



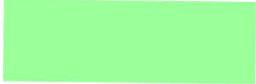
U.S. Citizenship
and Immigration
Services

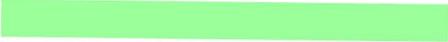
(b)(6)



Date: **OCT 09 2014**

Office: VERMONT SERVICE CENTER

File: 

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 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 resided with her spouse, married him in good faith, was battered or subjected to extreme cruelty by her spouse during their marriage, and is a person of good moral character.

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).

An individual who is no longer married to a citizen of the United States remains eligible to self-petition under these provisions if he or she is an alien: “who was a bona fide spouse of a United States citizen within the past 2 years and . . . who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. . . .” Section 204(a)(1)(A)(iii)(II)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa).

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:

(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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community.

* * *

(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.

* * *

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. . . . If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

(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 Kenya. The petitioner divorced F-O¹, her first husband, in Kenya in 2002. She last entered the United States as a B-1 nonimmigrant visitor on July 29, 2007. The petitioner married J-H², a U.S. citizen on March 28, 2008, and they divorced on October 31, 2012. The petitioner filed the instant Form I-360 on December 26, 2012. The director subsequently issued a Request for Evidence (RFE), of, among other things, the petitioner's joint residence with J-H, entry into the marriage with him in good faith, the requisite battery or extreme cruelty, and her good moral character. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

¹ Name withheld to protect individual's identity.

² Name withheld to protect individual's identity.

Battery or Extreme Cruelty

De novo review of the evidence submitted below and on appeal demonstrates that the petitioner was battered and subjected to extreme cruelty by J-H- during their marriage. In her initial declaration, the petitioner stated that she had a “happy marriage” until December 26, 2010, at which time J-H-’s behavior towards her changed because he believed that she lied about how much money she earned. She also stated that J-H- complained about her cooking, called her derogatory names, and sexually abused her, and described in detail the sexual abuse. She further stated that in April 2011, J-H- yelled at her and pushed her up against the wall, and was that she was afraid if she called the police J-H- would have her deported. She described another occasion when J-H- squeezed her arm while she was driving her car because she missed making a turn. The petitioner stated that she believed J-H- withdrew the immigrant petition that he filed on her behalf so she would not leave him. She stated that in June 2012 she and a friend went to get her belongings from her home and while the petitioner was in a closet, J-H- grabbed her arm and scratched her as she tried to get away.

The petitioner also submitted a letter from her friend, [REDACTED] Ms. [REDACTED] stated that she accompanied the petitioner to pick up her belongings at the petitioner’s marital residence and while she was in the living room and the petitioner was in the bedroom with J-H-, she heard the petitioner tell J-H- to leave her alone and then heard the petitioner scream. She stated that the petitioner came out of the bedroom, was upset, and showed her right arm to Ms. [REDACTED] The petitioner submitted photographs of bruises on her right arm.

The record also contains from [REDACTED] a senior crisis counselor/legal advocate, at the [REDACTED], a letter which described in further detail the incidents described in the petitioner’s declaration. Ms. [REDACTED] noted the bruises and circular marks she saw on the petitioner’s right arm. Ms. [REDACTED] stated that the petitioner “continues to experience issues with depression, flashbacks, [and] panic attacks” as a result of the domestic violence that she experienced during her marriage to J-H-. The letter from Dr. [REDACTED] an assistant professor of psychiatry at [REDACTED] stated that the petitioner received counseling services at the university’s clinic “for ongoing mental health problems related to trauma.” The letter from a case manager at [REDACTED] verified that the petitioner received assistance from their family violence program since May 2012.

On appeal, the petitioner submits another letter from Ms. [REDACTED] further discussing the June 2012 incident in which J-H- grabbed the petitioner’s arm, and letters from several of the petitioner’s friends who were told about the abuse by the petitioner or heard J-H- verbally abuse the petitioner.

Upon a full review of all the relevant and credible evidence, the petitioner has demonstrated that she was subjected to battery and extreme cruelty by J-H- during their marriage. The petitioner credibly described in probative detail the battery and extreme cruelty that she endured from J-H- during her marriage. In addition, the petitioner provided a letter from her friend about the June 2012 incident,

photographs of the bruises to her arm, and a letter from a crisis counselor verifying the incidents in the petitioner's marriage, particularly the existence of bruising from the June 2012 incident. The preponderance of the evidence demonstrates that the petitioner's husband subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Although the petitioner has overcome this ground for denial, additional grounds preclude approval of the petition.

