



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 17 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:

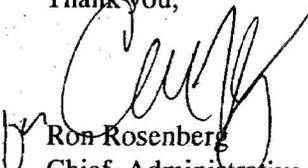


INSTRUCTIONS:

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 Director, Vermont Service Center, (“the director”) denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by her United States citizen spouse.

The director denied the petition, concluding that the petitioner had failed to demonstrate that she had entered into her marriage in good faith and that she had been subjected to battery or extreme cruelty during the marriage. On appeal, the petitioner submits additional evidence.¹

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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

¹ On the Form I-290B, Notice of Appeal or Motion, and attached letter from her counsel, the petitioner indicated that a brief from counsel would be submitted within 30 days. As of this date, we have not received counsel’s brief.

* * *

(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 United States 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 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.

* * *

(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 Poland who last entered the United States on November 5, 2011, on a B-2 nonimmigrant visitor's visa. She married A-S-², a citizen of the United States, on [REDACTED] 2012, in [REDACTED] Hawaii, and the two were subsequently separated.³ The petitioner filed the instant Form I-360 self-petition on February 25, 2014. The director issued a Request for Evidence (RFE) of, among other things, the petitioner's good faith entry into her marriage and the requisite abuse. The petitioner responded with additional evidence, which the director found insufficient to establish her eligibility. The director denied the petition and the petitioner timely appealed.

We review these matters on a *de novo* basis. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The evidence submitted on appeal does not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal does not demonstrate the petitioner's good faith entry into her marriage. The record contains the petitioner's statements; some photographs; letters from several of the petitioner's friends; a joint lease agreement; the petitioner's bank debit card; application adding petitioner's name to a joint bank account; computer printout of joint bank account; a computer printout of a detail vehicle record bearing both the petitioner's and her spouse's names; a car insurance record with both their names; and a camping permit for the couple from [REDACTED] 2013.

In her first statement, the petitioner indicated that she met her husband, A-S-, in [REDACTED] at a festival in [REDACTED]. She stated that she became infatuated with him and ignored her friends' warnings about him. The petitioner described being blind to A-S-'s many faults, including the fact that he was 18 years younger than her. She stated that she saw him as the future father of her baby and decided not

² Name is withheld to protect the individual's identity.

³ The record indicates that the petitioner may have signed divorce papers but it does not contain any evidence of a final divorce judgment.

to wait to get pregnant due to her age. The petitioner indicated that A-S- proposed after six months of dating and on [REDACTED] 2012, they were married in secret. The petitioner stated that after their wedding, A-S- returned to college in Alaska and they reunited in Hawaii after the fall semester where they continued their "idyllic" life there for another six months. They then decided the petitioner would move to Alaska as well, and she joined A-S- in [REDACTED] Alaska on June 6, 2013. Aside from this brief narrative touching on their relationship prior to the alleged abuse, the petitioner did not further describe in any probative detail the circumstances of meeting her husband, their courtship, engagement, their secret wedding, joint residence or any of their shared experiences.

Similarly, the letters of the petitioner's friends submitted below and on appeal also did not contain probative information regarding the petitioner's intentions in marrying A-S-. Although her friend, [REDACTED] indicated in a brief letter that the couple planned to have children and that she witnessed their entire courting and romance, she did not describe any particular visit or social occasion in probative detail or otherwise provide any detailed information establishing her personal knowledge of the petitioner's relationship with A-S-. Another of the petitioner's friends, [REDACTED] briefly indicated that the petitioner and her husband resided with her for a short time in 2013 and that they planned a future together, but she too does not provide any details about specific events or occasions. Further, the remaining statements in the record assert only each author's belief that the marriage was genuine without offering any specific details of their knowledge of the relationship or of the petitioner's intentions in entering the marriage.

