



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **OCT 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:

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.

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 was the subject of battery or extreme cruelty by her husband, and that she married her husband in good faith. On appeal, the petitioner submits a statement and additional evidence.

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 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 or the self-petitioner's child, 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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Saint Lucia, entered the United States on April 23, 2000 as a nonimmigrant visitor. She married T-F-¹, a U.S. citizen, on October 7, 2004 in [REDACTED] Illinois. T-F- filed an immigrant visa petition on behalf of the petitioner, which was ultimately denied as abandoned. The petitioner filed a Form I-360 self-petition on September 27, 2010 based on her marriage to T-F-. The director denied the petition on December 6, 2011, and the petitioner

¹ Name withheld to protect the individual's identity.

submitted an untimely appeal, which was rejected. The petitioner filed the instant Form I-360 self-petition on September 25, 2012. The director subsequently issued a Notice of Intent to Deny (NOID) for the petitioner's failure to establish the battery and/or extreme cruelty that she suffered, and her good-faith entry into the marriage, among other issues. The petitioner responded with further evidence, which the director found insufficient to establish her 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). Upon a full review of the record, we find that the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The preponderance of the relevant evidence does not establish that T-F- battered the petitioner or subjected her to extreme cruelty. In her initial personal affidavit, dated September 2, 2011, submitted in support of her first Form I-360 self-petition, the petitioner stated that months after she and T-F- married, T-F- lost his job and began to leave the house for days or weeks at a time claiming that he was looking for work. The petitioner recounted that during his absences, T-F- would not answer her calls, and when he returned home they would have arguments regarding his absences. The petitioner indicated that T-F- told her that he was seeing another woman, and requested that the petitioner engage in a "threesome," which she declined. The petitioner discussed T-F-'s drug and alcohol usage, of which she disapproved. She recounted the couple's financial difficulties, and indicated that T-F- often asked her for money. The petitioner briefly stated that some weeks after the couple's immigration interview, T-F- insisted that the petitioner acquiesce to his sexual preferences, and slapped the petitioner when she declined. The petitioner described the end of the relationship, stating that she returned home from work to find that T-F- had left with some of his belongings. She recounted that after a month she realized that T-F- was not coming back, so her brother and a friend arranged for her to move from Chicago to New York City. The petitioner stated that she has not seen or spoken to T-F- since her move.

In the same submission with her September 2, 2011 statement, the petitioner provided a psychosocial report prepared by [REDACTED] also dated September 2, 2011. In the report, Mr. [REDACTED] recounted various circumstances of the marriage that were inconsistent with the petitioner's statement. For example, Mr. [REDACTED] stated that the petitioner was forced to stay at home and told to stop inviting friends over to house. However, the petitioner stated that T-F- was gone for days and weeks at a time without any contact. The petitioner did not claim that T-F- attempted to isolate her from her friends. Mr. [REDACTED] also indicated that T-F- humiliated the petitioner in a restaurant and on a train. Neither Mr. [REDACTED] nor the petitioner provided probative information regarding these incidents. The report briefly states that T-F- choked the petitioner and forced her to have unwanted sexual relations, but did not describe specific incidents. Several of the quotations in the report attributed to the petitioner are dissimilar to the petitioner's communication style, as exemplified in her statements. The dissimilarity of the statements detracts from the credibility of Mr. [REDACTED] report, which the petitioner resubmitted in these proceedings.

In support of her initial Form I-360 self-petition, the petitioner also submitted affidavits from friends and a family member, which she also resubmitted in these proceedings. In an affidavit dated August 27,

2011, [REDACTED] the petitioner's friend, stated that the petitioner told her that T-F- would leave the house for days or weeks at a time and was disrespectful toward the petitioner during arguments. [REDACTED] another of the petitioner's friends, asserted in his September 1, 2011 affidavit that he learned through telephone contact with the petitioner about her marital difficulties. He stated that the petitioner told him about T-F-'s alcohol and drug usage and his requests for money. Mr. [REDACTED] described the "worst" incident when T-F- disappeared for two weeks prior to the couple's immigration interview, and returned only two days before the interview. He indicated that after numerous calls from the petitioner in tears, he helped her resettle in New York. In an affidavit dated September 1, 2011, the petitioner's brother recounted the first time he learned that there was a problem in his sister's marriage. He stated that he received a telephone call from the petitioner late at night during which she told him that T-F- came home intoxicated and that they had an argument regarding finances. The petitioner's brother also described an incident when T-F- had been gone from the house for three weeks before the petitioner was informed that he was in the hospital for a gunshot wound. He stated that the petitioner visited T-F- many times in the hospital, and T-F- subsequently told her that he was involved in illegal activities. None of the affiants claimed that T-F- battered the petitioner or subjected her to behavior amounting to extreme cruelty.

