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U.S. Citizenship
and Immigration
Services

Date:

SEP 30 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)

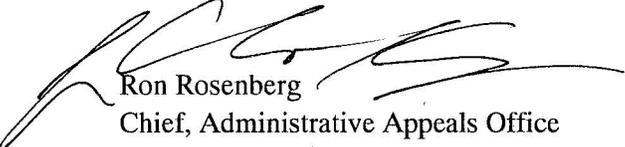
ON BEHALF OF PETITIONER:

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.

The petitioner seeks immigrant classification pursuant to 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 her U.S. citizen spouse. The director denied the petition for failure to establish that the petitioner married her husband in good faith, resided with him during their marriage, 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 explained in 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. ...

(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 explained in 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Nigeria who entered the United States on August 21, 2002, as a nonimmigrant visitor. The petitioner married S-F-¹, a U.S. citizen, on May 27, 2003, in [REDACTED] County, Texas. The petitioner filed the instant Form I-360 self-petition on July 10, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's joint residence with S-F-, her good-faith entry into the marriage, and S-F-'s battery or extreme cruelty. Through counsel, the petitioner timely responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

We conduct appellate review on a *de novo* basis. 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. Counsel's claims on appeal overcome one, but not all, of the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The petitioner described how she met S-F- at [REDACTED] when he started a conversation with her two sons. She recounted their first date at a park, meeting his family, and introducing him to her Pastor. She described how he was a mentor to her sons and the activities they shared together. She explained that her sons grew very attached to S-F-, that she felt very lucky, and that they all looked forward to a happy future together. However, the petitioner described S-F-'s drug problem, stating that he was arrested several times for drug-related offenses. She explained how she believed she could help him, sent him money in jail, and helped bond him out of prison, but that he eventually became an absent husband and stepfather.

The petitioner gave a probative, credible, and detailed account of how she first met S-F-, their courtship, and her marital intentions. The record shows that S-F- was incarcerated within weeks after the couple married and that he remained incarcerated for approximately the first year of their marriage. The record includes copies of several receipts showing that the petitioner sent money to her husband in prison. In addition, the record includes copies of letters from the petitioner and from S-F- discussing their relationship and the difficulties the petitioner experienced as a result of her husband's incarceration. The record also contains copies of joint income tax returns as well as utility bills, telephone bills, and letters from a bank addressed to the couple. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner entered into marriage with S-F- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director's contrary determination is withdrawn.

Joint Residence

The appeal cannot be sustained, however, because the petitioner has not overcome the remaining grounds for denial. The petitioner stated on her Form I-360 self-petition that she resided with S-F-

¹ Name withheld to protect the individual's identity.

on [REDACTED] from May 2003 until April 2005, and then on [REDACTED] from April 2005 until February 2008. In her statement, the petitioner described that her husband was unable to keep a job and she took full responsibility for keeping up their home. She stated she paid the rent, utility bills, and for groceries. She also explained that S-F- would take care of her sons so that she could work long hours. Counsel contends in his brief that S-F- was incarcerated for more than forty-two months, but that he physically resided with the petitioner for fifteen months.

The petitioner failed to provide any probative details of joint residency with S-F-. For example, she did not describe either their apartment on [REDACTED] or their house on [REDACTED] their shared belongings, or provide any other substantive information regarding her residence with S-F- after their marriage. In addition, the record includes evidence of a bond form, dated April 4, 2005, used to get S-F- out of jail. Significantly, although the bond form lists the petitioner's mother, father, brother, three other relatives, and two friends, there is no name listed for S-F-'s spouse or ex-spouse. Rather, the petitioner is identified on the bond form as an indemnitor and listed her former counsel's address as her address. In addition, S-F-'s address is listed as being on [REDACTED] the same address listed for [REDACTED] who is identified as being a relative. Therefore, the bond form in the record indicates that the couple did not reside together as the petitioner had claimed on her self-petition and there is no explanation for the addresses the petitioner and S-F- listed on this form.

Three letters and a statement from a bank and joint income tax returns show the couple commingled finances, but do not establish that they actually resided together. Telephone bills, utility bills, and a car insurance card are also jointly addressed to the couple. However, without a more probative, detailed account of their joint residence from the petitioner, and without an explanation of the discrepancy raised by the bond form, the preponderance of the evidence does not demonstrate that the petitioner resided with her husband after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The petitioner briefly recounted that S-F- often came home drunk, made fun of her African culture, banned her from cooking African food, and yelled at her and her sons, threatening to have them deported. In addition, she claimed S-F- prohibited her from going to church, and was physically and sexually aggressive. According to the petitioner, she developed night phobia, was afraid to go home after work, stopped eating, and cried constantly. The petitioner stated that S-F- eventually became an absent husband and stepfather, and was arrested several times on drug-related charges.

A letter from [REDACTED] an intern at a domestic violence shelter, states that the petitioner sought counseling for the emotional abuse she suffered from her husband. According to Ms. [REDACTED] the petitioner reported that S-F- had drug problems and was incarcerated shortly after the couple married. Ms. [REDACTED] recounted that S-F- called the petitioner names, yelled at her, stole money from her, and disappeared frequently. A mental health evaluation from licensed professional counselor [REDACTED] diagnosed the petitioner with Posttraumatic Stress Disorder and Major Depressive Disorder. According to Ms. [REDACTED] the petitioner got telephone calls from a woman claiming to be

S-F-'s wife and when the petitioner confronted S-F- about it, he got angry and left home. Ms. [REDACTED] further stated that S-F- sexually assaulted the petitioner.

On appeal, counsel claims the statements of the petitioner, Ms. [REDACTED] and Ms. [REDACTED] show that S-F- sexually, psychologically, and emotionally abused the petitioner. However, the petitioner does not probatively discuss any particular incident of battery or sexual abuse. Ms. [REDACTED] also does not mention any physical or sexual assault. Ms. [REDACTED] did not discuss any particular incident of battery, sexual abuse, or other forms of extreme cruelty. The remaining behaviors described by the petitioner do not constitute extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Counsel also contends that S-F- was convicted of drug offenses and it is well known that drug use perpetuates abuse, but counsel submits no evidence to support this claim generally or as it applies to this case. In her February 27, 2013 affidavit, the petitioner briefly states that S-F- was arrested and imprisoned for "drug related activities," but she does not otherwise discuss his use of controlled substances or describe any particular incident of battery or extreme cruelty that occurred while he was under the influence of drugs. When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner's husband subjected her or either of her children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has established that she entered into marriage with S-F- in good faith. However, she has failed to establish that she resided with her husband after their marriage and that he subjected her or her children 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.