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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

Date: NOV 17 2014 Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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:

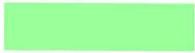
Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office



DISCUSSION: The Acting 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 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 a United States citizen.

The director denied the petition for failure to establish that the petitioner's spouse battered or subjected her to extreme cruelty and that she entered into the qualifying spousal relationship in good faith.

On appeal, the petitioner submits a statement.

Applicable Law

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 states, in pertinent part:

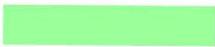
In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S.



citizen spouse].

* * *

(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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of... the self-petitioner

* * *

(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 was born in Mexico and asserted on the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, that she entered the United States on August 6, 2001, as a B-2 nonimmigrant visitor. She married her spouse, A-C-,¹ whom she claimed is a U.S. citizen, on June [REDACTED] in California. She filed the instant self-petition on August 21, 2012. On August 24, 2012, the director issued a request for evidence (RFE) of the petitioner's good moral character and that she entered into the marriage with A-C- in good faith. The petitioner timely responded. On August 1, 2013, the director issued a second RFE that, among other things, A-C- subjected the petitioner to battery or extreme cruelty and that the petitioner entered into marriage with him in good faith. The petitioner responded, but the director found the response insufficient to establish the petitioner's eligibility and denied the petition on these two grounds. The petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

Battery or Extreme Cruelty

In her first affidavit, the petitioner said that A-C- molested her niece and that she found out about this on the day that the [REDACTED] Child Protective Service (CPS) workers came to her house to question her husband. She asserted that her husband drove away, that "I have not known anything

¹ Name withheld to protect the individual's identity.

of my husband since that day,” but that she would be happy to help put him in jail when the police arrest him. The petitioner provided a copy of several [REDACTED] Department of Public Social Services documents outlining A-C-’s abuse of her niece, including the CPS Detention Report, in which CPS “explained to [the petitioner] that as a member of the family, she also failed to protect the children from abuse.”

In response to the August 1, 2013 RFE, the petitioner submitted several affidavits from friends and family members who attested that the petitioner’s marriage was bona fide, but did not describe any acts of battery or extreme cruelty by A-C- against the petitioner.

On appeal, the petitioner asserts that A-C- subjected the petitioner to extreme cruelty when he sexually abused her niece. Citing to *INS V. Cardoza-Fonseca*, 480 U.S. 421 (1987) and *Bailey v. U.S.*, 516 U.S. 137 (1995), the petitioner asserts that the director committed an abuse of discretion by failing to consider whether A-C-’s abuse of her niece constituted extreme cruelty. The record shows that the director fully considered the evidence the petitioner provided, but found that the petitioner had not submitted evidence to establish that A-C- subjected her to extreme cruelty when he abused her niece. The petitioner has not submitted any additional evidence on appeal to establish that A-C- subjected her to battery or extreme cruelty. Accordingly, the relevant evidence is insufficient to establish that A-C- subjected the petitioner to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good-Faith Entry into Marriage

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner’s good-faith entry into her marriage with A-C-. On the Form I-360 self-petition, the petitioner asserted that she lived with A-C- from June of 2004 until January of 2006. The petitioner briefly recounted that she met him in the hair salon in which she worked, that they became close friends, dated, and eventually married. She indicated that she was surprised to find out that he abused her niece and had not seen him since the day CPS came to question him. However, she did not include any information about her good-faith entry into their marriage in her initial affidavit. She provided a copy of her marriage certificate, but this establishes that she married A-C- rather than her intentions at the time of her entry into marriage with him.

In response to the first RFE, the petitioner provided an affidavit from her sister-in-law, who attested that she and her children lived with the petitioner and A-C-, and did not have any problems with them until he molested her daughter. [REDACTED] generally attested to the petitioner’s character, noting that she married A-C- but separated “due to some serious family problems.” [REDACTED] also attested to the petitioner’s character. None of these individuals included probative information about the petitioner’s relationship with A-C- for purposes of establishing the petitioner’s good-faith entry into the marriage.

In response to the RFE dated August 1, 2013, the petitioner provided affidavits from two clients, who attested that the petitioner married A-C- in good faith. [REDACTED] suggested that

“the few years they were together they were a normal couple” and [REDACTED] indicated tht A-C- was always at the hair salon when she went to have the petitioner cut her hair. The petitioner’s brother provided an affidavit attesting that he knew that the petitioner’s marriage to A-C- was bona fide “because I put together the party” after their marriage. Her brother also asserted that he lived with the petitioner and A-C- and they “were always at family gatherings together and they were inseparable.” None of the affidavits included any details about the petitioner’s courtship with A-C-, their shared marital routines, or other information to establish her good-faith entry into the marriage. The petitioner submitted some photographs of her husband that appear to have been taken on their wedding day, but these show them together on a single day and do not otherwise establish her good-faith entry into the marriage.

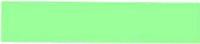
On appeal, the petitioner indicates that she has already provided evidence of her good-faith entry into the marriage with A-C- but includes no additional probative information such as details of her courtship with A-C-, their wedding ceremony, joint residence, and shared experiences. The petitioner’s statements and those of her family and friends fail to include probative information regarding the petitioner’s courtship, wedding, marital residence, and shared marital experiences with A-C-. The petitioner has not established by a preponderance of the evidence that she entered into marriage with A-C- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

As an additional, the petitioner has not established that A-C- is a U.S. citizen.² Consequently, she has not established that she shared a qualifying spousal relationship with him and her corresponding eligibility for immediate relative classification. According to the regulation at 8 C.F.R. § 204.2(c)(2)(ii), evidence for immigrant classification pursuant to section 204(a)(1)(A)(iii)(I) of the Act requires that the petitioner submit evidence of the citizenship of the U.S. citizen abuser and of the marital relationship.

The petitioner submitted a License and Certificate of Confidential Marriage showing that she and A-C- married on June [REDACTED] California. Although the marriage certificate indicates that A-C- was born in California and is a U.S. citizen, there is no evidence showing that the [REDACTED] Clerk’s office verified this assertion when it issued the marriage license. According to California Family Code section 354, each applicant for a marriage license is required to present photo identification to the county clerk establishing his or her name and date of birth. Cal. Fam. Code § 354. However, there is no requirement that a marriage license applicant provide documentation establishing his or her place of birth. Aside from the assertion on the marriage certificate, there is no evidence in the record establishing that A-C- was a U.S. citizen or that the [REDACTED] Clerk confirmed A-C-’s citizenship before issuing the marriage license. Because the petitioner has not established that A-C-

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. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003).



was a U.S. citizen, she also has not established that she had a qualifying spousal relationship with a U.S. citizen and was eligible for immediate relative classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that A-C- subjected her to battery or extreme cruelty, that she entered into their marriage in good faith, and that she has a qualifying spousal relationship with A-C- and corresponding eligibility for immediate relative classification. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.