



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 09 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: 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)

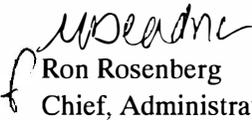
ON BEHALF OF PETITIONER:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to 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, determining that the petitioner did not demonstrate that she resided with her U.S. citizen spouse, that her spouse subjected her to battery or extreme cruelty, and that she entered into a qualifying spousal relationship in good faith.

On appeal, the petitioner initially submitted a brief and additional evidence. We issued a notice of derogatory information, to which the petitioner has responded with 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:

(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 . . . 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.

* * *

(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 was born in Ghana and last entered the United States on October 8, 2010 as an F-1 nonimmigrant student. She married, K-B-, a U.S. citizen, on [REDACTED] 2010, in [REDACTED] Connecticut.¹ The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on February 11, 2013. On October 8, 2013, the director issued a Request for Evidence (RFE) that, among other things, the petitioner resided with K-B-, K-B- subjected her to battery or extreme cruelty, and she entered into marriage with K-B- in good faith. The petitioner responded with additional evidence which the director found was insufficient and denied the petition on these three grounds. The petitioner filed a timely appeal. We issued a notice of derogatory information (NOID), to which the petitioner has responded.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal and in response to the NOID, establishes that the petitioner has overcome part of the director's determination; however, the petition is ultimately unapprovable.

Battery or Extreme Cruelty

In her initial affidavit, the petitioner explained that K-B- initially showed a lack of sympathy to her when her father died, advising her to "just move on." Because they did not live together, the petitioner asserted that K-B-'s abusive treatment of her took the form of abusive and derogatory language during their daily telephone or Skype conversations. The petitioner asserted that K-B- controlled her by keeping all documents relating to her adjustment of status application. She also asserted that the stress he placed her under caused her epileptic seizures to increase and that he would mock her after a seizure. The petitioner provided an evaluation from a psychotherapist who reiterated the assertions from the petitioner's affidavit, advised that the petitioner was suffering from emotional abuse, and noted that the petitioner is also having a difficult time completing coursework needed for graduation from medical school because of the stress her husband has created. [REDACTED]

¹ Name withheld to protect the individual's identity.

██████████ the Director of ██████████ at the petitioner's church, asserted that he had witnessed K-B- being very controlling over the petitioner during his meetings with the petitioner and K-B-.

In response to the RFE, the petitioner provided a new affidavit in which she described her husband's treatment of her in more detail. She indicated that he controlled their money, told her what to wear at home and in public, "cut [her] off verbally in a group to prevent [her] from sharing [her] thoughts," and held all of her immigration-related documents and threatened "to stop processing [her immigration] papers." The petitioner again asserted that the stress her husband created led her to have more serious epileptic seizures. The petitioner also provide a new letter from her psychotherapist, who advised that she has continued to work with the petitioner over the past year but that the petitioner "suffered significant emotional stress due to her husband's emotional abuse."

With her RFE response, the petitioner also included a new statement from Mr. ██████████ who stated that K-B- controlled the petitioner and even accused her of flirting with Mr. ██████████ calling her a prostitute. The petitioner's brother provided an affidavit in which he described the petitioner's personality as becoming withdrawn after her marriage. Although her brother asserted that K-B- abused the petitioner, her brother did not indicate whether he personally observed or heard the abuse.

The petitioner also provided a September 2010 article regarding domestic violence in Ghana, but the article is about the dynamics of intimate partner violence in Ghana in general rather than about the petitioner's own relationship with K-B-.

On appeal, the petitioner submits a new affidavit in which she provides additional descriptions of K-B-'s treatment of her. She asserts that he used abusive language, and once threw a pot of soup on her, threatened to hit her, threw a cup at her, and was indifferent to her when she had seizures, refusing to call 911 for help. She describes additional episodes of name-calling and K-B-'s controlling behavior, asserting that he failed to give her a critical fingerprint scheduling notice from USCIS. The petitioner explains that she constantly felt physically threatened by K-B-. The petitioner also provides a new statement from her psychotherapist, who diagnosed the petitioner with posttraumatic stress disorder. The statements of the petitioner and her psychotherapist are sufficient to establish that K-B- subjected the petitioner to battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. However, the petitioner has failed to overcome the director's remaining findings, and we will dismiss the appeal for the following reasons.

