

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **APR 03 2015**

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:

SELF-REPRESENTED

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 Acting 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 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 a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that her U.S. citizen spouse battered her or subjected her to extreme cruelty, and that she entered into her marriage in good faith.

On appeal, the petitioner submits a brief and additional evidence.

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 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 explained further 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 . . . 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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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.

Pertinent Facts and Procedural History

The petitioner was born in Kenya and last entered the United States on May 16, 2004, as a B-2 nonimmigrant visitor. She divorced her first spouse on [REDACTED] 2009, and married her U.S. citizen spouse, J-W-¹ on [REDACTED] 2011 in [REDACTED], New York. She filed the instant self-petition on December 6, 2013. On February 12, 2014, the director issued a request for evidence (RFE) that, among other things, J-W- subjected the petitioner to battery or extreme cruelty, and that the petitioner entered into her marriage with J-W- in good faith. The petitioner responded, but the director found the response insufficient to establish the petitioner's eligibility and denied the petition on these two grounds. The petitioner filed a timely appeal.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility, and we will dismiss the appeal for the following reasons.

Battery or Extreme Cruelty

The petitioner did not initially submit an affidavit. Instead, she provided a letter dated October 1, 2013, from a counselor who stated that the petitioner had received psychotherapy since March of 2012. The therapist indicated that the petitioner "initially presented with anxiety and depressive symptoms secondary to marital issues and emotional abuse," and diagnosed the petitioner with adjustment disorder with mixed anxiety and depressed mood. The therapist did not recount or describe any episodes of alleged battery or extreme cruelty by J-W- against the petitioner.

The petitioner also initially provided affidavits from friends and family who indicated that J-W- subjected the petitioner to extreme cruelty. [REDACTED] stated that she had known the petitioner since before the marriage to J-W-, and that she stopped seeing and talking to the petitioner as often as she used to once the petitioner and J-W- married. Ms. [REDACTED] explained that the petitioner told her that J-W- "has been verbally abusing her telling her she is useless and a bad wife," but did not claim to have witnessed any of the purported abuse or provide a more detailed description of the alleged cruelty. The petitioner's sister generally indicated that "[s]hortly after the wedding, [the petitioner] confided in me that her husband was verbally and psyc[h]ologically abusive," and that he subjected the petitioner to "constant barraging and demeaning attitude [sic] and that he thought he was doing [the petitioner] a great favor because she was going to obtain [a] green card due to the marriage." However, the petitioner's sister did not claim to have witnessed any of the alleged abuse and provided no specific examples of the claimed abuse. [REDACTED] claimed to have witnessed "one instance of verbal abuse perpetrated against [the petitioner] in their residence at a Christmas party in 2011" and indicated that J-W- called the petitioner "all kinds of words." However, Ms. [REDACTED] did not provide any probative details of the Christmas party or describe the alleged abuse in

¹ Name withheld to protect the individual's identity.

detail. Accordingly, the petitioner's initial evidence was insufficient to establish that J-W- subjected her to battery or extreme cruelty.

In response to the RFE, the petitioner provided photographs of a woman with a bandaged arm sitting on a bed; however, the photographs are undated and unlabeled and the woman is not identified. The petitioner also submitted two copies of an electronic mail (e-mail) that J-W- allegedly sent to her entitled " [REDACTED] ". The e-mail contains derogatory language and threatens to have the petitioner deported. Although the petitioner suggested in a cover letter that J-W- sent the e-mail to her on Monday, July 16, 2012, the two e-mails contain conflicting dates. One has an automatic date stamp indicating that it was sent on "Mon, 16 Jul 2012 10:27:19" but the other copy has an automatic date stamp indicating that it was sent on "Monday, Jul 12, 2012 1:27 PM." The date of July 12, 2012 was a Thursday rather than a Monday, and the conflicting days of the week are irreconcilable.

