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U.S. Citizenship
and Immigration
Services

Date: **SEP 25 2014** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

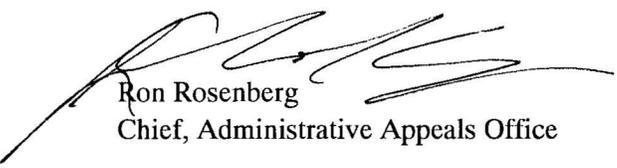
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 entered into the marriage with her spouse, a United States citizen, in good faith, and that he subjected her to battery or extreme cruelty during the marriage. On appeal, counsel for the petitioner submits a brief and other evidence.

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.

* * *

(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.

* * *

(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, a citizen of Kenya, entered the United States on May 21, 1998 as a nonimmigrant F-1 student.¹ On August 8, 2010, she married H-W-², a United States citizen, in Massachusetts. The petitioner filed the instant Form I-360 self-petition on October 18, 2012. The director subsequently issued two Requests for Evidence (RFEs) of, among other things, the petitioner's good-faith entry

¹ A psychological evaluation indicates that the petitioner subsequently departed the United States twice on a valid student visa - in 2004 to visit family in Kenya, and in 2006 to renew her visa in Canada. The petitioner has not directly addressed these departures and re-entries, and documentary evidence has not been submitted.

² Name withheld to protect the individual's identity.

into marriage and the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Good Faith Entry into the Marriage

We find no error in the director's determination that the petitioner failed to establish that she entered the marriage with H-W- in good faith, and counsel's claims on appeal fail to overcome this ground for denial. In her initial affidavit, the petitioner stated that she first met H-W- at a church service she attended in Boston with three friends, they all shared a meal afterwards and she and H-W- exchanged telephone numbers. She recalled that H-W- called her two weeks later, they spoke regularly on the telephone before going out for food after about two months, talked about marriage after five or six months, married in August 2010, rented an apartment in ██████████, Massachusetts and because H-W- worked in ██████████ he stayed part of the week in ██████████ and part in ██████████ during the first two and a half months of their marriage. The petitioner explained that in October 2010, H-W- left his job, moved to ██████████ began looking for work in the area, and shortly thereafter began drinking and becoming abusive before returning to ██████████ in March 2011 after which she has seen him only once. The petitioner did not describe in probative detail her courtship with H-W-, their engagement, wedding, joint residence or any shared experiences, apart from the claimed abuse.

In his letter, ██████████ apologized from Kenya for having been unable to attend the petitioner's wedding ceremony but wished the couple happiness. In his letter, ██████████ stated that he was the property manager for the apartment complex where the petitioner resided and that after she married H-W-, his name was added to the lease. In her affidavit, ██████████ stated that she and her family have known the petitioner for more than ten years, the petitioner introduced her to H-W- when they were dating, they seemed to be a loving couple, did things together and attended family social activities, she and her family visited the former couple's home, but after some time the marriage began to deteriorate. None of the affiants described any particular social occasion in detail or otherwise provided probative information establishing the petitioner's good-faith marital intentions. Photographs show the petitioner and H-W- together at their wedding and on other unspecified occasions. The petitioner's residential lease, dated May 15, 2007, shows that H-W- was added on October 1, 2010 and the lease and two joint "final notice" billing statements, dated after H-W- moved out of the marital home, indicate that the petitioner and H-W- resided together. Without a probative account of the petitioner's relationship with H-W-, however, these documents alone are insufficient to establish that the petitioner married H-W- in good faith.