In support of the appeal of her first Form I-360 self-petition, the petitioner submitted an additional affidavit dated January 6, 2012. In the affidavit, the petitioner indicated that she was putting aside money to buy a house with T-F-, but discovered that T-F- was stealing the money a little at a time. The petitioner briefly stated that their arguments "ended slapped, punched, or pushed," but did not provide further explanation. The petitioner asserted that T-F- had "controlling habits," but did not discuss specific incidents. The petitioner described in detail one incident of abuse, which occurred after the petitioner confronted T-F- about paying his girlfriend's telephone bill. The petitioner stated that T-F- continuously beat her for hours and sexually assaulted her. The petitioner described T-F- leaving and telling her to "clean up the mess," which the petitioner did as soon as T-F- departed. The petitioner stated that she then called her brother and a friend and told them what happened. The next day the petitioner's brother and friend arranged for her departure from Chicago. The petitioner asserted that she packed what she could, and took a plane from [REDACTED]. The petitioner's January 6, 2012 statement directly contradicts her previous claim that she left for New York after T-F- failed to return home after a month. Although the petitioner stated that she confided in her brother and friend about the abuse, neither the petitioner's brother, nor her friends mentioned the incident or the petitioner's physical injuries upon her arrival to New York, which the petitioner claimed was one day after the incident of abuse. Mr. [REDACTED] who helped the petitioner relocate, described the "worst" incident that the petitioner suffered as T-F-'s two week absence from the home prior to the couple's immigration interview.

In a statement submitted in response to the NOID in the instant proceeding, the petitioner provided another personal affidavit dated July 23, 2013. The statement is similar to her January 2, 2012 affidavit. The petitioner again briefly noted that T-F- slapped, pushed, or punched her during arguments. The petitioner again recounted the previously described incident of abuse in nearly identical language. However, in this affidavit, the petitioner also stated that after sexually assaulting her, T-F- choked her until everything turned black and her face seemed to pulsate. The petitioner also asserted that T-F- raped her. In this affidavit, the petitioner also did not indicate that she moved to New York immediately following this incident, as she did in her prior statement.

In her July 23, 2013 affidavit, the petitioner also discussed T-F-'s absence from the home prior to the couple's immigration interview. She stated that he had been gone for several days, and when he came home she discovered that he had been in the hospital for a gunshot wound. The petitioner's statement conflicts with the petitioner's brother's claims that the petitioner visited T-F- several times while he was in the hospital. In her July 23, 2013 statement, the petitioner claims that her last fight with T-F- occurred when they got home from their immigration interview. She stated that she tried to fight back when he wanted to have sex with her, but T-F- was "banging on her head" and she felt like she was going to lose consciousness. She stated that after T-F- left, she contacted her brother and friend and planned her move to New York. She indicated that she packed her important belongings and then hid them in case T-F- returned, and the following day she departed Chicago via airplane. This account conflicts with the petitioner's January 2, 2012 affidavit in which she indicated that she left the home immediately with whatever she could pack as soon as the arrangements had been made. The petitioner's July 23, 2013 statement regarding the circumstances of her departure from Chicago and the incident that preceded it are inconsistent with both her January 2, 2012 and September 2, 2011 accounts of the last incident of abuse and her move.

In response to the NOID, the petitioner submitted a second psychological assessment dated July 20, 2013, prepared by licensed marriage and family therapist [REDACTED] Dr. [REDACTED] assessment is based on a single evaluation of the petitioner on July 20, 2013, more than seven years after the petitioner states that she and her husband separated. Dr. [REDACTED] recounted the petitioner's statements regarding her relationship with T-F-. Dr. [REDACTED] briefly stated that the petitioner described instances when T-F- physically assaulted her, but did not provide probative information regarding these incidents. She further stated that the petitioner indicated that her husband forced her to have sex.

The petitioner provided photographs of a few small scars, which she asserts resulted from T-F-'s abuse. The petitioner also provided two photographs of buttocks with red marks, which the petitioner claims is a "bruise." The petitioner's face appears in only one photograph, in which she appears to have some redness in one eye. The photographs are undated, and the petitioner did not provide a probative account of the various incidents resulting in the marks.

In her September 12, 2013 decision, the director summarized the discrepancies in the petitioner's claims of abuse, and correctly concluded that the inconsistencies diminished the credibility of her statements and psychological reports based on her statements.

