



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:

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 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 resided with her husband, and that her husband battered or subjected her to 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)(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:

(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.

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.

Facts and Procedural History

The petitioner, a citizen of China, married T-B-¹ a U.S. citizen, in China on [REDACTED] 2003. The petitioner last entered the United States as a K-3 nonimmigrant spouse on [REDACTED] 2011. The petitioner filed the instant Form I-360 on September 20, 2011. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's joint residence with her husband, and the requisite battery or extreme cruelty. The director found the petitioner's response insufficient, and denied the petition. Counsel filed a timely appeal.

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

¹ Name withheld to protect the individual's identity.

Joint Residence

We find no error in the director's determination that the petitioner failed to demonstrate that she resided with her husband. On the Form I-360, the petitioner listed October 2003 to August 2009 as the period that she lived together with her husband. She also listed [REDACTED] California, as the last address where they lived together from July 2009 to August 2009. In her initial affidavit, the petitioner stated that she met T-B- in early 2003 through the Internet. She stated that he first visited her at her home in [REDACTED] China, in October 2003, and that she and T-B- were married in China on [REDACTED] 2003. The petitioner stated that after their honeymoon near her home, "[i]t was difficult to see [T-B-] leave China." After T-B- returned to the United States, the petitioner remained in China for nearly six more years. She provided no evidence to demonstrate that she resided with T-B- in China and her statements contain no probative details regarding T-B-'s stay in China to establish that they resided together. Although the petitioner submitted photographs that appear to be taken during T-B-'s visit to China and show the petitioner and T-B- pictured together and with other people, the photographs are not dated and do not identify any specific residence that the petitioner shared with her husband.

Regarding her claim of residence with T-B- in the United States, the petitioner stated that she arrived in Los Angeles, California, on [REDACTED] 2009, that her uncle took her to his home, and that she lived there for a few days before she rented her own apartment. The petitioner explained that T-B- told her that in a few days he would meet her in Los Angeles. She stated that they resided together for an unspecified period of time at the [REDACTED] address but that "shortly after we were living together he left for Oregon." The petitioner failed to describe their home or provide any other probative details about the claimed marital residence with her husband or their shared residential routines.

The petitioner also submitted an affidavit from her supervisor, [REDACTED] her uncle, [REDACTED], and her friends, [REDACTED], [REDACTED], and [REDACTED]. The affidavits from her employer, uncle, and friends mainly discuss the breakdown of the petitioner's marriage and do not describe any visits to the petitioner's marital home or provide any substantive information about the claimed shared residence. Accordingly, the preponderance of the relevant evidence fails to demonstrate that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

On appeal, counsel submits no additional evidence but argues that the director impermissibly rejected the petitioner's photographic evidence and required the petitioner to demonstrate the unavailability of primary or secondary evidence. Counsel correctly cites to USCIS regulations that encourage the submission of primary evidence but do not require such submission. Although the director did indicate that "photos are only acceptable when they are accompanied by other credible documentation," and stated that when submitting affidavits the petitioner must also explain why "the usual supporting documents are unavailable," the director did not impose any additional requirement or heightened evidentiary standard. Consistent with the Act and regulations, the director considered and weighed all of the relevant evidence, and explained that the affidavits and other evidence did not support the petitioner's claim that she resided with her spouse. The determination

of what evidence is credible and the weight to be given that evidence is within the sole discretion of the Service. 8 C.F.R. 204.2(c)(2)(i). Even if the director had neglected to consider certain relevant evidence, any such error would be corrected on appeal. We have reviewed the record *de novo* and have considered the photographs and affidavits contained in the record and found them insufficient to establish the petitioner's claims.

Counsel further argues that the statute and regulations do not require a specified period to demonstrate a shared residence, and that the director "concede[d] that the citizen spouse 'came to L.A. and lived with [the petitioner] for a short time, before going back to Oregon.'" Counsel mischaracterizes the director's decision. The sentence quoted by counsel in his brief appears on page 2 of the director's decision. In the sentence preceding that quoted by counsel, the director stated, "It is your claim that when you came to Los Angeles, California to live with your [uncle] you state his house was too small and you rented your own apartment. You lived there for a short time before your spouse came to L.A. and lived with you for a short time before going back to Oregon." It is clear that the director was summarizing the petitioner's claims, rather than acknowledging the petitioner's residence with T-B-. Although the director's decision could have been better worded in this regard, the director made no finding that the petitioner lived with T-B- for any period of time.