The record also contains two wedding photographs, along with two other photographs of the petitioner and her husband at an unknown time and location. These photographs, without probative testimony, are insufficient to establish the petitioner's good-faith marital intent. A single printout of the couple's [REDACTED] joint bank account from [REDACTED] 2013 indicates it was opened that same month, nearly one year after the couple's marriage, and that it had a balance of less than \$700. A copy of an application to add the petitioner to her husband's [REDACTED] bank account is also dated [REDACTED] 2013. The record does not contain any bank statements for the joint account to show its activity or use by the couple for any period during their marriage. The other documents in the record, taken cumulatively, fail to establish the petitioner's good-faith intention in marrying her husband.

On appeal, the petitioner submits statements from [REDACTED] and [REDACTED] Mr. [REDACTED] states that he does not know the petitioner's husband and has no knowledge of her relationship with him. Mr. [REDACTED] states that he is aware of the petitioner's marriage to A-S-, but he does not describe any interaction with the petitioner and A-S- as a married couple and does not provide any substantive information about the petitioner's marital intentions. The petitioner also submits unclear two copies of a photograph of herself and her husband, which offer little or no insight into the petitioner's good faith intent in marrying A-S-.

Traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, 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." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's affidavit, the letters from her friends, and the evidence submitted below and on appeal do not provide

sufficient detail to address her good faith intent upon marrying A-S-. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The petitioner also failed to establish that A-S- subjected her to battery or extreme cruelty, and the evidence submitted below and on appeal fails to overcome this ground for denial. The relevant evidence in the record includes the petitioner's statements; photographs of the petitioner's face bearing a bruise; letters from the petitioner's friends; a letter from the petitioner's spouse to her; an evaluation from license marriage therapist, [REDACTED] M.A., LMFT; a second evaluation from licensed therapist, Dr. [REDACTED] Ed.D, LMFT, CSAC; and a letter from immigrant advocate, [REDACTED]. The psychological assessment from Dr. [REDACTED] states that she found the petitioner credible and that her experiences were indicative of someone who experienced domestic violence. Additionally, the statement from immigrant advocate, Ms. [REDACTED] recounted the petitioner's history with A-S- and concluded that the petitioner suffered mentally and physically during her marriage. While we do not question Dr. [REDACTED] or Ms. [REDACTED] professional expertise, their assessments are solely based on information provided by the petitioner and they provide no further substantive information regarding the claimed abuse.

In her affidavit, the petitioner stated that A-S- changed after she moved to Alaska in June 2013 to join him there. She stated that A-S- stopped working and abandoned her for three weeks to attend a music festival in Canada, leaving her in their cabin which had no running water and no toilet. She recounted that in those early months in Alaska, A-S-'s power grew because he knew she had to keep quiet for her greencard. The petitioner does not further explain this or what caused the change in A-S-'s behavior towards her. She indicated that he started demanding sexual services and was verbally abusive, calling her names even in public. The petitioner stated that the culmination point was during a visit from her brother when A-S- came home drunk, full of rage and demanded his keys. She described A-S- using all his strength to knock her down onto the floor, causing her bruises and pain. The petitioner stated that she obtained a restraining order against A-S- on [REDACTED]. However, contrary to the petitioner's statement and a copy of the order, dated [REDACTED] 2013, in the record, the first evaluation she submitted from her therapist, Ms. [REDACTED], indicates that the petitioner reported this incident leading up to the restraining order as having happened on [REDACTED] 2013, when the petitioner asked him for his part of the rent. In her statement submitted in response to the RFE, the petitioner explained that she did not have an opportunity to review and make corrections to Ms. [REDACTED] report, but she maintained that the circumstances of her abuse is accurate and that she had given more priority to the requirements of a VAWA application rather than to the exactness of the dates. However, the petitioner's explanation is insufficient and the record contains several other discrepancies that are not sufficiently explained. For instance in his letter, the petitioner's brother stated that he came to visit his sister and A-S- for two weeks on [REDACTED], 2013, and that he was present on the occasion that A-S- physically attacked his sister a few days after his arrival. The petition for the restraining order that the petitioner filed, however, indicates that she reported the incident as having occurred on [REDACTED] 2013, two days prior to her brother's arrival in Alaska. The petitioner's brother also described hearing the petitioner screaming for help when he was in the shower and finding her naked on the floor, wiping her "bleeding legs." The petitioner, however, describes only being bruised in her statement, and made

