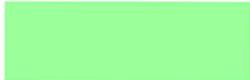


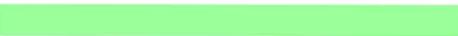


U.S. Citizenship
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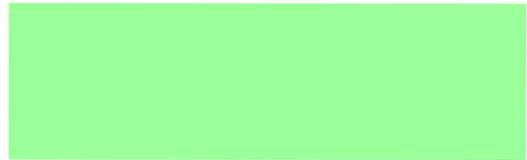


Date: **SEP 22 2014** Office: VERMONT SERVICE CENTER FILE: 

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:

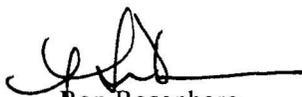


INSTRUCTIONS:

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 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.

The director denied the petition on the basis of her determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief.

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 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:

Evidence for a spousal self-petition –

(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 Nigeria who last entered the United States on January 20, 2006, with parole for one year. The petitioner married her U.S. citizen husband on December 13, 1996, in Arlington, Virginia. The petitioner filed her first Form I-360 on September 29, 2006, which was denied.¹ The petitioner filed the instant Form I-360 on July 16, 2012. The director subsequently issued a request for additional evidence (RFE) of, among other things, the petitioner's husband's battery or extreme cruelty. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite battery or extreme cruelty. On appeal, counsel submits a brief in which he asserts that the petitioner suffered abuse.

¹ The petitioner subsequently appealed the denial decision, and we dismissed the petitioner's appeal on October 9, 2008, citing several inconsistencies in the record regarding the applicant's claims to having been subjected to battery and extreme cruelty by her husband.

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. On appeal, the petitioner has failed to establish that she was subjected to battery or extreme cruelty by her husband during their marriage.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty and counsel's assertions on appeal fail to overcome this ground for denial.

In her affidavit submitted with the instant Form I-360, the petitioner stated that on one occasion, her husband hit her with his elbow, and pushed her, causing her to hit her head on the wall. The petitioner indicated that on another occasion, they were fighting in their office and her husband threw a computer at her, which caused her hand to swell, and then her husband called the police and said that the petitioner was destroying property in the office. She also stated that on one occasion, her husband beat her so badly that she went to the police to get a restraining order, but dropped the case because he threatened to have her deported to Nigeria.

The petitioner recalled that the relationship between her and her husband began to deteriorate after she discovered mail from "Immigration" that indicated her husband was trying to bring his other "woman" and child to the United States from Nigeria. The petitioner further stated that after they had agreed to adopt a child together, her husband told her to leave the child in Nigeria.

The petitioner stated that as recently as 2012, her husband's friend told her that her husband, who had been released from prison, is looking for her because he thinks that the petitioner put him in jail. On another recent occasion, her roommate asked to take a picture of her and then told her that she had run into the petitioner's husband who asked her to take a picture of the petitioner.

In response to the RFE, the petitioner submitted another affidavit in which she reiterated some of the events described in her first affidavit, adding that one time she was hurt very badly due to her husband hitting her, which was witnessed by her friend, Ms. [REDACTED]. In her statement, [REDACTED] indicated that she witnessed the petitioner's husband physically, emotionally and verbally abusing the petitioner, but she didn't provide any details regarding the incident that the petitioner described in her affidavit. In his statement, [REDACTED] asserted that the petitioner's husband "was known to abuse his wife physically, emotionally, and verbally." While both affiants claim that the petitioner was abused, neither affiant provided any probative descriptions of any particular incident(s) of battery or extreme cruelty. [REDACTED] a licensed Professional Counselor, indicated that he noticed that the petitioner was being verbally abused by her husband, but also did not describe the verbal abuse, or any other abuse or extreme cruelty, in probative detail. Additionally, Mr. [REDACTED] stated in his letters that he noticed that the petitioner was being verbally abused by her husband as early as 1995; however, the petitioner was not married until December 1996 and she testified that "things were going great" at

the beginning of her marriage.

The petitioner also submitted a copy of a Temporary Protective Order, dated May 2012. In the petition for the order, the petitioner indicated that she was told that her husband was going to harm her by all means possible for letting him go to jail for eight years, but there is no indication of or explanation for whether a permanent protective order was sought or granted.

When considered in the aggregate, the relevant evidence fails to establish that the petitioner's husband subjected her to battery during their marriage. The petitioner recounted that her husband hit her with his elbow, pushed her, threw a computer at her, and beat her, but she failed to provide a probative description of these events to show that the incidents resulted or threatened to result in physical or mental injury. See 8 C.F.R. § 204.2(c)(1)(vi). Furthermore, the petitioner filed an affidavit signed on August 1, 2010, with her first Form I-360 filing that is inconsistent with the information in her affidavit submitted with her current Form I-360. In her September 2010, affidavit, the petitioner indicated that she and her husband bought a house together, but in her September, 2012, affidavit she indicated that her husband already owned the house, and that she and her second husband rented the basement from her current husband. In her 2010 affidavit, the petitioner stated that when she found her husband's marriage certificate to another woman in Nigeria, he punched and kicked her all over. In her 2012 affidavit, the petitioner reported that she found out about the other woman in Nigeria when she saw a letter from the Immigration office regarding this woman, and that her husband reacted by hitting her with his elbow and pushing her against the wall. In her 2010 affidavit, the petitioner stated that her husband threw a computer at her and their co-worker called the police, but in her 2012 affidavit she indicated that her husband was the one who called the police.

Where United States Citizenship and Immigration Services (USCIS) can articulate a material doubt regarding the petitioner's eligibility, the agency may either request additional evidence or deny the benefit request if the material doubt indicates that the claim is probably not true. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). On appeal, the petitioner does not provide any new evidence that her husband subjected her to battery or extreme cruelty, and the relevant evidence submitted below does not sustain the petitioner's burden of demonstrating her eligibility under the statutory and regulatory criteria. Specifically, the petitioner's affidavits lacked probative detail regarding the claimed incidents of battery, and the other harm she described does not constitute extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). In addition, the petitioner's affidavits are inconsistent with her own previously submitted evidence in conjunction with her first Form I-360. The affidavits from friends do not discuss any specific incident of battery or extreme cruelty, and the letters from Mr. [REDACTED] provide that he counseled the couple about the petitioner's husband's verbal abuse prior to the time that the petitioner claimed the abuse started. The petitioner's statements and other relevant evidence are insufficient to demonstrate that her husband subjected her to actual or threatened violence, psychological abuse or other forms of extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). On appeal, counsel contends that the petitioner has submitted sufficient evidence to show that the petitioner suffered abuse, but the evidence fails to support his assertions. Accordingly, the petitioner has not established that her 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 her 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.

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.