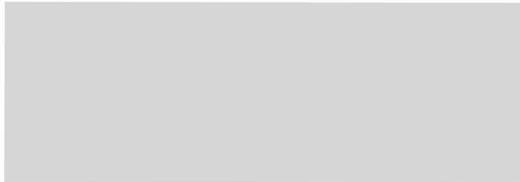


(b)(6)

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



U.S. Citizenship
and Immigration
Services



Date: **AUG 07 2015**

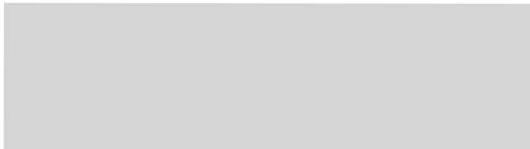


IN RE: Petitioner:



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:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

R Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting 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 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 Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the petitioner had not established either joint residence with her spouse, battery or extreme cruelty, or good-faith marriage. 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 U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 clause (ii) or (iii) of subparagraph (B) 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 regulation at 8 C.F.R. § 204.2(c)(1) provides, 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 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. . . .

* * *

(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.

Facts and Procedural History

The petitioner, a native and citizen of Cameroon, last entered the United States on February 22, 2010 as a B-2 nonimmigrant visitor. She married D-R-,¹ a U.S. citizen, on [REDACTED] in [REDACTED] Minnesota. The petitioner filed the instant Form I-360 on May 29, 2013. The director issued a Request for Evidence (RFE) of the petitioner's joint residence with D-R-, battery or extreme cruelty, good-faith marriage, and good moral character. The petitioner responded to the RFE with additional evidence, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner filed a timely appeal.

We review these proceedings *de novo*. The preponderance of the evidence submitted below and on appeal does not demonstrate that the director's decision to deny the petition was in error. Therefore, we will dismiss the appeal.

Joint Residence

The petitioner has not demonstrated by a preponderance of the evidence that she resided with D-R- during their marriage.

In her affidavit of August 9, 2013, the petitioner stated that she and D-R- moved in together after marrying in [REDACTED]. She indicated that, because she did not have a Social Security number, she could not be added to the lease for D-R-'s apartment and the landlady would not allow her to stay there for more than a week. Therefore, according to the petitioner, she spent some time living with D-R- and some time living with her sister. She claimed that she eventually obtained a Social Security number in June 2011. The petitioner further claimed that she and D-R- began to argue in late-2011, and that he moved to Mississippi for a new job in early-2012. The petitioner indicated that she was unable to remain in the apartment when D-R- moved because she did not have previous rental history, so the apartment complex refused to add her to the lease. She asserted that, therefore, she moved to her sister's house. The petitioner made similar claims in her affidavit of December 6, 2012, which she submitted in connection with a previous Form I-485, Application to Register Permanent Residence or Adjust Status, which she filed in 2010 in conjunction with a Form I-130 Petition for Alien Relative that D-R- filed on her behalf. The petitioner stated in the affidavit that she and D-R- separated but that she wished to pursue her Form I-485 on her own. She also indicated that she later moved in with [REDACTED] a friend with whom she began a romantic relationship after D-R- moved to Mississippi.

On appeal, the petitioner submits additional affidavits which address her living situation during her marriage. She states that it was difficult for her to commute from D-R-'s apartment in [REDACTED] to her job in [REDACTED], so she spent "most of the time at her sister's" and returned to D-R- in [REDACTED] on weekends. She also claims that she sometimes arrived at D-R-'s apartment on weekends to find that he would not let her in or told her to go back to her sister's because, according to the petitioner, he had friends or other women over. Additionally, the petitioner contends that she used her sister's home as a "shelter" from D-R- and began to spend most of her time at work, including on weekends, in order to

¹ Name withheld to protect the individual's identity.

escape D-R-. The petitioner further alleges that she was not present when D-R- moved to Mississippi and was not aware of the date of his move until after it occurred. She claims that D-R- threw away her personal items when he left his apartment.