no reference to being naked or bleeding from her injuries. She also did not mention the "bleeding" on her legs as one of the injuries she sustained when she filed the restraining order petition against her husband, and in fact, only reported having bruises on her back. Additionally, according to Ms. [REDACTED] evaluation, the petitioner reported only being bruised in the shins after A-S- pushed her down, causing her to hit a table and chair. Neither the petitioner's brother's statement, nor Ms. [REDACTED] evaluation, indicates that the petitioner also incurred bruises on her back. In response to the director's RFE, the petitioner submitted another psychological assessment from Dr. [REDACTED] dated [REDACTED] 2014, which indicates that the petitioner's brother saw the petitioner's legs bleeding. It is unclear from the report, however, whether the petitioner reported this herself or whether it was reported by her brother. On appeal, the petitioner does not explain these discrepancies.

The record also includes letters from other friends of the petitioner, including from Ms. [REDACTED]

regarding the abuse. These letters do not provide probative details of specific incidents of abuse and relay only that the petitioner had told them. [REDACTED] in her second statement, dated July 3, 2014, recounted that when the petitioner was still in Alaska, the latter told her that A-S- was verbally and physically abusing her. However, in her prior letter, Ms. [REDACTED] did not address the abuse, despite her subsequent assertion that she was already aware of the abuse at the time. In addition, the petitioner also submitted a detailed letter from [REDACTED] in which he indicated that the petitioner asked him to go with her to meet with A-S- to sign some papers. He stated that the petitioner appeared to be anxious, that A-S- was angry but in control, and that A-S- accused the petitioner of being dishonest. Mr. [REDACTED] did not describe witnessing any incident of abuse.

The petitioner also asserted that A-S- will seek retaliation by any means against her, and in an addendum, stated that her husband promised to punish her "by the cost of jail" anywhere in the world, dead or alive. She did not further explain when and under what circumstances A-S- made this threat, nor did she indicate whether A-S- ever contacted or harmed her, or attempted to do so, again after he left her. Moreover, the petitioner also submitted a "farewell" letter from A-S-, which the petitioner explained was written when he abandoned her. In this letter, A-S- apologized for the manner in which their relationship ended and wished the petitioner luck in her "next chapter," suggesting he had moved on from the relationship and from the petitioner. The petitioner also indicated that her husband wants to see her deported, and sent her a text message stating that she was going to be deported, a copy of which was submitted with the instant petition. On appeal, the petitioner references the "cycle of abuse" in her statement and notes that abusers are often apologetic after committing abuse. She does not, however, sufficiently demonstrate that A-S-'s letter and text were part of a cycle of abuse or otherwise show that A-S- subjected her to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

On appeal, the petitioner also submits statements from [REDACTED] Both indicate that they recalled seeing the petitioner in [REDACTED] 2013 in Alaska. Mr. [REDACTED] indicates that he saw a bruise on the petitioner's face and that the petitioner told him of the abuse she suffered. Likewise, the letter from [REDACTED] states that he met the petitioner for the first time on [REDACTED] 2013, at his home, and that on that occasion, she had a black eye, a swollen lip and bruises on her forearms. He indicates that the petitioner told him that her husband, who he had never met, had been abusing her. The petitioner also submits a photograph of her face with what appears to be black discoloring on the left side of her face

and a handwritten note indicating that it was taken after the couple's first fight in [REDACTED] 2013. The petitioner did not provide details about this physical altercation in any of her statements. Likewise, neither of the psychological assessments in the record indicates that the petitioner ever described this incident. The photograph alone, without probative testimony, is insufficient to establish the claimed injuries from A-S-'s abuse. Consequently, upon *de novo* review of the record in its entirety, the petitioner has failed to demonstrate that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that she entered the marriage in good faith or that her spouse subjected her to battery or extreme cruelty during their marriage, as required. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, 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 (BLA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, she has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.