On appeal, the petitioner submits an affidavit in which she describes J-W-'s alleged battery and extreme cruelty. She asserts that about six months after their wedding, J-W- stopped going to work and became intent on controlling the petitioner. The petitioner maintains that J-W- addressed her with derogatory language and would yell at her for no reason, began to complain about her cooking, and started to go out to get drunk or high on drugs. The petitioner suggests that J-W began to sexually abuse her and force her into degrading acts, threatened to choke her to death, and suggested that he would leave her daughter in foster care. The petitioner describes an episode of alleged abuse at their Christmas party in December of 2011 when J-W- cursed her in front of their friends and family, using "horrible names." She indicates that J-W- stormed out of the house, and when he came back the petitioner hid his car keys. The petitioner asserts that she later returned the car keys to J-W- and he began to stay away from the house for days, without leaving money for her to buy food or other essentials.

The petitioner describes another episode of alleged battery in the spring of 2012, asserting that J-W- gave her a black eye. According to the petitioner, although she tried to cover her black eye with sunglasses when they went out to dinner with friends, [REDACTED] noticed and accompanied her to the bathroom. The petitioner stated that Ms. [REDACTED] asked her to report J-W- to the police, but that she was too afraid. The petitioner states that when she left the restaurant bathroom, J-W- took her outside and beat her up in the parking lot, then beat her more when they returned home. The petitioner indicates that Ms. [REDACTED] followed her home and consoled her when J-W- had left the house. Finally, the petitioner explains that the photographs she had previously submitted of a woman with a bandage are of herself and that J-W- gave her the black eye and hit her, causing her to fall and cut her arm on a bedside table. The petitioner submits a statement from Ms. [REDACTED], who also recounts the episode of battery at a restaurant in the spring of 2012.

The petitioner also submits a second evaluation from her therapist dated July 7, 2014. In his statement, the therapist reiterates that he believes the petitioner has symptoms consistent with battered spouse syndrome and post-traumatic stress. He advises that the petitioner recounted that her husband was abusive and used derogatory language toward her, threatened to report her for being in

the United States illegally, and subjected the petitioner to forced sexual acts that caused her to develop an aversion to physical relations.

Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, “evidence of abuse may include . . . other forms of credible relevant evidence.” 8 C.F.R. § 204.2(c)(2)(iv). The petitioner has provided her own statement on appeal, and the statements from her therapist and a friend who recounted witnessing an episode of abuse. However, as discussed, the petitioner has submitted other conflicting evidence regarding J-W-’s alleged abuse. Specifically, she provided two e-mails that contain conflicting dates, including an incorrect day of the week. The contradictory and conflicting nature of the petitioner’s evidence of abuse undermines the credibility of the petitioner’s remaining evidence. The petitioner’s other friends and sister did not discuss J-W-’s behavior in probative detail and their statements do not show that he ever battered or threatened the petitioner with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). When viewed in the aggregate, the preponderance of the relevant evidence is insufficient to establish that J-W- subjected the petitioner to battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good-Faith Entry into Marriage

The petitioner did not initially provide an affidavit. Instead, she submitted a statement from her sister who indicated that J-W- proposed marriage to the petitioner at her house “on the eve of Christmas 2010,” that the petitioner married J-W- in [REDACTED] of 2011, and that that she believed the petitioner and J-W- were happy. The remainder of the sister’s statement described J-W-’s purported abuse of the petitioner. The petitioner also provided affidavits from two friends; however, they primarily described J-W-’s allegedly abusive behavior. The petitioner’s sister and friends did not discuss any particular visit or social occasion with the couple or claim to have any personal knowledge or insight into the petitioner’s marital intentions at the time she entered into the marital relationship.