On appeal, the petitioner submits an additional undated personal affidavit, in which she states that everything that she wrote in the past is true. She did not address the discrepancies in her claims of abuse.

De novo review of the relevant evidence shows that the director correctly concluded that the petitioner did not establish that her U.S. citizen spouse battered her or subjected her to extreme cruelty. The petitioner's statements regarding the abuse that she suffered contain numerous discrepancies, described above, that diminish their credibility. In their affidavits, the petitioner's friends and brother do not attest that T-F- battered the petitioner or subjected her to extreme cruelty, even though the petitioner claims to have fled to New York to her brother and a friend the day after she suffered multiple physical injuries.

On appeal, the petitioner does not address the discrepancies in her statements. Rather, she states that she felt the first letter was "not satisfactory" so she wrote a more detailed one. The unresolved discrepancies detract from the credibility of petitioner's statements regarding the claimed abuse, and the two psychological reports based on the petitioner's statements. See section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i) (determination of what evidence is credible and the weight to be given that evidence is within USCIS's sole discretion). The preponderance of the relevant evidence does not show that the petitioner was battered or subjected to extreme cruelty by her U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

The preponderance of the relevant evidence does not establish that the petitioner married her husband in good faith. In her initial affidavit dated September 2, 2011, the petitioner briefly stated that she met her husband at a club through a mutual friend in 2003. She asserted that they became close friends and then lovers, and got married in October 2004. The petitioner did not provide any probative information regarding their courtship, wedding, or shared experiences beyond the claimed abuse. In her second affidavit dated January 6, 2012, the petitioner stated that she and T-F- were saving money to buy a house where they could raise their future children. However, the credibility of the petitioner's claim that she was saving to buy a house is diminished by her multiple statements regarding the couple's financial difficulties and their inability to timely pay their bills as they each only had sporadic employment. In her July 23, 2013 statement, the petitioner claimed that she met T-F- in 2001, conflicting with her prior assertion that the couple met in 2003. The petitioner briefly stated that the couple met for "dates and activities" that included walks and dinner, but she did not provide probative information regarding these occasions. The petitioner indicated that the couple got married in October 2004, and began living at a New York address. This conflicts with the petitioner's prior representations that the couple resided together in Illinois. The petitioner again noted that the couple was saving to purchase a home.

The affidavits from the petitioner's friends and brother, submitted in response to the NOID, also do not provide probative information regarding the couple's courtship, wedding, or shared experiences. The petitioner's brother briefly stated that T-F- traveled to New York to meet the petitioner's family, but did not provide any further information regarding the visit. The record also contains documents indicating that both T-F- and the petitioner obtained life insurance on July 29, 2005; however, the documentation does not list the beneficiaries of the policies. The petitioner also submitted correspondence from the Internal Revenue Service addressed to her and T-F- at the petitioner's New York residence, and a 2004 income tax return listing T-F- and the petitioner's status as "Married filing jointly." In addition, the petitioner also submitted undated, unlabeled photographs, six of which appear to show her and T-F- together on unspecified occasions.

On appeal, in an undated statement, the petitioner described meeting T-F- for the first time at a club, and their subsequent outing to the [REDACTED]. Also on appeal, the petitioner submitted a lease for a residence in [REDACTED] Illinois in the names of both her and T-F-, commencing on January 7, 2004. Although the lease was purportedly signed nearly ten months before the petitioner's marriage to T-F-, the petitioner's married name appears on the lease. The petitioner's administrative record contains a Form G-325A, Biographic Information, submitted by the petitioner in support of her initial application for adjustment of status. The Form, signed by the petitioner on October 13, 2004, lists an address on

[REDACTED] as her only place of residence in Chicago. The petitioner has not indicated in her statements that she resided with T-F- prior to marriage or in [REDACTED] at any time. The inconsistencies between the lease and the other evidence of record detract from the credibility of the lease.

When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with T-F- in good faith. Much of the relevant documentation is of minimal probative value, such as the lease containing discrepancies in the dates and the petitioner's name, documents addressed solely to the petitioner dated after her relationship with T-F- ended, and unlabeled photographs. The petitioner's statements contain unresolved inconsistencies as to when she met T-F- and where they resided, and the petitioner, her brother, and her friends do not provide probative information regarding the couple's courtship, wedding, shared residence and experiences. When viewed in the aggregate, the preponderance of the relevant evidence does not establish that the petitioner married T-F- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. The record does not demonstrate by a preponderance of the evidence that the petitioner was subjected to battery or extreme cruelty by her husband, or that she entered into their marriage in good faith. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these two grounds.

The burden of proof in these proceedings rests solely with the petitioner. 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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.