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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: **OCT 10 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:

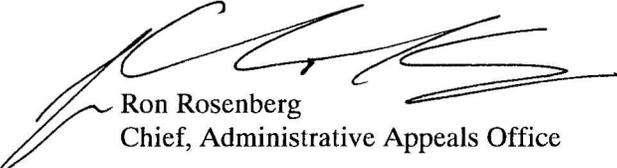
SELF-REPRESENTED

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 Director, Vermont Service Center (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 spouse.

The director denied the petition on the basis of his determination that the petitioner did not marry her husband in good faith and that he did not subject her to battery or extreme cruelty during their marriage. On appeal, the petitioner submits an affidavit.

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 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 . . . 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 is a citizen of Ghana who entered the United States on December 27, 2002, as a nonimmigrant student. The petitioner married her former husband, a U.S. citizen, on December [REDACTED] in Maryland. The petitioner filed the instant Form I-360 self-petition on January 28, 2011. The petitioner and her former husband divorced on May [REDACTED]. The director subsequently issued a request for additional evidence (RFE) of the petitioner's good-faith entry into the marriage and that her

former husband subjected her to battery or extreme cruelty. The director found the petitioner's responses to the RFE insufficient and denied the petition accordingly. On appeal, the petitioner submits a brief affidavit.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence fails to demonstrate the petitioner's entry into her marriage in good faith. In her affidavit, the petitioner stated that she met her former husband at a friend's party. She indicated that they were platonic friends at first, but then their relationship became romantic and they married in December, [REDACTED]. In her affidavit in response to the RFE, the petitioner added that she visited her former husband once or twice a month in Maryland before they were married, and that after they got married, they cooked, shopped, saw movies, and watched boxing. The petitioner did not describe in probative detail how she met her former husband, their courtship, engagement, wedding, or any of their shared experiences, aside from the alleged abuse.

The petitioner submitted affidavits from friends. [REDACTED] indicated that through visits to the petitioner's home, he got to know the petitioner's former husband, and that they were a perfect couple with strong affection. [REDACTED] stated that he witnessed the petitioner's wedding and visited her many times at the former couple's home. [REDACTED] reported that she knows the petitioner and they talked about the petitioner's former husband, but her affidavit focused on the alleged abuse. These affidavits do not describe the affiants' observations in probative detail or provide any other substantive information regarding the petitioner's interactions and relationship with her former spouse prior to and during their marriage. The director correctly concluded that these affidavits were insufficient to demonstrate that the petitioner married her former husband in good faith.

The petitioner also submitted photographs of herself and her former husband at their wedding and on a few other unspecified occasions. She submitted proof of joint health insurance, joint checking account statements and a copy of their [REDACTED] joint state income tax return. The petitioner submitted a jointly addressed utility bill, but it was dated after they separated. The petitioner submitted a lease in both her and her former husband's names, but the lease term began after the two separated, and the lease does not provide any specific information regarding the petitioner's intentions in entering her marriage. This evidence, without probative testimony regarding the relationship, is insufficient to establish the petitioner's intentions upon entering into the marriage.

In her affidavits, the petitioner briefly describes meeting her former husband and states that they were married, but does not describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. In addition, on August 16, 2012, in an interview with agents of United States Immigration and Customs Enforcement (ICE), the petitioner stated that she only entered into marriage with her former husband in order to obtain immigration benefits.

On appeal, the petitioner asserts that her marriage to her former husband was not a sham marriage and that the director did not properly consider the evidence she submitted. The petitioner also states she has “sufficient documents to establish that the marriage was bonafide and not a sham which [she] will be providing later.” To date, we have not received any further evidence from the petitioner. Finally, the petitioner claims that a local state trooper and a Homeland Security Officer visited her home and threatened her with arrest if she did not admit that her marriage was fraudulent. The record does not show that any state law enforcement official accompanied the ICE agents who interviewed the petitioner. Even disregarding the petitioner’s admission that her marriage was not bona fide, the preponderance of the remaining relevant evidence does not establish that the petitioner married her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We find no error in the director’s determination that the petitioner failed to establish that her former husband subjected her to battery or extreme cruelty. In her affidavits, the petitioner stated that her former husband had an affair, put her down, threatened her, and demanded sex. She recalled that her former husband “maltreated” her and disabled their vehicle. She indicated that her former husband threatened her if she did not move out. The petitioner does not contend that her former husband battered her, and she does not probatively describe behavior that involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted statements from friends. [REDACTED] stated that she knew the petitioner’s former husband verbally abused her, disabled their truck, and threatened the petitioner. [REDACTED] indicated that the petitioner’s former husband philandered, maltreated her, and threatened the petitioner. [REDACTED] reported that the petitioner’s former husband was abusive, told him not to call, disabled the petitioner’s truck, and threatened her. None of the affiants stated the basis for their knowledge.

The petitioner submitted a psychological evaluation prepared by [REDACTED] a psychologist. Dr. [REDACTED] indicated that the petitioner’s former husband had affairs, threatened the petitioner, disabled her truck, verbally abused her, and forced the petitioner to have sex, but Dr. [REDACTED] did not describe any particular incident in detail. Dr. [REDACTED] diagnosed the petitioner with post-traumatic stress disorder (PTSD) and depression. While we do not question Dr. [REDACTED] expertise as a psychologist, her evaluation provided no additional probative information of battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner also submitted a temporary protective order (TPO), but the order does not provide any information regarding the basis for the order, nor does the petitioner provide evidence that the TPO resulted in a permanent protection order against her former husband. The petitioner submitted two police reports; the first one stated that there was no physical contact or violence, but that the petitioner’s former husband threatened her if she didn’t leave the home. However, the officer indicated that the petitioner’s statements were inconsistent; first she said that her former husband

threatened her during a previous argument, then she stated that he threatened her before she left the apartment. The second police report stated that the petitioner went to her house to get her belongings and that her former husband was there, but did not describe any battery or extreme cruelty. The petitioner also submitted a letter from the [REDACTED] indicating that the petitioner stayed at the shelter because she was fleeing abuse from her former husband, but the letter does not describe any particular incident of battery or extreme cruelty.

On appeal, the petitioner contends that her former husband is a [REDACTED] who turned the law against her, accused her of causing problems for him with immigration authorities, and threatened her to make her leave their home. The relevant evidence does not, however, provide a consistent account of her former husband's threats or otherwise establish that her former husband battered her or subjected her to threats of violence, psychological or sexual abuse, or other actions constituting extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that her former 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.

Conclusion

On appeal, the petitioner has not established that she entered into the marriage in good faith or that her former husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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). Here, that burden has not been met.

ORDER: The appeal is dismissed.