In the RFE, dated June 3, 2013, the petitioner was notified that her affidavit and the psychological evaluation of ██████████ Ph.D. were found not to be credible based on a number of significant discrepancies. For example, the psychological evaluation relayed from the petitioner that she met H-W- in 2009, she was alone for more than one year before meeting him, prior to meeting H-W- she was

in a two-year relationship with another man, M-W-, and she was never in a significant relationship before M-W-. However, the petitioner's divorce decree shows that she was married to D-U-³ until February 17, 2009 and they separated only one month earlier, on January 15, 2009. In addition, the RFE noted that the birth certificate of the petitioner's son, E-K-⁴, shows that M-W- is the father and the petitioner gave birth on May 3, 2011 while married to H-W- for just under nine months. The petitioner did not discuss E-K-, his paternity, and the fact that the petitioner was pregnant during her marriage and throughout the entirety of her joint residence with H-W-.

In response to the RFE, the petitioner submitted a second personal affidavit, affidavits from a pastor and a friend, and additional joint billing statements. In her second affidavit, dated July 29, 2013, the petitioner stated that she initially included only some facts but would now be as detailed as possible. She recalled that after staying for some time in the United States with no serious relationship, she met D-U- in November 2007, they dated, and married in July 2008. Around December 2008, the petitioner decided to separate from D-U- and remain single. She stated that their divorce became final in February 2009, during that time she first met H-W-, and it was several months before they entered into an intimate relationship. The petitioner did not describe the circumstances under which she first met H-W- in February 2009 or explain why she stated earlier that she was alone for more than one year before they met. The petitioner continued that she "later" met H-W- in May 2009 at a special church service in Boston where a famous pastor was preaching. She did not address why she stated in her first affidavit and to the psychologist that she first met H-W- at the special church service in May 2009. The petitioner recounted instead how she went to the special service for prayer related to her divorce, H-W- was kind, he and another woman from the church counseled her and they met together on many occasions and encouraged her. She added that she and H-W- went out to eat after every Sunday service. This account is inconsistent with the petitioner's earlier statements that she and H-W- first met at the special church service, exchanged telephone numbers, and spoke on the telephone for months before finally going out to eat together.

The petitioner further recounted how H-W- first asked her out on a date in October 2009, she accepted, he showed interest in her and her culture, made her feel great about herself, and she thought he was a good man and was encouraged by his Christian faith. She stated that in May 2010, she and H-W- celebrated her birthday, in June 2010, they started going out in public places, he introduced her to his friends and she introduced him to hers, in July 2010, he proposed marriage to her in front of friends at a birthday party, and they married in August 2010 in a small civil ceremony and later went out to a buffet restaurant. While the petitioner provided further details in her second affidavit, she failed to resolve or address the numerous inconsistencies and areas of concern identified in the RFE, including her failure to acknowledge she was pregnant with another man's child and gave birth to their son during her marriage to H-W-.

In his affidavit, Rev. [REDACTED] stated that the petitioner became an active member of his church since joining in July 2007, consulted him when she became a victim of domestic violence the prior year (2012) and before separating from H-W-, she tried to persuade him to join in marriage

³ Name withheld to protect the individual's identity.

⁴ Name withheld to protect the individual's identity.

counseling without success. Though Rev. [REDACTED] indicates that the petitioner sought to save her marriage, he did not state that he ever observed the former couple's relationship or had any knowledge of whether the petitioner married H-W- in good faith. In her affidavit, [REDACTED] stated that she has known the petitioner for more than twelve years, they belong to the same church, she attended the petitioner's wedding to H-W-, and difficulties in the former couple's marriage escalated to abuse. Neither affiant provided further probative information concerning the petitioner's marital intentions.

