escorted her to the marital residence on August 4, 2011 to retrieve her belongings, but D-R- told the police that he did not know where the petitioner's items were, and the petitioner left the house without her things.

The petitioner submitted a psycho-emotional assessment prepared by licensed marriage and family therapist [REDACTED] dated October 12, 2012. In the assessment, Dr. [REDACTED] concluded that the petitioner suffered from anxiety and depression, and recounted the petitioner's statements regarding her relationship with D-R- indicating that D-R- used profane language, threatened to harm or humiliate her, threw things, refused to touch the petitioner, and insulted the petitioner. However, Dr. [REDACTED] did not provide probative information regarding any specific incidents of battery or extreme cruelty. The petitioner also submitted affidavits from her friend, nephew, sister, and cousin who all attested to awareness of difficulties in the petitioner's marriage to D-R-, but did not describe any incidents of abuse. In response to the RFE, the petitioner provided copies of previously submitted documents, but did not provide any additional relevant evidence.

On appeal, the petitioner provides copies of previously submitted documents, and an additional undated personal affidavit. In the affidavit, the petitioner states that D-R- abused her, but again fails to

describe specific incidents of battery or extreme cruelty. The petitioner also provides a printout of a police incident record from July 31, 2011, stating that police escorted the petitioner to the [REDACTED] apartment to retrieve her clothes, which she could not locate, but found her passport and left. The report does not reference any domestic violence or threats by D-R-.

De novo review of the relevant evidence, as supplemented on appeal, shows that the director correctly concluded that the petitioner did not establish that her U.S. citizen spouse battered her or subjected her to extreme cruelty. The petitioner must demonstrate that her spouse battered or threatened her with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The preponderance of the relevant evidence does not show that the petitioner was battered or subjected to extreme cruelty by her U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has not overcome all of the director's grounds for denial on appeal. The petitioner has established that she entered into marriage with D-R- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. However, the petitioner has not shown that she was battered or subjected to extreme cruelty by her U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner has therefore not established eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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. The appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.