



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **SEP 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 Acting Vermont Service Center 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 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.

The director denied the petition for failure to establish that the petitioner was battered or subjected to extreme cruelty by her husband during their marriage.

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 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)(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.

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.

Facts and Procedural History

The petitioner is a citizen of Ghana who last entered the United States as a B-2 nonimmigrant visitor on [REDACTED] 2003. She married A-P-¹, a U.S. citizen, on [REDACTED], 2008. The petitioner filed the instant Form I-360 on March 8, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence, which the director found insufficient and the director denied the petition. The petitioner timely appealed.

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

Battery or Extreme Cruelty

De novo review of the evidence submitted below fails to demonstrate that the petitioner's husband battered her or her child or subjected the petitioner or her child to extreme cruelty during her marriage. The petitioner stated in her initial affidavit that she did not know about her husband's criminal history when she married him and that he was not truthful to her about his past. She explained that her husband sponsored her for permanent residency and during an interview for the family petition and adjustment application she learned of her husband's prior arrests and the criminal charges brought against him for sexual abuse of a minor and possession of a firearm. The petitioner stated that she was afraid of her husband upon learning about his past, and out of concern for the safety of her son sent him to live with her parents in 2009. She stated that in January 2011 she received a letter from U.S.

¹ Name withheld to protect the individual's identity.

Citizenship and Immigration Service (USCIS) that discussed her husband's criminal record, and when she confronted her husband about the information in the letter, he told her that it was none of her business, asked for his ring back, and left her. She stated that since then she has not heard from her husband, and that she filed for divorce. In her second affidavit, the petitioner stated that her husband "never physically harmed [her]. I was under subject of extreme cruelty of his lies and verbal threats." She stated that her husband "would scream and yell at [her] in front of [their] son." The petitioner stated she had to go to the hospital because the stress was causing her to be sick and that she had panic attacks. The petitioner did not describe any particular incident where her husband ever battered or threatened her or her child, or establish that her husband's behavior was part of an overall pattern of violence or involved sexual abuse or psychological abuse or otherwise constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

In addition, the affidavits from the petitioner's landlord, [REDACTED] and her barber, [REDACTED] are not probative in establishing that A-P- ever battered the petitioner or her child or subjected her or her child to behavior that constituted extreme cruelty. Ms. [REDACTED] stated that she rented her house to the petitioner and her husband, and during visits she would "sometimes see them engaged in a heated argument over trivial issue[s]." Ms. [REDACTED] further stated that the petitioner told her that she divorced A-P- "due to the threat and cruel treatment he meted out to her." Mr. [REDACTED] stated that he was told the petitioner and A-P- divorced "due to the abusive treatment [A-P-] has been [sic] meted out to the wife." Neither Ms. [REDACTED] nor Mr. [REDACTED] described any specific incidents of abuse that they witnessed or of which they were otherwise aware. Their short statements are not probative in establishing that A-P- ever battered or threatened the petitioner or her child or subjected her or her child to sexual abuse or psychological abuse or to behavior that is equivalent to extreme cruelty.

Lastly, the doctor's progress notes from [REDACTED] do not establish that the petitioner or her son were ever battered or subjected to extreme cruelty by her husband. The doctor's notes reflect that the petitioner had three clinic visits, none of which were for treatment of a panic attack or stress-related symptoms. For example, on May 16, 2009, she was treated for "itching eyes and throat, sore throat, lightheaded . . . neck and joint pain," and on April 5, 2010, the visit was to treat "[p]ain in joint, shoulder region" and "[a]llergic rhinitis." The petitioner's clinic visit on April 5, 2010 was for, among other things, a "headache likely tension related trial of advil exercises," and the doctor specifically indicated in his notes that the visit was not related to domestic violence.

In denying the petition, the director stated that there was an inconsistency between the petitioner's affidavits in this proceeding and statements made by the petitioner on May 19, 2009, in an interview with Dr. [REDACTED] for an evaluation report on A-P-. Specifically, the director found that Dr. [REDACTED] report stated that the petitioner told Dr. [REDACTED] that A-P- was a good father to her son, and that the petitioner knew about her husband's criminal convictions and it did not have any impact on her marriage. The director concluded that this inconsistency brings into question the reliability of the petitioner's statements and diminishes their weight as probative evidence.

On appeal, the petitioner asserts that she is "retracting previous statements, which [she] made about [A-P-] and [her] marriage to him." She states that "[a]ll prior statements that I have made about my marriage with [A-P-, were] made under duress. Throughout our marriage I was mentally and physically abused and was threatened with death, if I told anyone about it." The petitioner states that

she “was not honest about my marriage before, but please understand I was scared.” The petitioner, does not however, provide any further details regarding her spouse’s actions and behavior to establish her claim of battery and extreme cruelty.

On appeal, the petitioner submitted additional evidence: a reference commending her character from her friend, [REDACTED]; a disposition certificate from the State of New York showing that A-P- was convicted of criminal possession of a weapon (a gun) in the third degree (N.Y. Penal Law § 265.02) on [REDACTED], 1992; and a disposition certificate from the State of New York showing that A-P- pled guilty to endangering the welfare of a child (N.Y. Penal Law § 260.10-01) on [REDACTED], 2008. Qualifying abuse must be perpetrated against the petitioner or her child during the marriage. 8 C.F.R. § 204.2(c)(1)(vi). Although A-P-’s convictions evidence his criminal past, the petitioner has failed to demonstrate that either conviction relates to the petitioner or her child.

Accordingly, when viewed in the totality, the preponderance of the evidence fails to demonstrate that the petitioner or her child were subjected to battery or extreme cruelty by her husband during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has not overcome the director’s ground for denial on appeal. She has not demonstrated that she or her child were subjected to battery or extreme cruelty by her husband during her marriage.

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.