The petitioner also submitted a copy of her certificate of marriage, but this is evidence of her legal marriage rather than evidence of her good-faith entry into the marriage. She provided photographs that appear to be from her and J-W- on their wedding day and other photographs taken with J-W- at undisclosed locations. However, as the petitioner does not describe the significance or relevance of these photographs, they are insufficient to establish her intentions toward J-W- at the time she entered into marriage with him. The petitioner included a copy of a 2009 Internal Revenue Service (IRS) transcript and 2010 Form 1040, U.S. Individual Income Tax Return, but these predate her marriage and reflect only J-W-’s income prior to marriage. With the Form I-360 self-petition, the petitioner included an April 2011 lease agreement signed only by J-W-, three months of electric bills showing that she and J-W- paid for only one month of service, a single bank statement from April of 2012 showing that they had \$1.86 in their shared bank account, evidence that the petitioner maintained her own, separate bank account at another financial institution, and several notices reflecting that the petitioner and J-W- were overdue payment on various accounts. These documents

do not reflect that the petitioner and J-W- shared active accounts and commingled finances. Accordingly, the petitioner's initial evidence does not provide sufficient probative information to establish her good-faith entry into the marriage.

In response to the RFE, the petitioner provided a 2012 lease agreement that she and J-W- had signed, and resubmitted many of the previously submitted bills and bank statements. She did not include a personal statement or include any other probative information for purposes of establishing her good-faith entry into marriage with J-W-.

On appeal, the petitioner suggests that she received ineffective assistance of counsel from her prior attorney. A claim based upon ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard; (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against her and be given an opportunity to respond; and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

The petitioner has not properly articulated a claim for ineffective assistance of counsel under the requirements set forth in *Matter of Lozada*. Although the petitioner submits a termination letter that she claims to have sent to her attorney, the letter appears to focus on her frustration with the attorney and provided no detail as to the agreement entered into between the parties and what representations were made. Moreover, the petitioner stated in the letter that she "appreciate[d] the long hours and hard work." On appeal, the petitioner does not explain the facts surrounding the preparation of the petition or the engagement of prior counsel. Further, the petitioner's statement here does not reflect whether or not she attempted to file a complaint with appropriate disciplinary authorities against her former counsel, and if not, why not. Accordingly, the petitioner did not articulate a proper claim based upon ineffective assistance of counsel.

The petitioner also provides a personal statement in which she explains that she never believed that she would fall in love or get married, but that she got along with J-W- very well. She indicates that he took her and her daughter for walks in the park and to see live theater in New York. According to the petitioner, they fell in love, became engaged in six months, and married after one year of courtship. Apart from describing J-W-'s alleged battery and extreme cruelty, the petitioner does not proffer any additional probative information, such as details regarding their courtship or shared marital experiences, to establish her good-faith entry into marriage with J-W-.

On appeal, the petitioner also submits a statement from her friend, [REDACTED] who asserts that she is a good friend and "knew of [the petitioner's] courtship with [J-W-] and even their marriage." Ms. [REDACTED] claims that she went out to dinner with the petitioner and J-W- but does not describe any particular meal or interaction with the couple. Ms. [REDACTED] said that she "had no doubt in my mind

that their marriage would last long," but the remainder of her statement focuses on J-W's alleged abuse of the petitioner. Ms. [REDACTED] does not provide any probative details about the petitioner's courtship with J-W-, their wedding, or shared martial experiences, apart from the abuse, that could provide insight into the petitioner's intentions at the time she entered into marriage with J-W-.

The petitioner includes previously submitted bills and bank statements, as well as photographs that are now labeled. The petitioner indicated that the photographs were taken on the day she and J-W- married, and at the residences of various family members on other occasions. Although the photographs depict the petitioner and J-W- together on certain days, they do not provide any probative information that could establish the petitioner's marital intentions toward J-W- when she entered into marriage with him.

We will consider any credible evidence relating to a petitioner's claim of good-faith entry into marriage with the U.S. citizen spouse. See 8 C.F.R. § 204.2(c)(2)(vii). Nevertheless, the petitioner has failed to provide probative information of her courtship, wedding ceremony, joint residence, and shared experiences with J-W-. The petitioner has not established by a preponderance of the evidence that she entered into marriage with J-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has not demonstrated that J-W- subjected her to battery or extreme cruelty and that she entered into marriage with J-W- in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, the petitioner has not met that burden. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reason.

ORDER: The appeal is dismissed.