On appeal, counsel asserts that the director erred in finding the petitioner's affidavits and psychological evaluation incredible as the petitioner was involved with M-W- before her marriage to D-U, details of her relationship with M-W- are contained in the psychological evaluation, and therefore, "there are no discrepancies..." However, Dr. [REDACTED] relayed from the petitioner that "she had no relationships at all until she was forty-two" (approximately 2005) when she met M-W-. Dr. [REDACTED] continued: "After her relationship with [M-W-] had ended, [the petitioner] says: 'Before I met [H-W-], I was alone for a long time, more than a year.' Her next significant relationship was with her husband, [H-W-] to whom she is still legally married." Dr. [REDACTED] further reported that the petitioner's "first relationship lasted for two years, but ultimately did not work out. Then, in 2009, she made the acquaintance of [H-W-]." The petitioner has not explained why she did not tell Dr. [REDACTED] that she was married from 2007 to 2009, between her relationships with M-W- and H-W-, why she stated that she was alone for more than a year before meeting the petitioner when in fact she was married to and residing with D-U-, and why she has still not addressed that she was pregnant with M-W-'s child and gave birth during her marriage and joint residence with H-W-. Counsel contends that the petitioner's child has no bearing on the instant petition, and that submission on appeal of medical records demonstrating that E-K- was born of *in vitro* fertilization shows that he was not the product of an extramarital affair. The petitioner was first inseminated less than three weeks after marrying H-W-, using as a donor the man with whom she claimed she had ended a nearly two-year relationship only two years earlier. The circumstances concerning that decision and the petitioner's pregnancy and birth during her marriage to H-W- is material to whether she entered into the marriage with H-W- in good faith. Accordingly, a preponderance of the relevant credible evidence does not demonstrate the petitioner's good-faith entry into the marriage with H-W-, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The director determined that the petitioner's spouse did not subject her to battery or extreme cruelty and counsel's claims on appeal fail to overcome this ground for denial. In her initial affidavit, the petitioner stated that after moving to [REDACTED] H-W- began drinking a lot and coming home drunk, she noticed small items missing from her home, and when she asked if he knew anything about it H-W- would get mad and shake her or shake his fists at her. The petitioner recalled that in January 2011, H-W- started calling her unspecified names, forced her to have sex, and said she does not have a "backbone" in the United States. She stated that H-W- went to [REDACTED] in March 2011 and never returned, and she did not see him again until June 2011 when she visited him in jail in New Hampshire after learning he was there. The petitioner recalls that H-W- told her he had been jailed before for stealing and this confirmed her belief that he was responsible for her missing items. H-W- called the petitioner in July 2011 when released from jail and though she returned his call, she has not seen him.

In the psychological evaluation, Dr. [REDACTED] stated that the evaluation was based on a single four-hour interview with the petitioner on November 2, 2011. Dr. [REDACTED] recounted from the petitioner's report of how H-W- was aggressive when drunk, forcing the petitioner to have sex and stealing from her. Dr. [REDACTED] relayed the petitioner's medical history, but did not indicate that the petitioner reported giving birth six months earlier. Dr. [REDACTED] diagnosed the petitioner with major depression and post-traumatic stress disorder, and stated that she was also experiencing acute anxiety with panic attack symptoms. While we do not question Dr. [REDACTED] professional opinion, her assessment conveys the petitioner's statements during a single interview with her and provides no further, probative information regarding the claimed abuse.

In their letters, [REDACTED] did not discuss any claimed abuse or indicate that they were aware of any such claims. In her affidavit, [REDACTED] stated that the petitioner's marriage began deteriorating when H-W- started being abusive to her. Ms. [REDACTED] did not describe any particular incident of battery or extreme cruelty and none of the affiants provided further probative information.

In her second affidavit, the petitioner stated that she worked on her father's farm helping her mother till the land. This account is inconsistent with her first affidavit in which she stated that her father was a businessman who sold food in a store. The petitioner also discussed her background and referred to her native country as Tanzania when in fact, it is Kenya. Similarly, counsel refers to the petitioner's life experiences in Ghana.⁵ These significant biographical discrepancies detract from the credibility of the petitioner's second affidavit.

