



U.S. Citizenship
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Services

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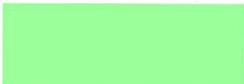


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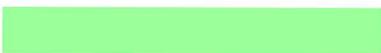
Office: VERMONT SERVICE CENTER

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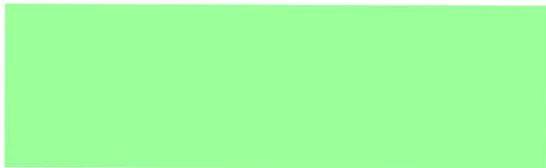
IN RE:

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 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 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 was subjected to battery or extreme cruelty by her husband during their marriage, and resided with her husband.

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 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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 Haiti who entered the United States as a K-1 fiancée on October 11, 2011. The petitioner married J-G-¹, a U.S. citizen, on January [REDACTED]. The petitioner filed the instant Form I-360 on March 6, 2013. The director subsequently issued Requests for Evidence (RFE) of the petitioner's joint residence, entry into the marriage in good faith, and the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence, which the director found demonstrated her good-faith entry into the marriage, but was insufficient to establish joint residence and the requisite battery or extreme cruelty, and the director denied the petition.

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, the petitioner has not overcome the director's grounds for denial.

Battery or Extreme Cruelty

In her initial affidavit, the petitioner recounted that she lived in Haiti, and met J-G- while he was on vacation in Haiti in February 2006. She indicated that J-G- visited her again in July 2006, and they became engaged in January [REDACTED]. The petitioner stated that J-G- attended her mother's funeral in

¹ Name withheld to protect the individual's identity.

Haiti in November [REDACTED]. The petitioner stated that J-G-'s behavior changed during the visit and claimed that J-G- forced himself on her when she refused to be sexually intimate. The petitioner stated that she became pregnant and her family was ashamed of her behavior, which left her no choice but to stay with J-G-. The petitioner indicated that her second child with J-G- was born on February [REDACTED]. The petitioner recounted that she traveled to the United States with her oldest child in October 2011, and stayed at her aunt's house in [REDACTED] Florida, while J-G- remained in Haiti for almost three months. The petitioner stated that she and J-G- married in [REDACTED] on January [REDACTED]. Shortly thereafter, the petitioner indicated that J-G- went to [REDACTED] Massachusetts, to settle a few matters, and months later over the telephone J-G- told her that he had another family in [REDACTED] and that he would not return to [REDACTED]. In her affidavit in response to the RFE, the petitioner made new allegations of abuse. She stated that after they were married, J-G- was disrespectful towards her and would call her derogatory names in front of everyone. The petitioner claimed that when she was alone with J-G- in their bedroom he would force himself on her, but she provided no probative details regarding her allegation, and her general statements about J-G-'s behavior do not probatively establish that during her marriage, he battered or subjected her to sexual abuse, psychological abuse, or extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1).

The petitioner also submitted letters from [REDACTED], the petitioner's aunt, and [REDACTED] Ms. [REDACTED] stated that J-G- treated the petitioner with disrespect and that he left the petitioner to live with his mistress in [REDACTED]. [REDACTED] indicated that he once saw J-G- "in [the petitioner's] face." The letters, however, do not describe any incident in which J-G- battered or subjected the petitioner to extreme cruelty.

On appeal, the petitioner states that she and J-G- lived as a married couple at the home of [REDACTED] and the petitioner submits a new letter from Ms. [REDACTED]. Ms. [REDACTED] claims that there were times when J-G- acted aggressively towards the petitioner and would throw a chair against the wall, shake the petitioner's chair, or mumble under his breath. Ms. [REDACTED] general statements do not describe any alleged incident of abuse in detail and they are not described in the petitioner's affidavits. The preponderance of the evidence fails to demonstrate 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.

Joint Residence

The petitioner stated on her Form I-360 that she resided with J-G- from December 2011 until January 2012, and their last residence together was in [REDACTED] Florida. In her initial affidavit, the petitioner did not discuss her marital residence. In her second affidavit, the petitioner stated that she and her son traveled to the United States together and lived at her aunt's home in [REDACTED] while J-G- remained in Haiti for about three months. She recounted that when J-G- arrived in the United States in December, they all stayed at her aunt's home. The petitioner claimed that after she and J-G- were married they "went straight to [her] aunt's house," but the petitioner did not provide the specific dates of their residence there; or give a detailed description of where they resided in the house, their shared belongings, or their common residential routines.

The petitioner also submitted a letter from [REDACTED] who stated that she agreed to have the petitioner stay at her home for a few days, but she provided no probative information of joint residence. Similarly, [REDACTED] indicated only that J-G- stayed at his house without providing any dates or specific description of J-G-'s residence with them.

The petitioner also submitted a collection notice dated after the petitioner had returned to [REDACTED] and a letter from the Massachusetts Department of Revenue, which show the [REDACTED] mailing address but are not jointly addressed to the petitioner and J-G-. The petitioner provided photographs of the petitioner and J-G- pictured together on two occasions but which are undated and not identified as being taken at their marital home. Although the petitioner submitted photographs and documents showing a shared address, without a detailed description from the petitioner or a probative account from Ms. [REDACTED] of the petitioner's marital residence, the evidence in the record, when considered together, is not sufficient in demonstrating that the petitioner and J-G- resided together during their marriage.

On appeal, the petitioner asserts that she and J-G- lived as a married couple at the home of Ms. [REDACTED]. In her new letter on appeal, Ms. [REDACTED] states that upon J-G-'s return to the United States in December 2011, he lived at her house with the petitioner. She claims that after the petitioner and J-G- were married they stayed at her house until J-G- left for [REDACTED]. Although she claimed that the petitioner and J-G- lived at her house during their marriage, apart from the abuse, Ms. [REDACTED] does not describe where the couple and their child lived in her home, the petitioner's shared belongings with J-G-, and their common residential routines. Therefore, the preponderance of the relevant evidence fails to demonstrate that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Conclusion

The petitioner has failed to establish that she resided with her husband, and was battered or subjected to extreme cruelty by him during their marriage.

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 and the petition will remain denied.

ORDER: The appeal is dismissed.