Joint Residence

The director correctly determined that the preponderance of evidence submitted below did not establish that the petitioner resided with K-B-. On the Form I-360 self-petition, the petitioner stated that she resided with K-B- from June 2010 to December 2011, and that their last joint address was on ██████████ in ██████████, Connecticut. In her initial affidavit, the petitioner stated that she and K-B- "had chosen to have a long distance relationship temporarily," planned for him to maintain the residence in Connecticut, and that she would eventually move there when she finished school. She

provided a marriage certificate showing that K-B- lived in Connecticut and that the petitioner lived in Philadelphia at the time of their marriage.

The petitioner provided a 2010 Internal Revenue Service (IRS) Form 1040X, Amended U.S. Individual Tax Return. According to the explanation of changes on the tax return, K-B-'s tax return was amended from a single taxpayer status in 2010 to reflect that he and the petitioner were married and filing jointly. However, K-B- did not sign the form and the petitioner did not initially provide evidence that this amended form was filed with the IRS. The petitioner provided receipts showing that she made bus trips from Philadelphia to New York, but no evidence that these were visits to a joint marital residence in Connecticut. The petitioner also provided photographs of her with K-B-, but these are unlabeled and do not show that they shared a residence. Accordingly, the tax return and photographs does not reflect that they resided together.

In response to the RFE, the petitioner stated that she did not have additional evidence that she resided with K-B- because she was not on his lease and was not even sure he had a lease for his apartment in Connecticut. She also explained that K-B- paid all of the bills on the Connecticut apartment and that although she visited him by first traveling by bus to New York and then taking a train to [REDACTED], she did not save any of her train tickets and could not document her travel to Connecticut. The petitioner submitted a bank statement listing her and K-B- on an account with an ending balance of \$12.34. The bank statement is for the period of January 17, 2013 through February 13, 2013. Because the petitioner stated that she ceased to be with her husband in December 2011, this later bank statement does not establish that they resided together. Moreover, in her decision the director noted during an October 4, 2011 interview with U.S. Citizenship and Information Services (USCIS), the petitioner admitted that she had not seen her spouse since August of 2011. The petitioner submitted additional photographs of her with her husband visiting with other people in various unlisted locations, but these do not establish that she and K-B- resided together.

On appeal, the petitioner again asserts that she resided in Philadelphia while K-B- resided in Connecticut but that they intended to live together in the future. Section 101(a)(33) of the Act prescribes that, as used in the Act: "The term 'residence' means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent." 8 U.S.C. § 1101(a)(33) (2007). The preamble to the interim rule for this classification further clarified that "[a] self-petitioner cannot meet the residency requirements by merely . . . visiting the abuser's home . . . while continuing to maintain a general place of abode or principal dwelling place elsewhere." 61 Fed. Reg. 13061, 13065 (Mar. 26, 1996). Accordingly, the petitioner cannot establish eligibility for this classification by asserting that she intended to reside with K-B-.

The petitioner also provides new bank statements listing her and her husband on an account; however, the earliest statement period is for a 30-day period ending on December 15, 2011, and the remaining statements post-date that time. Because the petitioner ceased to be with her husband in December 2011 and had not even visited him between August and October 2011, the bank statements do not establish that they resided together. None of the insurance information, bills, or other documentation reflecting both of their names establishes that the petitioner and K-B- resided

together.

In response to our November 19, 2014 NOID, the petitioner submits statements from two friends who asserted that the petitioner resided with K-B- for the latter half of 2010. Dr. [REDACTED] stated that in 2010 the petitioner "moved to Connecticut shortly before the wedding to be with her new husband," but subsequently moved back to Philadelphia to study for her board exams. Dr. [REDACTED] did not list or describe any of the petitioner's claimed addresses, nor did she describe visiting the petitioner and K-B- at their claimed marital residence in Connecticut. Dr. [REDACTED] stated that she was sad when the petitioner moved to Connecticut in June of 2010 in order to reside with K-B-. Dr. [REDACTED] also indicated that toward the end of 2010, she helped the petitioner move back to Philadelphia to concentrate on studying for her medical exams. However, Dr. [REDACTED] did not list or describe the petitioner's shared Connecticut residence with K-B- or provide any other probative information to establish that the petitioner K-B- resided together.

