



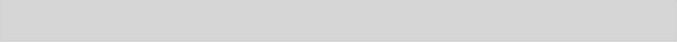
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **APR 08 2015**

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:

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 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 was battered or subjected to extreme cruelty by her husband, and that she married him in good faith. On appeal, the petitioner submits a statement and additional 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 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.

#### *Pertinent Facts and Procedural History*

The petitioner, a citizen of the Bahamas, entered the United States on June 13, 2009, as a nonimmigrant visitor. She married G-W<sup>1</sup>, a U.S. citizen, on [REDACTED] 2011, in [REDACTED], New Jersey, and filed the instant Form I-360 self-petition on February 27, 2013. The director subsequently issued a request for additional evidence (RFE) of battery and/or extreme cruelty, and the petitioner's good-faith entry into the marriage, among other issues. The petitioner responded with further

<sup>1</sup> Name withheld to protect the individual's identity.

evidence, which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. Upon a full review of the record, we find that the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

#### *Battery or Extreme Cruelty*

The preponderance of the relevant evidence does not establish that G-W- battered the petitioner or subjected her to extreme cruelty, as that term is defined in the regulations. On March 18, 2013, the petitioner submitted an undated affidavit in which she recounted that G-W- suffered from a drug addiction. She indicated that when she met G-W-, he had been clean for several years, but that he relapsed in June of 2012. The petitioner stated that G-W- would disappear for days, and that he attempted to hit her, but did not discuss any specific incidents. The petitioner indicated that in the past, G-W- had spent all of the couple's rent money, rendering the couple homeless for a time. She stated that G-W- moved out on February 7, 2013, because he had again spent all of the couple's rent money. The petitioner asserted that she feared that G-W- would "snap," and has had difficulty sleeping because of these fears. The petitioner did not describe either what she feared that G-W- would do if he "snapped," or any specific previous incidents of abuse upon which her fears were based.

In response to the RFE, the petitioner submitted an affidavit from her friend, [REDACTED] dated August 18, 2013. In her affidavit, Ms. [REDACTED] indicated that in June 2012, the petitioner and G-W- became homeless and G-W- began using drugs. She recounted that the petitioner and G-W- separated in March 2013 due to constant arguments, and G-W- went to a rehabilitation program. The petitioner also submitted an affidavit from her friend, [REDACTED], dated August 13, 2013. Ms. [REDACTED] attested to housing the petitioner and G-W- for one week after they became homeless, and that the petitioner had informed her that she and G-W- lost their apartment due to G-W-'s misuse of funds. In addition, the petitioner provided an affidavit from [REDACTED] dated August 15, 2013. In his affidavit, Mr. [REDACTED] indicated that the petitioner and G-W- depended solely on G-W-'s income, due to the petitioner's lack of work authorization, and that the couple suffered when G-W- returned to his drug habit and was not able to maintain employment.

In her decision, the director correctly determined that the relevant evidence of record did not establish that G-W- had battered the petitioner, or subjected her to extreme cruelty. On appeal, the petitioner submits an undated personal affidavit, and additional evidence. In her affidavit, the petitioner states that there were a few abusive incidents during her marriage, the last of which left her in fear for her life. The petitioner describes an argument during which she and G-W- had a "heated confrontation" regarding G-W-'s infidelity. The petitioner states that G-W- yelled using profanity, and threw some objects. The petitioner asserts that G-W- charged at her aggressively, but her son, who was present, stopped G-W- from inflicting any bodily harm. The couple then decided to separate. The petitioner also submits a letter from G-W-, dated October 7, 2013, in which he admits to a relapse of his drug addiction in June of 2012. He states that he "fought against" the petitioner regarding his drug abuse, but

does not describe any specific incidents. G-W- indicates that his infidelity played a role in the couple's separation.

*De novo* review of the relevant evidence, as supplemented on appeal, does not establish that G-W- battered the petitioner or subjected her to extreme cruelty. To satisfy her burden of proof, the petitioner must demonstrate that her spouse battered or threatened her 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). Here, the petitioner has indicated that her husband mismanaged money due to his drug addiction, engaged in an extramarital affair, and was aggressive on occasion during arguments. Neither the petitioner's affidavits, nor those of her friends and G-W-, provide sufficient probative information establishing that G-W- either battered the petitioner or subjected her to extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Entry into the Marriage in Good Faith*

In her initial undated personal affidavit, the petitioner discussed the demise of her marriage to G-W- due to G-W-'s drug abuse, but did not describe how she met G-W-, their courtship, or their shared experiences, beyond the discussion of the claimed abuse. The petitioner also submitted several unlabeled photographs of what appear to be the couple's wedding ceremony, and a power bill, dated September, 11, 2012, addressed to G-W- at an apartment on [REDACTED] Florida.

In response to the RFE, the petitioner submitted affidavits from Ms. [REDACTED] Ms. [REDACTED] and Mr. [REDACTED] however, the affidavits did not provide substantive information regarding the petitioner's intent in marriage. The petitioner also submitted a letter from her landlord, [REDACTED] dated August 19, 2013, attesting to G-W-'s and the petitioner's joint residence on [REDACTED] since approximately August 2012, and additional unlabeled photographs. The petitioner also provided a cellular telephone account statement covering the period from July 2013 through October 2013. The petitioner indicated on the bill that she is still paying for G-W-'s cellular telephone service.

In her decision, the director correctly concluded that the evidence submitted below was not sufficient to establish that the petitioner married G-W- in good faith. The director explained that the petitioner's affidavits, and those of her friends and clergy, did not contain probative information that would demonstrate the petitioner's good-faith intent in marriage.

On appeal, the petitioner submits an additional personal affidavit in which she discusses the events leading to her and G-W-'s separation; however, she does not describe the couple's courtship, wedding ceremony, and shared residences and experiences. The petitioner also submits a letter from [REDACTED] dated October 13, 2013, in which he certifies that he presided over the petitioner's and G-W-'s wedding ceremony, but does not describe the ceremony, or provide any further information regarding his personal knowledge of the petitioner's and G-W-'s relationship. The petitioner also submits a letter from assistant pastor [REDACTED] who attests to being part of the couple's wedding ceremony. She states that the petitioner met and fell in love with G-W- in October 2010, but did not further discuss their courtship. She briefly states that the petitioner and G-W- were regular guests of her family, but did not describe any specific occasions that she shared with the couple. In addition, the

petitioner submitted a letter from G-W-, briefly attesting that the couple was in love at the time of their marriage in June 2011, and indicating that his drug addiction and infidelity played a role in the termination of the relationship.

To demonstrate that she married G-W- in good faith, the petitioner must prove by a preponderance of the relevant evidence that she entered into marriage with her spouse in good faith. Instead of traditional documentation, a self-petitioner may submit “testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(vii). Here, the petitioner’s relevant evidence, albeit credible, is not sufficiently detailed regarding her and G-W-’s courtship, wedding ceremony, shared residence and experiences to establish her good-faith intent in marriage. When viewed in the aggregate, the preponderance of the relevant evidence does not establish that the petitioner married G-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

The petitioner has not overcome the director’s grounds for denial on appeal. The record does not demonstrate by a preponderance of the evidence that the petitioner was subjected to battery or extreme cruelty by her husband, or that she entered into their marriage in good faith. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

**ORDER:** The appeal is dismissed.