



U.S. Citizenship
and Immigration
Services

(b)(6)

Date:

OCT 21 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)

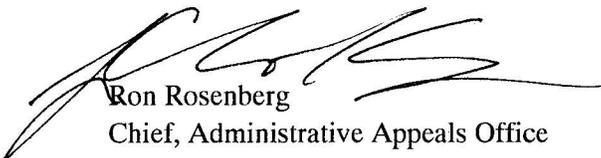
ON BEHALF OF PETITIONER:

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 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 former spouse, a U.S. citizen. The director denied the petition for failure to establish that the petitioner married her husband in good faith, resided with him during their marriage, and that he subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief.

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 for an abused spouse self-petition are further explained in 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 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 explained in 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. . . .

(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 is a citizen of Ghana who entered the United States on September 1, 2008, as a nonimmigrant exchange visitor. The petitioner married W-F-¹, a U.S. citizen, on September 10, [REDACTED] Massachusetts. On appeal, counsel states that the petitioner divorced W-F- on May 20, 2013. The petitioner filed the instant Form I-360 self-petition on July 27, 2010. The director subsequently issued a Request for Evidence (RFE) and a Notice of Intent to Deny (NOID) for failure to establish the petitioner's joint residence with W-F-, her good-faith entry into the marriage, and W-F-'s battery or extreme cruelty. Through counsel, the petitioner timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. 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. Counsel's claims on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Joint Residence

The petitioner stated on her Form I-360 self-petition that she resided with W-F- from June 2009 until July 2010 and that the last address at which they lived together was on [REDACTED] in [REDACTED] Massachusetts. In response to the RFE, the petitioner described visiting W-F- for a month from January 10, 2009, until February 15, 2009, before their marriage at his apartment on [REDACTED]. She stated that he lived with his friend, [REDACTED]. She explained that she was in love with W-F- so she decided to stay with him. The petitioner described W-F-'s mistreatment of her after they married, how he moved out of the apartment at the end of June 2010, and that she continues to live there.

The petitioner failed to provide any probative details of joint residency with W-F-. For example, she did not describe their apartment, their shared belongings, or provide any other substantive information regarding her residence with W-F- after their marriage. In addition, her declaration contradicts a letter from [REDACTED]. According to Mr. [REDACTED] he was sharing his two-bedroom apartment with [REDACTED] who introduced him to the petitioner and W-F- in January 2009. Mr. [REDACTED] stated that the couple was looking for a room and that shortly after he met them, the petitioner moved in. He further stated that it was not until June 2009 when W-R- moved in. He explained that W-R- moved out sometime in 2010 and that he continues to live in the same apartment with the petitioner. Therefore, the petitioner's account of visiting W-F- while he was living with Mr. [REDACTED] directly conflicts with Mr. [REDACTED] account that he met W-F- and the petitioner at the same time, that the petitioner moved into the apartment first, and that W-F- did not move in until months later. These inconsistencies greatly detract from the credibility of the petitioner's claims.

¹ Name withheld to protect the individual's identity.

Copies of joint bank account statements, bills, and joint income tax returns show the couple commingled finances, but do not establish that they actually resided together. Other correspondence in the record are addressed either to W-F- individually or are jointly addressed to the couple at the [REDACTED] address. However, without a more probative, detailed account of their joint residence from the petitioner, and without an explanation of the significant contradictions between her declaration and Mr. [REDACTED] statement, the preponderance of the evidence does not demonstrate that the petitioner resided with her ex-husband during their marriage.

Counsel contends on appeal that the director erred in finding the petitioner not credible based on inconsistencies in evidence submitted for a Form I-130 alien relative petition and the instant Form I-360 self-petition because the two are fundamentally different immigrant petitions. However, Mr. [REDACTED] statement was submitted in response to the RFE for the instant Form I-360 self-petition. Consequently, the preponderance of the relevant evidence does not demonstrate that the petitioner resided with her former spouse after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The petitioner described meeting W-F- in a restaurant in December 2008 when she was visiting [REDACTED] Massachusetts, with her friend [REDACTED]. The petitioner explained how she and W-F- started texting and talking on the telephone multiple times per day and that they met for lunch at the same restaurant later the same week. According to the petitioner, she returned to her internship in Florida, but went back to [REDACTED] to see W-F- on January 10, 2009, and changed her return flight home to Ghana to February 15, 2009, so that they could be together for over a month. She recounted staying with W-F- at his apartment that he shared with Mr. [REDACTED] and described the activities they shared together. The petitioner described how her feelings for W-F- grew very quickly, that she loved him, and that she decided not to return to Ghana in order to stay with him. She described his marriage proposal to her in July 2009 and their simple wedding ceremony at City Hall, attended only by W-F-'s friend, [REDACTED]. She explained that they planned on having a traditional wedding in Ghana.

Although the petitioner provided information regarding her courtship, wedding ceremony, and some of her shared experiences with W-F-, the inconsistency between her declaration and Mr. [REDACTED] statement greatly detract from the credibility of her statements. As described more thoroughly in the preceding section, the petitioner claimed she visited W-F- beginning in January 2009 and stayed with him in the apartment he shared with Mr. [REDACTED]. However, according to Mr. [REDACTED], W-F- did not move into the apartment until June 2009. Although the record contains numerous joint documents, without a more detailed, probative description from the petitioner regarding her marital intentions and a reasonable explanation for the significant discrepancy between her declaration and Mr. [REDACTED] statement, the preponderance of the relevant evidence does not establish that the petitioner entered into marriage with W-F- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The record contains a letter from Nurse Practitioner [REDACTED] which briefly states that the petitioner was treated twice for post-traumatic stress disorder following an abusive relationship with her husband,

and that she was prescribed anti-depressant medication. In addition, a letter from Counselor Advocate [REDACTED] indicated that the petitioner is a legitimate victim of domestic violence, received individual counseling, and completed a six-week support group. A letter from the petitioner's friend [REDACTED] described how W-F- did not allow the petitioner to talk to her on the telephone and that when she visited the petitioner in January 2010, she had a mark on her face that she said was caused by her husband. Mr. [REDACTED] also indicated in his statement that he heard sounds of physical struggle between W-R- and the petitioner at night, and that W-R- screamed at the petitioner. While these letters provide some evidence of battery or extreme cruelty, they are outweighed by significant and unresolved discrepancies in the record.

The petitioner stated that W-F- was physically and sexually aggressive, verbally abusive, called her names, and threatened to have her deported. She described how he spent most of his time away from home, stopped providing for her financially, and stole money from their bank account. She explained how he called and harassed her, as well as her managers and clients, at work. She described that during the first week of June 2010, W-F- left the house for seven days and did not answer her telephone calls and text messages. She explained that by this point in their relationship, they were speaking to each other as little as possible. She recounted that he left at the end of June, but called her twice afterwards to ask for money.

The petitioner's declaration contradicts the Incident Report from the [REDACTED] Police Department which she submitted in response to the RFE. The report is dated June 4, 2010 and states that the petitioner went to the police station and asserted that W-F- was calling her at work and they argued, but "never has she been assaulted." In direct contradiction, the petitioner stated in her declaration that W-F- left their home during the first week of June, never called her during this period, but had previously assaulted her numerous times. These discrepancies greatly detract from the credibility of the petitioner's statement. Although the director notified the petitioner of these discrepancies in the NOID, neither the petitioner nor counsel submits any explanation or additional evidence to resolve them on appeal. The preponderance of the relevant evidence does not establish that the petitioner's ex-husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner failed to establish that she resided with her ex-husband during their marriage, that he subjected her to battery or extreme cruelty during their marriage, or that she entered the marriage in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.