The petitioner's statements and those submitted on her behalf lack probative details regarding the petitioner's claimed residence with her spouse. Moreover, although the petitioner has asserted that she frequently visited K-B- and intended to live with him, the record shows that she maintained a separate, principal dwelling place during their marriage. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with K-B-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good-Faith Entry into Marriage

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's good-faith entry into her marriage. In her initial affidavit, the petitioner stated that she first met K-B- when they were children in Ghana, and that their families were friendly and members of the same church. She explained that she and K-B- became reacquainted in the United States through their extended families in New York. Although she was in Philadelphia and K-B- in New York, she asserted that they were able to date on weekends during the summer of 2009. The petitioner explained that she believed that she and K-B- would be a good marital match because of their shared religion and their families approved of their relationship. She affirmed that they married on [REDACTED] 2010. The remainder of the petitioner's statement focused on the K-B-'s alleged abuse. The petitioner did not provide any probative details about such as their courtship, K-B-'s proposal, their wedding ceremony, or her intentions for purposes of establishing her good-faith entry into the marriage.

In response to the director's RFE, the petitioner submitted a second statement that reiterates much of her initial statement. She also indicated that K-B- made her laugh during their early relationship and that because of her religious upbringing she never intended to divorce or be married to anyone but K-B-. She indicated that she did not have additional evidence in the form of bills because their utility bills were under K-B-'s name and because she was a student, she was unable to pay bills herself. She provided a 2013 bank statement reflecting both her name and K-B-, but this statement falls outside the time that the petitioner claims to have shared a relationship with K-B-. Apart from describing the alleged abuse to which K-B- subjected her, the petitioner did not provide any

probative details about her intentions and their time together before and after their marriage.

The petitioner submitted a Change of Beneficiary Form for life insurance reflecting that she intended to make K-B- the beneficiary of her life insurance. There is no evidence that she filed the form with her insurance company. Accordingly, this form does not reflect that the petitioner changed the beneficiary of her life insurance from her mother to K-B-. The petitioner included K-B-'s amended IRS Form 1040X for 2010 showing that he resided in Connecticut and initially filed as single for that year, even though they married in [REDACTED] of 2010. The tax return is unsigned by K-B- and there is no evidence that he filed this amended return with the IRS in order to change his status from single to married. Therefore, this document does not reflect that the petitioner and K-B- had commingled finances or provide information for purposes of establishing the petitioner's good-faith entry into marriage with K-B-.

On appeal, the petitioner provides a third affidavit in which she indicates that she became reacquainted with K-B- in 2004 after she had graduated from college. She explains that they were always comfortable and excited when they were together but were friends for several years before they began to date. She reasserts that their shared religion was important to her and that they eventually married. The petitioner advises that K-B- became abusive shortly after their marriage, and then describes numerous episodes of abuse and extreme cruelty. The petitioner provides a statement from her brother, who explains that he and his family encouraged the petitioner's relationship. He asserts that he personally visited the petitioner and K-B-, and had seen and heard them communicating, but does not describe any particular visit or any interaction between them. The petitioner also submits affidavits from two friends. Dr. [REDACTED] says she was not surprised that the petitioner married K-B-, and generally discusses her understanding of the petitioner's living arrangement with K-B-, but does not provide any insight into their relationship. Dr. [REDACTED] advises that the petitioner and K-B- began dating in 2009 and from what she heard "and saw first-hand" believes they shared much in common, but does not describe any visit with them or any specific interaction between the petitioner and K-B-. The petitioner and her friends do not provide any additional probative information such as details of the wedding ceremony with K-B-, a description of their claimed marital residence and shared experiences, other than describing K-B-'s alleged battery and extreme cruelty toward the petitioner.

The petitioner also submits additional bank statements for a Connecticut account beginning in November of 2011; however, because she indicated that she ceased to reside with K-B- as of December 2011, these documents are not indicative of commingled finances or the petitioner's marital intentions at the time of her [REDACTED] 2010 marriage. Accordingly, the petitioner has not established by a preponderance of the evidence that she entered into marriage with K-B- 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 she shared a marital residence with K-B and that she entered into marriage with K-B- in good faith. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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NON-PRECEDENT DECISION

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.