Joint Residence

De novo review of the evidence submitted below and on appeal fails to demonstrate that the petitioner resided with J-H-. On the I-360 self-petition the petitioner lists March 2008 until April 2012 as the period that she resided with J-H-. The petitioner lists [REDACTED] Texas, as her last residence with J-H-. In her initial declaration, the petitioner does not describe her home with J-H- or their shared residential routines in any detail. The affidavits of her friends and niece submitted at filing stated that they visited the petitioner and J-H- at their marital residence, but they do not provide any probative details about the home or claimed visits. The petitioner also included several documents such as 2011 tax documents, a September 6, 2011 lease, utility bills, and a license, all of which list the petitioner's and J-H-'s residence at the claimed marital address at [REDACTED]

In the director's September 10, 2013 RFE, the director noted the results of an investigation which produced documents showing that the petitioner continued to reside with her first husband, F-O-, during the time in which she claimed to be residing with J-H-. Specifically, according to a search of public records, as of July 2009, more than a year after her marriage to J-H-, the petitioner's address was listed as [REDACTED] Dallas, Texas. The leasing agent for that apartment confirmed the petitioner as a tenant and provided copies of a rental application and leases. The rental application was signed by the petitioner and F-O- and dated "06-14-09" by the petitioner. Although the director also indicated that the rental application listed the petitioner and F-O- as residing at [REDACTED] Dallas, Texas from 2004 to 2008, in fact, the application listed this address as the petitioner's current address only. The 2004 to 2008 dates referred to an address for F-O- prior to his residence at [REDACTED]. The two lease contracts were dated July 1, 2009 and May 28, 2010, and listed the petitioner and F-O- as tenants/occupants at [REDACTED] apartment [REDACTED] from July 1, 2009 until June 30, 2010 and July 1, 2010 until June 30, 2011, respectively.

In response to the RFE, regarding the derogatory information noted by the director, the petitioner initially claimed that when she first came to the United States she began residing with her niece. She further stated that her niece's boyfriend "threw them from the home" and as she was "destitute and without resources" she agreed to live at [REDACTED] with F-O-. She claimed that she left that apartment in 2008 to begin residing with J-H- after their marriage but in 2009 began having problems with J-H-'s abuse. During these times of "marital discord" the petitioner claimed that she sought F-O-'s assistance and he agreed to add her to his lease. She states that she and F-O- did not cohabit in the apartment at the same time. The claim that she sought assistance from F-O- beginning in 2009 due to "marital discord" is inconsistent with the petitioner's claim that she had a "happy marriage" until December 2010.

In contrast to these claims, the petitioner's October 2, 2013 letter, also submitted in response to the RFE, indicates that she never resided at [REDACTED]. Instead, the petitioner claimed that she resided with her niece from December 2005 until she traveled back to Kenya and that upon her return in July 2007 she resumed residence at her niece's house at "the same address." She did not indicate that she and her niece were thrown out of the apartment or that she went to live at [REDACTED]. In her October 2013 letter the petitioner also did not mention being added to F-O-'s lease during "marital discord." Rather, she claimed that in May 2009, F-O- was "destitute and could not get an apartment due to his history and credit." The petitioner stated that her name appeared on the lease because F-O- convinced her to co-sign. The petitioner did not explain why on the June 2014 rental application she listed her current address as [REDACTED] when she had purportedly been residing with J-H- for more than a year.

Regarding her residence with J-H-, although the petitioner claimed to have continued living with J-H- until he became physically and verbally abusive, at which time she "moved out to the shelter," she provided no probative description of the claimed joint residence. In addition, the petitioner submitted letters from [REDACTED] however, the letters provided no details regarding the petitioner's claimed residence with J-H-. Mr. [REDACTED] stated that he visited their apartment on several occasions but does not describe the occasions, the residence, or provide any other facts to demonstrate a joint residence. Ms. [REDACTED] does not mention the claimed marital address. The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with his spouse.

On appeal, the petitioner claims that she lived with J-H- "from the day we got married . . . until the day I left to go to the shelter in May 2012." Regarding the rental application and lease agreements with F-O-, the petitioner claims F-O- "forced [her] to put [her] name on the lease contract" because he was "ashamed" to have gone through a divorce and having lost "face within the African community." The petitioner stated also that she agreed to "sign a lease contract with both our names on the contract" so F-O- would "help pay child support." The probative value of the petitioner's assertions that she never lived with F-O- and continuously resided with J-H- is undermined by a document entitled "Roommate Release/Replacement Form." This form shows the petitioner as an "Outgoing Resident," and stated that she was "moving out of [REDACTED] on 05-05-2011 and will no longer have access to this apartment. [She] hereby forfeit[s] [her] security deposit and any refund of prepaid rents or monies to [F-O-]."

The petitioner also submits additional affidavits from her friends and relatives. They state that they visited the petitioner at her home, but provide no detailed, probative information of any visits or a description of the claimed marital residence. The affidavits from the petitioner's friends, [REDACTED] state that the petitioner assisted in taking care of [REDACTED] states that the petitioner "use[d] to go and pick up [her] daughter, [REDACTED] from school and would baby sit her as well when [she] had to work on weekends. . . .[she] would also take [her] daughter to her doctor appointments." [REDACTED] further claims that the petitioner "started helping [her] with her daughter from 2009 until December 2011." Ms. [REDACTED] made no mention in her prior letter that the petitioner took care of her daughter at her marital

residence, and her statements are inconsistent with the petitioner's claim of having a "live-in job" from Monday through Friday.

