



U.S. Citizenship
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Services

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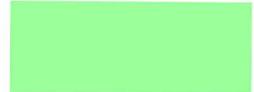


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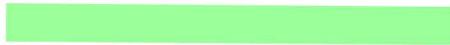
Office: VERMONT SERVICE CENTER

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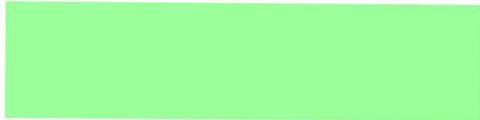
IN RE:

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 Acting Director, Vermont Service Center (“the director”), denied the immigrant visa petition. 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 U.S. citizen.

The director denied the petition determining that the petitioner had failed to establish a qualifying relationship with her spouse, and her corresponding eligibility for immediate relative classification. The director found also that the petitioner failed to establish that her husband subjected her to battery or extreme cruelty during their marriage.

Applicable 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 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 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, the following:

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, that:

(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 . . . 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.

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of South Africa who entered the United States as an H-2B nonimmigrant worker on May 27, 2003. The petitioner married H-S-¹, a United States citizen, on November [REDACTED]. The petitioner filed the instant Form I-360 on September 20, 2011. The director subsequently issued Requests for Evidence (RFE) of the petitioner's qualifying spousal relationship and corresponding eligibility for immediate relative or preference classification, and the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence, which the director found insufficient and the director denied the petition on those grounds.

We review these proceedings *de novo*.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The director determined that the petitioner had not established a qualifying spousal relationship because she failed to submit evidence of the termination of her prior marriage. On appeal, the petitioner resubmits copies of an abridged death certificate and an abridged marriage certificate from the Republic of South Africa. The marriage certificate indicates that the petitioner married

¹ Name withheld to protect the individual's identity.

S-M-² in [REDACTED] South Africa, on October 2, 1985. The death certificate reflects that S-M- died in [REDACTED] on November [REDACTED]. The petitioner sufficiently demonstrated that her prior marriage was terminated through death, and she has also established that she has a qualifying relationship as the spouse of a U.S. citizen and is eligible for immigrant classification based upon that relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(AA) and (cc) of the Act.

Battery or Extreme Cruelty

In her initial affidavit, the petitioner stated that she and H-S- lived together at [REDACTED] South Carolina, and had a happy marriage. She stated that she moved to [REDACTED] Connecticut, in December 2006 to look for a job, while H-S- remained in South Carolina. The petitioner indicated that she obtained a job in early 2007 and moved into a studio apartment. She stated that she visited H-S- in South Carolina on her days off until he moved to [REDACTED] in October 2007. The petitioner claimed that H-S- did not look for work and associated with people who used illegal drugs. She indicated that H-S-'s behavior towards her changed. She recounted that he was argumentative, loud, rude, and angry if she refused to give him money. She claimed that H-S- was a drug addict and that she found his "crack pipe," and although H-S- denied using drugs, he sold items in their house to buy drugs. The petitioner recounted that they slept apart and sometimes she woke up to find him "standing, glaring over [her] in the dark." She stated that H-S- did not help her pay bills or rent and they were forced to move from their apartment. The petitioner indicated that she moved to a studio apartment, and H-S- lived at a shelter, and since then she has had no further contact with him. The petitioner did not describe any incident in which the petitioner battered or subjected her to extreme cruelty.

In her second affidavit, the petitioner stated that H-S- called her names in public, cursed her, threw dishes against the wall, and abandoned her. The petitioner indicated that after H-S- left her she saw their former neighbor and friend [REDACTED] who used to live at their apartment building on [REDACTED]. The petitioner stated that Ms. [REDACTED] claimed that at their former apartment building Ms. [REDACTED] once overheard H-S- and a drug dealer plotting to rob the petitioner on her pay day. The petitioner claimed that Ms. [REDACTED] stated that upon seeing that Ms. [REDACTED] heard their conversation, the drug dealer threatened Ms. [REDACTED] at gun point, and Ms. [REDACTED] "left the apartments" due to the incident and did not tell the petitioner of the incident until now. The petitioner provided no probative, detailed information regarding Ms. [REDACTED] claim. In her letter dated March 1, 2013, Ms. [REDACTED] recounted that the petitioner's husband [REDACTED] and a "real drug addict," were passengers in her car on a day that she was to pick up the petitioner's check at her job. Ms. [REDACTED] stated that the man angrily accused "Junior" of deceiving him because [REDACTED] had not yet given him the petitioner's pay check. Ms. [REDACTED] indicated that the man told her to let him out of the car and threatened to shoot her for "foolery." She stated that when she "would come home [she] would witness these drug addict[s] hanging out on the porch" and that she "moved away frighten[ed] that they would damage [her] car," but does not mention an attempted robbery or being held at gun point.

² Name withheld to protect the individual's identity.

In addition to these affidavits, the petitioner provided a letter from [REDACTED], her sister. Ms. [REDACTED] indicated that the petitioner gave H-S- money even though he yelled at the petitioner and called her names in public. She stated that when the petitioner was sick, H-S- did not take care of her and that the petitioner has not heard from H-S- since he returned to South Carolina. Ms. [REDACTED] did not describe any incident in which H-S- battered or subjected the petitioner to extreme cruelty. Likewise, the letters from [REDACTED] did not discuss any abuse in the petitioner's marriage.

On appeal, the petitioner correctly states that "acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence" may constitute abuse. 8 C.F.R. § 204.2(c)(1)(vi). The petitioner asserts that her new letter on appeal provides a detailed description of her husband's behavior, which demonstrates he subjected her to extreme cruelty. The petitioner's description of her husband's behavior in her new letter, however, is similar to that which is described in her previously submitted affidavits. For example, in her new letter she states that after H-S- moved to [REDACTED] in 2007, he argued with her, cursed her, and called her names in front of her friends and strangers. Although she claims that H-S- would break things around the house, throw dishes against the wall near her, and threaten her if she did not give him money, she does not describe any particular incident in detail, and her general statements do not demonstrate that H-S- battered or subjected her to extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1).

Upon a full review of the record, the preponderance of the relevant evidence fails to demonstrate that the petitioner's wife subjected him to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner demonstrated that she had a qualifying relationship as the spouse of a U.S. citizen and was eligible for immigrant classification based upon that relationship. However, the petitioner has failed to establish that her husband battered or subjected her to extreme cruelty during their marriage.

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); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met.

ORDER: The appeal is dismissed.