In a supplemental affidavit also filed on appeal, the petitioner contends that she and D-R- applied for a lease together at the public housing agency and received a letter denying their application. She asserts that she went to the public housing agency to request a copy of the denial letter, but was told that the agency no longer had a record of it. The petitioner also claims that she previously submitted copies of notices from the public housing agency which demonstrate that she attempted to obtain a lease with the agency. Furthermore, in an additional affidavit filed on appeal, the petitioner alleges that when D-R- moved to Mississippi, she asked [REDACTED] to add her to his lease so that she could receive mail at his address. She explains that she could not receive mail at her sister's address "because it was already full." According to the petitioner, she and [REDACTED] were only friends at first, but began dating and moved in together in 2012.

The petitioner has not provided sufficiently detailed evidence to demonstrate that she resided jointly with D-R-. In her denial, the director noted that the evidence did not contain detail about the apartment the petitioner and D-R- allegedly shared. The petitioner's previously filed affidavits provided no detail about the layout of the apartment, furnishings, shared belongings, or household routines. Similarly, letters of support submitted on the petitioner's behalf were vague with regard to the alleged joint residence. [REDACTED] claimed to have visited the petitioner and D-R- "on multiple occasions," but provided no information about the apartment, belongings, or other probative details. The petitioner's sister,² [REDACTED] did not discuss the petitioner's living arrangement at all. On appeal, the petitioner provides no further detail about the apartment she claims to have shared with D-R-. Additionally, she indicates that she spent "most" of her time at her sister's home, and that, even when her work schedule allowed her to return to D-R-'s apartment on weekends, she often chose to go to work or D-R- did not allow her to enter his apartment. This does not support a finding that the petitioner resided with D-R- on even a part-time basis; instead, it indicates that she lived elsewhere, and may have visited D-R- at his apartment on occasion.

Additionally, the petitioner has not submitted sufficient supporting documentation. She previously submitted two bank statements addressed to her and D-R- at [REDACTED] Minnesota. These bank statements demonstrate that the petitioner and D-R- held a joint bank account under that address, but are not sufficient to show that they resided together there. The petitioner provides no additional supporting documentation on appeal.

Furthermore, the petitioner has not submitted sufficient evidence to resolve inconsistencies relating to her claim of joint residence. The petitioner indicated in her petition that she resided with D-R- at [REDACTED] from March 5, 2010 to June 2011. However, she stated in her affidavits that she was not permitted to reside at D-R-'s apartment due to her lack of a Social Security number and rental history, so she spent most of her time with her sister. Additionally, she claimed in her affidavit of

² [REDACTED] states in her affidavit that the petitioner is her niece, but that they "grew up together as sisters in Cameroon." Because the petitioner and [REDACTED] repeatedly refer to each other as sisters, we refer to [REDACTED] as the petitioner's sister for the sake of clarity.

August 9, 2013 that she and D-R- began to argue in late-2011, that he moved to Mississippi in early-2012, and that she also relocated at that time. This conflicts with the information in her petition and the accompanying Form G-325A that they stopped residing together at [REDACTED] in June 2011. Additionally, the petitioner's claims regarding her use of, and residence at, the address of [REDACTED] are inconsistent with other evidence in the record. The petitioner claims on appeal that she began using [REDACTED] address – [REDACTED] – solely for mail when D-R- moved to Mississippi. In an affidavit submitted on appeal, [REDACTED] also claims that he and the petitioner began dating “sometime in 2012.” However, the petitioner's Form G-325A indicates that she resided at [REDACTED] address beginning in June 2011.

The petitioner correctly notes on appeal that the record contains documentation from the Public Housing Agency of [REDACTED] indicating that she pursued a lease through that agency. These documents were submitted in relation to a Form I-130, Petition for Alien Relative, D-R- filed on the petitioner's behalf. A letter dated November 3, 2010 and addressed to the petitioner in care of [REDACTED] states that the petitioner's application for public housing was recommended for denial due to her immigration status and lack of documented housing history. However, this letter does not support the petitioner's claim that she resided with D-R-; rather, it indicates that the petitioner resided with [REDACTED] in November 2010, which is contrary to her claim in her petition that she began residing with D-R- in March 2010. The record also contains documents describing rules relating to public housing, which are signed by the petitioner. These documents support the petitioner's claim that she applied for public housing, but they do not support her claim that she actually resided with D-R-.