The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. Section 204(a)(1)(J) of the Act; 8 C.F.R. 204.2(c)(2)(i). All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(vii). In this case, although the petitioner submitted some evidence of joint assets and liabilities with J-H-, the petitioner has failed to provide a detailed description of her claimed joint residence during her marriage. The petitioner's friends also fail to provide probative details in support of her claim of joint residence. Moreover, the record contains numerous discrepancies between each of the petitioner's claims and between the petitioner's claims and the documentary evidence in the record. Accordingly, when viewed as a whole, the record does not establish that the petitioner resided with her former husband, as required by section 204(a)(1)(A)(iii)(dd) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her initial declaration, the petitioner stated that in November 2007 while she was shopping at [REDACTED] an acquaintance introduced her to J-H-. The petitioner recounted that she often talked with J-H- and liked that he was an older, mature man. The petitioner stated that J-H- fell in love and asked her to marry him. She does not describe her feelings for J-H- at this time and indicates only that she accepted his proposal. The petitioner stated that they got married on March 28, 2008 and moved into J-H-'s apartment at [REDACTED] Texas, on their wedding day. She indicated that after the marriage she obtained a job that required her to provide live-in caretaker services. The petitioner recounted that she and J-H- spent time together and had "a happy marriage" until December 26, 2010. The petitioner did not further describe the first time she met J-H-, their courtship and engagement, wedding ceremony, joint residence, or any of their shared experiences, apart from the alleged abuse. In the response to the RFE, the petitioner provided no further probative details to demonstrate that she married J-H- in good faith.

In addition to her declaration, the petitioner submitted letters from her friends, [REDACTED] and her relative and friend, [REDACTED]. Their letters mostly discussed the breakdown in the petitioner's marriage and provided no probative information of the petitioner's intentions in marrying J-H-. In response to the RFE, the petitioner also submitted letters from her friends, [REDACTED] but their letters contained only general statements that provided no insight into the petitioner's intentions in marrying J-H-.

The petitioner also submitted joint documents. The document from [REDACTED] shows a joint checking account but only for three months of the marriage; February, March, and April of 2012, and the deposits into the account are from the petitioner only. The 2011 income tax return shows the couple's tax filing status as "Married filing jointly," but there is no evidence that the tax return was ever filed with the Internal Revenue Service. The petitioner further submitted [REDACTED] cards which show J-H- as an excluded driver. Finally, the petitioner submitted

copies of her earnings statements but they were directly deposited into a different account from the joint [REDACTED] account with J-H-. The record also contains two [REDACTED] invoices in J-H-'s name for September 22, 2011 and April 9, 2012, an [REDACTED] invoice for March 23, 2012, J-H-'s identification cards, a temporary permit, and a joint mail solicitation and invitation from a friend. In addition, the petitioner submitted photographs of herself and J-H- pictured together at their marriage ceremony and on other occasions, but the photographs are undated and she does not describe the significance of the photographs. Finally, record contains the September 6, 2011 lease which lists the petitioner and J-H- as residents, but is not signed by the petitioner and J-H-. Moreover, as discussed previously, the record shows several discrepancies between the lease agreements and the petitioner's claims.

On appeal, the petitioner repeats in her affidavit the statements that she made in her initial declaration. The petitioner also submits affidavits from her friends, [REDACTED] and her former employer's daughter, [REDACTED], but the affidavits provide no substantive information to establish the petitioner's intentions in marrying J-H-.

When viewed in the totality, the preponderance of the evidence fails to demonstrate that the petitioner entered into marriage with J-H- in good faith. The petitioner has not provided a detailed, probative account of her relationship with J-H-. None of the petitioner's friends or family members provides insightful information about her intentions in marrying J-H-. Moreover, the probative value of the assertions of the petitioner and her friends, the photographs, and the joint documents reflecting a shared address is undermined by the inconsistencies in the petitioner's claims and the inconsistencies in the petitioner's evidence. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with J-H in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

To establish good moral character, the regulation requires a "local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition." 8 C.F.R. § 204.2(c)(2)(v). The record shows that the petitioner resided in Texas for over three years and was residing in Texas at the time this petition was filed. The petitioner submitted a criminal background check from the Texas Department of Public Safety showing that the criminal background search used her date of birth and the names "[REDACTED]" [REDACTED]. The petitioner has provided the requisite clearance, and demonstrated that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

On appeal, the petitioner has established that her husband subjected her to battery or extreme cruelty during their marriage and that she is a person of good moral character. However, the record fails to establish that the petitioner resided with J-H- and entered into the marriage with him in good faith.

The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

ORDER: The appeal is dismissed.