



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **SEP 30 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)

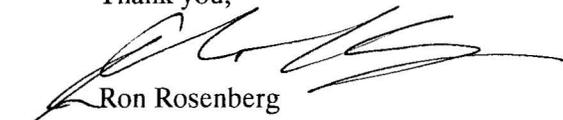
ON BEHALF OF PETITIONER:
[REDACTED]

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 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:

(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 Cameroon who entered the United States on March 9, 1995, as a B2 nonimmigrant visitor. The petitioner married her U.S. citizen husband on August 19, 1999, in Pennsylvania.¹ The petitioner filed the instant Form I-360 self-petition on May 29, 2012. The director subsequently issued two requests for additional evidence (RFE) of, among other things, her husband's battery or extreme cruelty. The director found the petitioner's responses to the RFEs insufficient and denied the petition for failure to establish the requisite battery or extreme cruelty. On appeal, counsel submits a brief asserting that the director gave too much weight to errors made on forms and erred in dismissing other evidence.

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.

¹ This marriage was the petitioner's second. Her prior marriage ended in divorce on July 14, 1999.

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, the petitioner stated that everything was normal until October, 2002. The petitioner refused to sign a paper for life insurance, and her husband locked her and the children out of the house, and locked the wheels to the car. She also indicated that her husband called the police in order to come get things out of their house. The petitioner recounted that on one occasion, her husband came into the house in the early morning and pointed a gun at her. She called the police and was granted a temporary protection from abuse order (PFA), but the order was cancelled after she was arrested when her husband told the judge she was present illegally in the United States. The petitioner indicated that on another occasion her husband pushed her between the door and doorframe, she and her husband both called the police and they asked him to leave. In her affidavit in response to a RFE, the petitioner stated that her husband was dragging out their divorce case in order to harass her, that he has given her trouble about her visitation rights, and that he "called immigration" on her even though she has a green card.

The petitioner also submitted a statement from her brother, [REDACTED] who stated that his sister's marital problems got worse and she moved out, and that the petitioner's husband was emotionally abusive towards her. Mr. [REDACTED] indicated that the petitioner told him that on one occasion her husband pointed a gun at her in the middle of the night. Mr. [REDACTED] did not provide any probative descriptions of any particular incident of battery or extreme cruelty, nor did he explain how the petitioner's husband was emotionally abusive towards her.

The petitioner submitted a letter and email from her husband in which he mentioned her lack of suitable housing and her immigration status in relation to the custody of their daughter. This letter does not involve threats of physical or mental injury, and does not indicate that the petitioner's husband subjected her to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted three incident reports from the [REDACTED] Police. The first two indicate that the petitioner and her husband got into a verbal argument and that her husband took her car, and that her husband took things from their home without her permission. Neither report mentions any battery or extreme cruelty. The third incident report, dated October 18, 2002, stated that the petitioner's husband slapped her in the face and told her to move out while she was asleep, then left. The petitioner also informed the police that her husband possessed several guns, and that he may have had one. The petitioner submitted a copy of the temporary PFA she obtained against her husband as a result of this incident. The petitioner also submitted a copy of a motion to vacate a PFA order against her, which included the Petition for Protection from Abuse she filed against her husband. In the petition for the PFA, the petitioner indicated that her husband slapped her and pointed his gun in her face. These statements are inconsistent with her affidavit, in which the petitioner did not state that her husband ever slapped her, even when describing this specific incident. In addition, in the third incident report, the petitioner did not state that her husband pointed a gun in her face, as described in her affidavit, but

rather indicated that her husband “may have” had a gun. None of the incident reports correspond to the occasion where the petitioner claimed her husband pushed her between the door and the doorframe and both of them called the police.

The petitioner submitted records from an emergency room psychiatric evaluation in July, 2005, which indicated that she went to the hospital after her child-support payments were increased and she became depressed and anxious. The records state that the petitioner reported that her husband had her incarcerated for six months after she was found to be in contempt of court, and reflects a diagnosis of major depressive disorder and post-traumatic stress disorder. The records show that the petitioner’s mental health was compromised during her marriage, but they do not indicate that any domestic violence occurred. Rather, the records state, “[Patient] says that although there was a PFA, there was never a physical matter at all.”

While we do not discount the harm the petitioner’s husband caused her, to qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require either battery or extreme cruelty. The petitioner’s statements and the other relevant evidence do not indicate that the petitioner’s husband’s behavior 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). When considered in the aggregate, the relevant evidence also fails to establish that the petitioner’s husband subjected her to battery during their marriage. While the petitioner claimed that her husband pushed her and they both called the police, she did not submit a corresponding police report and did not describe the claimed battery in detail. The record also presents inconsistent accounts of the October 2002 incident. Although in her affidavit, the petitioner claimed that her husband pointed a gun at her, her PFA petition indicated that he slapped her and pointed a gun at her when she was in bed with her son and daughter. The corresponding police incident report stated that her husband slapped her, but did not state that he pointed a gun at her or that her children were present. The hospital records indicate that no battery occurred. These unresolved inconsistencies detract from the credibility of the petitioner’s claim.

On appeal, counsel contends that the director erred in dismissing the other evidence, such as her brother’s letter, the email from her husband, and the hospital records provided by the petitioner. The additional evidence provided, such as the petitioner’s brother’s letter, her husband’s email, and the psychiatric records, do not probatively describe any incidents of battery, psychological or sexual abuse, or other behavior that was part of an overall pattern of violence or otherwise constituted extreme cruelty as defined at 8 C.F.R. § 204.2(c)(1)(vi). Moreover, the hospital records directly contradict the petitioner’s claim of battery in October 2002.

The director found the petitioner was not credible, in part, because she has used different names on other immigration petitions and applications and because she incorrectly stated on two applications that she had never been in removal proceedings. On appeal, counsel claims the director’s credibility determination was flawed and explains the petitioner’s use of different names. Counsel also claims the petitioner mistakenly believed her removal proceedings had been closed. We do not reach the issue of whether the petitioner’s prior actions on unrelated petitions and applications may render her

inadmissible for misrepresentation. To the extent the director relied on unrelated proceedings to impugn the petitioner's credibility in this case, his error has not prejudiced the petitioner because the record of proceedings in this case fails to establish her eligibility.

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.