The record contains unresolved inconsistencies regarding the timeline of the petitioner's alleged residence with D-R-. Furthermore, notwithstanding the inconsistencies, the petitioner has not provided sufficient probative, detailed evidence regarding the dates and locations of her residence with D-R- or descriptions of their apartment, shared belongings, or household routines. Therefore, the petitioner has not demonstrated by a preponderance of credible, relevant evidence that she resided with D-R- during their marriage, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The petitioner has not established by a preponderance of the evidence that she was battered or subjected to extreme cruelty by D-R-.

In her affidavit of August 9, 2013, the petitioner stated that, in 2011, D-R- became distant, got angry easily, spent the money in their joint bank account, and sometimes disappeared for weeks. She claimed that she and D-R- began to argue and had problems in their marriage due to financial difficulties. In her January 30, 2014 affidavit, the petitioner indicated that D-R- became controlling and verbally abusive a few months after they got married. She stated that this caused her pain and that she spent many nights crying.

On appeal, the petitioner provides a different description of her relationship with D-R-. She states that D-R- convinced her to transfer all of her money to his bank account and that she believes he used her financially. She also indicates that D-R- demanded sex, raped her, forced her to engage in unprotected sex, and made vulgar comments toward her. She states that when she was staying at her

sister's house, D-R- often arrived to demand sex and money. Additionally, the petitioner claims that D-R- insulted her, intimidated and threatened her, and embarrassed her in public. The petitioner further asserts that D-R- stood over her, blocked her exit, grabbed her when she tried to leave, and threw and broke things. All of the petitioner's affidavits provide generalized descriptions of controlling and abusive behavior by D-R-, but they do not describe any particular incidents in detail. The petitioner does not provide specific information, such as the dates of any incidents, the circumstances leading to a particular incident, or her or D-R-'s actions following the incident. Although battery and extreme cruelty can encompass a variety of behaviors and the petitioner need not submit any particular type of evidence, the petitioner's descriptions in her affidavits lack sufficient detail to establish by a preponderance of the evidence that she was battered or subjected to extreme cruelty.

The petitioner also submits on appeal an affidavit from [REDACTED] who states, in relevant part, that the petitioner told him that D-R- had an "abusive attitude." He explains that the petitioner told him that D-R- was controlling, mismanaged the petitioner's money, and demanded sex. The petitioner's sister, [REDACTED], also claimed in her affidavit that she observed D-R- "acting in a very disrespectful and abusive manner towards" the petitioner. She indicated that D-R- confiscated the petitioner's phone and behaved in a "forceful" manner. Neither affiant describes witnessing or hearing of a particular incident of battery or extreme cruelty. The supporting affidavits lack the necessary detail to support the petitioner's claim.

The petitioner also submitted, in response to the director's RFE, a psychological evaluation by Licensed Psychologist [REDACTED] dated February 27, 2014. [REDACTED] reported that, based on two sessions with the petitioner, he believed that the petitioner was a battered woman. He stated that his conclusion was based on "the way that she presented herself and . . . the way that she responded to . . . the assessment tools." According to [REDACTED] the petitioner was the victim of "extreme neglect, verbal abuse, threats, physical violence and sexual violence." Although [REDACTED] expertise and conclusions are valuable, his report is vague and generalized. The report does not provide any detail regarding the petitioner's statements to [REDACTED] or discuss any specific incidents of abuse she experienced, nor does it identify the perpetrator of the abuse and violence he mentions. The report is not sufficiently detailed to establish that the petitioner was the victim of battery or extreme cruelty.

Due to the generalized nature of the petitioner's affidavits and supporting documentation, the evidence does not establish that she was the victim of abuse amounting to violent acts, psychological or sexual abuse, or an overall pattern of violence, or which otherwise constituted extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has not demonstrated by a preponderance of the evidence that she was the victim of battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good-Faith Marriage

The petitioner also has not demonstrated by a preponderance of the relevant evidence that she entered into marriage with D-R- in good faith.