The preponderance of the relevant evidence fails to demonstrate that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner failed to establish that her husband subjected her to battery or extreme cruelty. In her affidavits the petitioner stated that upon her marriage to T-B- in China in 2003, he returned to the United States and she waited six years before joining him in the United States. The petitioner stated that she lived with her husband in California for a short period before he decided to live in Oregon alone. She explained that T-B- told her he did not want to take her with him because she had more opportunities in Los Angeles. She stated that after he left they communicated regularly, and then he abruptly stopped contacting her in [REDACTED] 2009. She stated that her husband finally contacted her in [REDACTED] 2011 and told her that he contacted her because he fell in love with a man and no longer loved her. The petitioner stated that she was devastated and humiliated and fell into a depression due to her husband's actions. The petitioner stated that her spouse's actions devastated her, but she has not demonstrated that he ever battered her or that his actions involved 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's family and friends, [REDACTED], [REDACTED], [REDACTED], and [REDACTED], stated that the petitioner was distressed and heartbroken to be abandoned by her husband and to find out that he married a man. [REDACTED] the petitioner's supervisor, stated that the petitioner was emotionally distressed by T-B-'s actions. These brief statements are not probative in establishing that T-B- battered the petitioner or subjected her to psychological or sexual abuse or to conduct that was comparable to extreme cruelty. The photographs of the petitioner's husband and his

partner together and messages from T-B-'s Facebook account do not establish that the petitioner was battered or subjected to extreme cruelty.

The petitioner also submitted a psychological assessment from Dr. [REDACTED] a clinical psychologist, who diagnosed the petitioner with major depressive disorder and adjustment disorder with anxiety as the direct result of a "psychologically abusive relationship, characterized by extreme cruelty, including deception, social isolation, abandonment, and neglect." Dr. [REDACTED] assessment of the petitioner is based on the same incidents that are described in the petitioner's affidavits and does not establish that T-B-'s behavior toward the petitioner involved battery, or psychological or sexual abuse, or otherwise constituted extreme cruelty as defined by the regulation.

On appeal, counsel asserts that USCIS oversimplified the petitioner's account of abuse. Counsel states that the Ninth Circuit Court of Appeals discussed the stages within the cycle of domestic violence, and concluded that an abuser's behavior during the "contrite" phase of domestic violence may constitute extreme cruelty. *Hernandez v. Ashcroft*, 345 F.3d 824, 828 (9th Cir. 2003). Counsel contends that in this case USCIS's "analysis, and the cherry-picking of the acts of abuse as isolated events fail to reflect a pattern of abuse and violence perpetrated by Petitioner's spouse." Counsel states that "the self-petitioner related in her initial and supplemental affidavits that the abuse was doled out in a pattern by her spouse, who was happy and nice to her at the beginning of the relationship, who then suddenly changed and heaped abuse on her, followed by a period of remorse and apologies, and promises to change." Counsel contends that Dr. [REDACTED] stated that the petitioner had depression and anxiety that was directly the result of the abuse and abandonment she experienced.

The facts constituting extreme cruelty in *Hernandez* are in no way analogous to T-B-'s actions as described in the record. The plaintiff in *Hernandez* was subjected to years of her abusive spouse's cycle of violence including brutal beatings and a stabbing in Mexico, leaving the plaintiff bleeding and locked in the home after the attacks without medical care, constant verbal abuse, and periods of contrition and emotional manipulation to convince the petitioner to return to him after she had sought refuge with a relative in the United States. *Hernandez v. Ashcroft*, 345 F.3d at 829-32, 840-41. The *Hernandez* court determined that the plaintiff's husband's non-physical actions "in tracking Hernandez down and luring her from the safety of the United States through false promises and short-lived contrition are precisely the type of acts of extreme cruelty that 'may not initially appear violent but that are part of an overall pattern of violence.' 8 C.F.R. § 204.2(c)(1)(vi)." *Id.* at 840. In this case, the record does not demonstrate that T-B-'s actions were similarly part of any overall pattern of violence or otherwise constituted extreme cruelty under the regulation.

The affidavits submitted by the petitioner, her family, friends, and supervisor did not mention any violence or threatened violence. Although the affidavits reflect that T-B- left the petitioner and was unfaithful, the record does not establish that his behavior was equivalent to extreme cruelty as that term is discussed in *Hernandez* and as defined by the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The preponderance of the relevant evidence does not demonstrate that the behavior of the petitioner's husband included battery, psychological or sexual abuse, or otherwise constituted extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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NON-PRECEDENT DECISION

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Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. She has not demonstrated that she resided with her husband and that he subjected her to battery or extreme cruelty during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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.