



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: AUG 05 2015

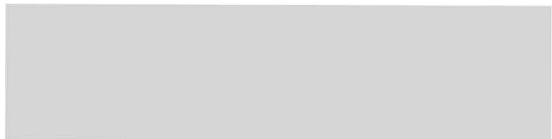
FILE #: [REDACTED]

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (the director) denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 former spouse, a United States citizen.

The director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage. On appeal, the petitioner, through counsel, submits a brief 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 . . . and must have taken place during the self-petitioner's marriage to the abuser.

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.

Pertinent Facts and Procedural History

The petitioner is a citizen of the Dominican Republic who claims she entered the United States on December 2, 2002, as a B-2 nonimmigrant visitor.¹ The petitioner married J-R-², a U.S. citizen, in [REDACTED], Massachusetts on [REDACTED]. The petitioner filed the instant Form I-360 self-petition on September 30, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite abuse inflicted upon her by J-R- during their marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

We review these proceedings *de novo*. Upon a full review of the record as supplemented, the petitioner has overcome the director's ground for denial. The appeal will be sustained for the following reasons.

Battery or Extreme Cruelty

The record contains the petitioner's affidavits, affidavits from family and friends, a psychological evaluation, and various medical reports. In her affidavit, the petitioner stated that at first, being married to J-R- was good and she felt really connected to him. However, approximately four months after their wedding, the petitioner stated that J-R- became verbally abusive and began calling her names. She stated that the J-R- would have an outburst once or twice a week and get mad at her for small things. She recounted that he called her derogatory names, criticized everything that she did, and forced her to

¹ The record shows that the I-94 arrival card and nonimmigrant visa submitted by the petitioner in support of a prior application for an immigration benefit appear to have been altered and were determined to be fraudulent by U.S. Citizenship and Immigration Services (USCIS).

² Name withheld to protect the individual's identity.

engage in unwanted sexual acts. The petitioner stated that in April of 2010, J-R- pushed her down the stairs in their basement apartment. The petitioner's cousin, [REDACTED] witnessed the incident and took the petitioner to a healthcare center. The petitioner described feeling too embarrassed to describe what really happened to the clinic staff and stated that she had been hit by a car instead.

The petitioner also submitted an affidavit from her aunt, [REDACTED], and her cousin [REDACTED]. [REDACTED] stated that she thought the petitioner and J-R- made a good couple at first and allowed them to live in the basement apartment of her house. She recounted that as time passed, J-R- seemed to get angry at the petitioner a lot and [REDACTED] would frequently hear him yelling at the petitioner in their apartment. [REDACTED] also described seeing J-R- hit the petitioner on one occasion and trying to calm him down. She stated that in August of 2012, she heard J-R- calling the petitioner "ugly words," and kicked him out of her home. In her affidavit, [REDACTED] explained that she shared the basement apartment with the petitioner and J-R-. She stated that after J-R- started school, she noticed that he began drinking a lot and going to parties. She described hearing J-R- push the petitioner against the wall and call the petitioner names. [REDACTED] also described the April of 2010 incident when J-R- pushed the petitioner down the stairs requiring the petitioner to seek medical treatment.

In addition to the affidavits, the petitioner submitted a psychological evaluation from [REDACTED] Ph.D and medical reports. Based on the results of [REDACTED] four and a half hour session and electronic mail correspondence with the petitioner, [REDACTED] diagnosed the petitioner with Post-Traumatic Stress Disorder (PTSD) and depression. She found that the petitioner's depressive symptoms matched the diagnostic criteria for Major Depression, anxiety, and PTSD as spelled out in *The Diagnostic and Statistical Manual of Mental Disorders*. The submitted medical reports show that the petitioner sought treatment in April of 2010 and that she reported the domestic abuse to her doctor in October of 2012.

The director gave little evidentiary weight to the petitioner's affidavits because she had previously submitted a fraudulent I-94 arrival card. The director further determined that the petitioner did not establish that she entered the United States in 2002 when in fact the exit stamp from the Dominican Republic in her passport appears to originally have been dated in September of 2007. On appeal, the petitioner reiterates that she was unaware that her I-94 card and nonimmigrant visa were fraudulent. She states she entered the United States in 2002 when she was [REDACTED] years old and submits school transcripts as evidence. Notwithstanding the irregularities surrounding her entry into the United States, a full review of all the relevant and credible evidence submitted below and on appeal, demonstrates that the petitioner was subjected to verbal and physical abuse by J-R-. The affidavits of the petitioner and her family submitted below described in probative detail the physical and emotional violence she suffered by her former husband. The detailed psychological evaluation submitted below concluded that the petitioner is suffering from depression and PTSD due to having been abused and degraded by J-R-. This documentation and the petitioner's statements demonstrate by a preponderance of the evidence that the petitioner's former husband subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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NON-PRECEDENT DECISION

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Conclusion

On appeal, the petitioner has established her eligibility 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. *See* Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has been met. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.