The evidence submitted below and on appeal does not contain sufficient detailed, probative information regarding the petitioner's relationship with D-R-, the circumstances of their marriage, and her intentions in marriage. In her three affidavits submitted below, the petitioner provided only general descriptions of her first meeting with D-R-, their wedding, and their marital relationship. In her affidavit of December 6, 2012, she stated that they dated for a year and then got married because they were in love. She claimed that, once D-R- moved away for work, he did not return her calls or come to visit. In her affidavit of August 9, 2013, the petitioner asserted that she and D-R- met at a party in June 2009 while she was visiting the United States from Denmark. She contended that they continued to communicate when she returned to Denmark and planned more time together when she again traveled to the United States in February 2010.

According to the petitioner, D-R- proposed to her because he was in love with her, and she agreed because she also loved him. She indicated that they were married at a chapel in the presence of family and friends. The petitioner further stated that, although she and D-R- could not live together full time, they had a good marriage and enjoyed time together until she began noticing changes in D-R- in 2011. She claimed that she and D-R- were experiencing financial problems, resulting in stress in their relationship. In her January 30, 2014 affidavit, the petitioner claimed that D-R- said all the right things, was funny, and made her feel special and loved. She stated that they "had a beautiful and loving relationship" until D-R- became abusive a few months after they were married. The petitioner claimed that she tried to preserve the marriage despite the abuse, and continued to love D-R- even after they were separated.

The petitioner's affidavit on appeal is also general and vague with regard to her relationship and marriage with D-R-. She asserts she left her life in Denmark in order to join D-R- in the United States because she loved him and believed he loved her. She claims that she and D-R- had "a beautiful relationship," so she thought it would be a good idea to marry him. However, she asserts that this was a mistake because she later learned that D-R- had lied to her about his employment and financial situation. She also indicates that D-R- later became abusive. The petitioner has not provided any detailed information regarding her first meeting with D-R-, their dating relationship, wedding ceremony, marital routines, or shared experiences other than abuse.

Additionally, the petitioner has not submitted sufficient supporting documentation to demonstrate that she married D-R- in good faith. In response to the RFE, she provided three photographs of her and D-R- together, two of which are from the same event. These do not establish the petitioner's intentions in marriage. The affidavits submitted on her behalf were also vague. [REDACTED] claimed to have attended the wedding ceremony and reception, but provided no detail other than that the ceremony was "small and intimate," that the reception occurred at the petitioner's sister's home, and that D-R- was "extremely happy." Similarly, [REDACTED] stated only that she attended the wedding and that the petitioner and D-R- "seem[ed] to be very happy." [REDACTED] states on appeal that the petitioner was

“happily married” and had an “attachment” with D-R-. The evidence does not contain sufficient detail to establish that the petitioner was married in good faith.

Furthermore, the record contains inconsistencies regarding the timeline of the petitioner’s relationship with [REDACTED]. She claims on appeal that she began a relationship with [REDACTED] in 2012, after D-R- moved away, and she moved in with [REDACTED] later that same year. However, as noted above, the petitioner indicated in her Form G-325A, which she submitted with her petition, that she began living at [REDACTED] address, [REDACTED] in June 2011. This was prior to the date the petitioner claimed, in her affidavits filed below, that D-R- left their shared apartment for a job in Mississippi in early-2012. The petitioner has not resolved this discrepancy on appeal and it is contrary to her claim that she was in a good-faith marriage with D-R- until they separated following his move to Mississippi.

The petitioner’s affidavits and supporting documentation do not contain sufficient probative detail regarding her first meeting with D-R-, their dating relationship, wedding ceremony, marital routines, and shared experiences. Additionally, the petitioner has not resolved inconsistencies relating to her relationship with [REDACTED]. Therefore, the petitioner has not established by a preponderance of evidence that she married D-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The record does not demonstrate by a preponderance of the evidence that the petitioner resided with D-R- during their marriage, was battered or subjected to extreme cruelty, and married D-R- in good faith. Accordingly, she has not demonstrated eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

In these proceedings, the petitioner bears the burden of proving by a preponderance of the evidence that she is eligible for the benefit sought. 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.

ORDER: The appeal is dismissed.