In her second affidavit, the petitioner stated that H-W- forced her to watch pornography with him, began drinking more, became aggressive, took pills that made him animal-like and raped and sexually abused her in other ways. She also claimed he threatened her with immigration consequences if she reported him. She described one incident of sexual abuse which occurred on a Saturday and she recounted confiding in an unnamed friend afterwards who advised her to file for divorce, to which H-W- reacted aggressively. However, the petitioner also recalled another incident of abuse in December 2010 and stated "though I never shared my abuses with anyone this time I had the courage to call my friend [REDACTED]". This statement is inconsistent with the petitioner's earlier assertion that she confided in an unnamed friend after the other incident occurring on a Saturday. The petitioner continued that after the December 2010 incident, H-W- fled and never returned, but he later called and threatened her and continued calling until she gained the courage to ask for a divorce. The petitioner referenced a court session she attended but has not said whether she filed for divorce or if H-W- participated in the proceedings. The petitioner also described how H-W- used her name to open lines of credit leaving her with \$1,000 of debt after their separation.

In his affidavit, Rev. [REDACTED] stated that the petitioner told him before she separated from H-W- that she tried unsuccessfully to persuade him to join her for marriage counseling, and he hopes that spiritual counseling will help her to recover. Rev. [REDACTED] also stated that the petitioner consulted him for counseling when she became a victim of domestic violence in 2012 and she became depressed after her

⁵ See counsel's appeal brief, page 6.

divorce. This statement is inconsistent with the petitioner's assertions that she has not seen H-W- since June 2011, and there is no evidence in the record that the petitioner and H-W- are divorced. Rev. [REDACTED] affidavit is inconsistent with the petitioner's statements and he does not discuss any specific incident of battery or extreme cruelty.

Ms. [REDACTED]'s affidavit is also inconsistent with the petitioner's own statements. Ms. [REDACTED] stated that the petitioner "put restrained on [H-W-] when during their relationship he resulted to continue abusive and I can witness that as close friend to [the petitioner]." The petitioner has not stated that she ever sought or obtained a restraining order against H-W- and Ms. [REDACTED] did not describe any specific incident of abuse she witnessed. Ms. [REDACTED] recalled that the petitioner called her crying many times, told her that H-W- had extramarital relationships, was possessive and controlling, abused sexual stimulants and forced her to have sex with him, rendering her unconscious on one occasion. The petitioner never described falling unconscious after any incident of sexual abuse.

On appeal, counsel asserts that neither the petitioner, through her personal statements or during her psychological evaluation, nor the authors of the third party affidavits discussed the petitioner's pregnancy with her son and his subsequent birth "because it has no relevance on the extreme cruelty she suffered during her marriage" to H-W-. However, the fact that the petitioner was pregnant with another man's child throughout the duration of the claimed abuse is significant. For example, the petitioner did not express in her affidavits or report to Dr. [REDACTED] any heightened concern for her unborn child during claimed incidents of repeated battery and sexual abuse. At the time of the final incident described, the petitioner would have been six months pregnant. She stated that she was bruised when she went to the hospital afterwards and lied about the source of her injuries, but she did not report any concerns specific to her pregnancy. Moreover, while providing a detailed personal and family medical history to Dr. [REDACTED] the petitioner did not report that she had given birth six months earlier and was pregnant during the entirety of the period of H-W-'s claimed abuse. Ms. [REDACTED] also made no reference to the petitioner's pregnancy and the danger to her unborn child during the claimed incidents of abuse.

Counsel's final claim is that the petitioner's statements, those of Ms. [REDACTED], Ms. [REDACTED] and Rev. [REDACTED] as well as Dr. [REDACTED] evaluation all demonstrate the requisite battery or extreme cruelty. Counsel does not acknowledge or explain the discrepancies between the petitioner's own affidavits and between her statements and those of Ms. [REDACTED] Rev. [REDACTED] and Dr. [REDACTED]. Counsel also does not acknowledge that Ms. [REDACTED] did not discuss any specific incident of battery or extreme cruelty.

The petitioner did not submit an affidavit on appeal to personally address the numerous areas of concern identified in our preceding discussion as well as in the director's decision and earlier in the RFE. The preponderance of the relevant evidence does not establish that the petitioner's spouse subjected her or her child 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 with H-W- in good faith or that he subjected her or her child 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 on these two grounds.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.