



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **SEP 23 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:

[REDACTED]

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 his determination that the petitioner had failed to establish that she married her husband in good faith, resided with him, 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 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 . . . 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.

* * *

(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.

Facts and Procedural History

The petitioner is a citizen of Jamaica who entered the United States on February 17, 2002, as a nonimmigrant visitor. The petitioner married her husband, a U.S. citizen, on July 10, 2008, in Ohio. The petitioner filed the instant Form I-360 self-petition on November 9, 2012. The director subsequently issued two requests for additional evidence (RFE) of the petitioner's good-faith entry into the marriage, that she and her husband resided together and that he subjected her to battery or extreme cruelty. The director found the petitioner's responses to the RFEs insufficient and denied the petition accordingly. On appeal, counsel submits a brief.

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 for the following reasons.

Joint Residence

The relevant evidence submitted below fails to demonstrate that the petitioner resided with her husband. On the Form I-360 self-petition, the petitioner claimed that she last lived with her husband on [REDACTED] in Ohio, and that they resided together from June 2006, until November 2011. In her affidavit, the petitioner indicated that in June 2006, she moved to Ohio with her husband. The petitioner does not describe her and her husband's home or shared residential routines in any detail. Additionally, the evaluation from [REDACTED] a licensed medical health counselor, indicates that the petitioner stopped residing with her husband in the summer of 2010, which is inconsistent with the petitioner's dates of joint residence as provided on the Form I-360.

The petitioner also submitted an insurance receipt listing a shared address and Greyhound bus tickets indicating that someone traveled between New York and Ohio. On appeal, the petitioner, through counsel, notes that the altered lease submitted in connection with the petitioner's husband's I-130 petition was not submitted by the petitioner, but rather by her husband. Counsel is correct; however, the evidence submitted, without probative testimony of joint residence, does not demonstrate by a preponderance of the evidence that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Entry into the Marriage in Good Faith

The relevant evidence also fails to demonstrate the petitioner's entry into her marriage in good faith. In her affidavit, the petitioner stated that she met her husband in February 2006, when they were shopping for clothes. They exchanged telephone numbers, and met every two weeks. She reported that they had dinner and spent time together. She stated that he proposed and asked her to move to Ohio, which she did. She helped out at his barber shop, and they were married in July 2008. The petitioner did not describe in probative detail how she met her husband, their courtship, engagement, wedding, or any of

their shared experiences, aside from the alleged abuse.

The petitioner also submitted photographs of herself and her husband on one occasion – their wedding. She submitted a receipt for a joint insurance policy, but the receipt does not reflect the type of insurance that the policy related to, or provide any information other than the existence of the account. This evidence, without probative testimony, is insufficient to establish the petitioner’s intentions upon entering into the marriage. In her affidavits, the petitioner briefly describes meeting her husband and states that they were married, but does not describe their courtship, wedding, joint residence or any of their shared experiences in meaningful detail. Similarly, the pictures and insurance receipt do not demonstrate the petitioner’s interactions with or feelings for her husband during their courtship or marriage. When viewed in the aggregate, the relevant evidence does not demonstrate, by a preponderance of the evidence, that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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 the arguments made on appeal fail to overcome this ground for denial. In her affidavit, the petitioner stated that her husband was angry when he had to close his shop to deal with her immigration case. She recalled that her husband had a temper, and when he asked her for money and she refused, he would curse at her. She stated that her husband put a lock on the refrigerator and threatened her if she tried to break the lock. Eventually her husband locked her out of the house. The petitioner does not contend that her husband battered her, and she does not probatively describe behavior that involved threatened violence, 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 evaluation from [REDACTED] a licensed medical health counselor, reported that the petitioner told him that her husband yelled at her, called her names, and had an affair. He also indicated that the petitioner’s husband threatened to abandon or kick her out of their home, and to boycott her immigration petition. Dr. [REDACTED] stated that the petitioner’s husband humiliated her, banged tables and slammed doors, pushed her away, and threw items around. He indicated that the petitioner has a post-traumatic and anxious-depressive condition. Dr. [REDACTED] did not probatively describe any particular incident of battery or extreme cruelty. In addition, the petitioner herself did not mention or describe any incident in which her husband banged tables and slammed doors, pushed her away, or threw items around. While we do not question Dr. [REDACTED]’s expertise as a counselor, his evaluation provided no additional probative information of battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, counsel contends that the director erred by requiring the information in the petitioner’s affidavit to match the information in the psychological evaluation. However, as explained above, the record, including both the evaluation and the petitioner’s affidavit, is insufficient to show that the petitioner was subjected to battery or extreme cruelty by her husband as the evidence as a whole does not probatively describe any particular incident where the petitioner’s husband battered her or where his

behavior involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). 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 she entered into the marriage in good faith, resided with her husband, or 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.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.