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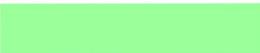
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

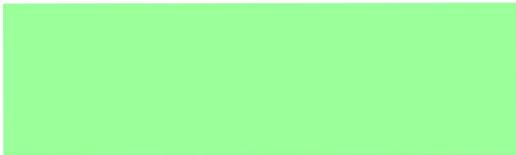


Date: FEB 05 2015 Office: VERMONT SERVICE CENTER File: 

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:

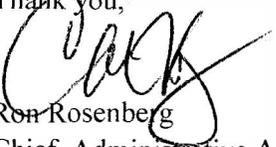


INSTRUCTIONS:

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 (“acting director”), denied the immigrant visa petition. The acting director granted a subsequent motion to reopen, but affirmed the previous decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the petition will remain denied.

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 husband.

The acting director initially denied the petition for failure to establish that the petitioner resided with her husband during their marriage and that the petitioner married him in good faith. The acting director granted a subsequent motion to reopen, but denied the petition for the reasons previously stated as well as for failure to establish that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage.

On appeal, the petitioner submits a brief.

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 explained in 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 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 explained in 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 Kenya who entered the United States on April 2, 2007, as a nonimmigrant student. The petitioner married M-M-¹, a U.S. citizen, on April [REDACTED] in [REDACTED] Maryland. The petitioner filed the instant Form I-360 self-petition on August 29, 2011. The acting director denied the self-petition on June 7, 2013. On April 1, 2014, the acting director granted the motion to reopen, but affirmed her previous decision denying the self-petition. The petitioner filed the instant appeal.

We conduct review on a *de novo* basis. A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome the acting director's grounds for denial and the appeal will be dismissed for the following reasons.

Joint Residence

The acting director correctly determined that the petitioner failed to establish that she jointly resided with her husband during their marriage. The petitioner stated on her Form I-360 self-petition that she resided with M-M- from April of [REDACTED] until April of [REDACTED], and that the last address at which they lived together was on [REDACTED] Maryland. Although the petitioner initially submitted an affidavit with her self-petition, she did not address her joint residence with M-M-. In response to the RFE, the petitioner did not submit a statement. The petitioner submitted an affidavit with her motion to reopen and stated that after she married M-M-, they lived together on [REDACTED] Maryland until the end of [REDACTED], and then they moved to [REDACTED]. The petitioner did not provide any probative details of joint residency with M-M- either at the [REDACTED] addresses. She did not describe their home, shared belongings, and residential routines or provide any other substantive information regarding her living arrangements with M-M- during their marriage.

The record contains copies of the couple's leases for [REDACTED] documentation of the couple's joint bank account addressed to them at the [REDACTED] address, two letters from [REDACTED] attesting to the couple living in part of her house on [REDACTED] and a copy of the couple's 2010 joint income tax return listing their address as [REDACTED]. However, as the acting director stated in both of her prior decisions, the record contains unexplained inconsistencies. For instance, according to M-M-'s Biographic Information Form (Form G-325A) in the record, he worked in [REDACTED] Michigan, from January of [REDACTED] until January of [REDACTED] and resided in [REDACTED] at the same time he purportedly

¹ Name withheld to protect the individual's identity.

resided at [REDACTED]. However, the petitioner did not contend that M-M- was living in both Michigan as well as in Maryland, but rather, asserted in her affidavit that M-M- “began staying full time in Maryland” with her at the [REDACTED] address beginning in late [REDACTED] to early [REDACTED].

On appeal, the petitioner contends that the contradictions are “nit picking” and asserts that the acting director failed to conduct a further investigation into the petitioner’s case. The petitioner bears the burden of establishing eligibility for relief and does not address the deficiencies as noted by the acting director on appeal. The regulations do not require the acting director to interview the petitioner, present contradictory evidence, or request additional documentation, as the petitioner contends. To the extent the record contains copies of photographs of the couple, the photographs are undated, unidentified, and there is no indication that they were taken at the claimed marital residence. Therefore, they do not provide probative evidence of the couple’s joint residence and there is no other relevant evidence in the record. Because the petitioner has not provided any probative details of joint residency with M-M- sufficient to overcome the inconsistencies in the record, the preponderance of the evidence does not demonstrate that the petitioner resided with her husband after their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

We further find no error in the acting director’s determination that the petitioner’s spouse did not subject her to battery or extreme cruelty during their marriage. The petitioner stated that M-M- was verbally abusive on many occasions. She briefly recounted that he once slapped and pushed her in February of 2011 at a club in [REDACTED]. She described that he subsequently left their apartment, returned to his family in Michigan, and sent her threatening messages via electronic mail when she tried to contact him in May and June of 2011. The petitioner’s statements and the electronic mail messages in the record do not describe in probative detail any particular incident of battery or other behavior by M-M- that included actual or threatened violence against the petitioner, psychological or sexual abuse, or otherwise constituted extreme cruelty as that term is defined in 8 C.F.R. § 204.2(c)(1)(vi). A letter from [REDACTED] briefly asserted that M-M- hit and cursed at the petitioner at a club in February of 2011, but also failed to provide any probative details of the alleged incident to establish battery or extreme cruelty as that term is defined in the regulation. A letter from Ms. [REDACTED] stated that M-M- got violent towards the petitioner and would “storm out of the house,” but did not provide any details regarding these incidents nor did she describe any other specific incidents of abuse. Although the record shows that the petitioner filed a Domestic Incident Report, the petitioner stated in the report that “No assault took place” and requested that M-M- refrain from sending her electronic mail. When viewed in the totality, the preponderance of the relevant evidence does not establish that the petitioner’s husband battered or subjected her to extreme cruelty as that term is defined in 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Entry into the Marriage in Good Faith

The petitioner also failed to establish that she married M-M- in good faith. The petitioner did not address her good-faith marriage in her initial affidavit or in response to the RFE. In her motion to

reopen, the petitioner submitted an affidavit describing that she met M-M- in 2009 through a friend while visiting Michigan. She stated that she and M-M- kept in contact and traveled between Michigan and Maryland to visit each other. According to the petitioner, M-M- started living with her full-time in Maryland in late 2009 to early 2010 and they were married in April of 2010.

The petitioner's affidavit failed to provide specific information regarding her relationship with M-M- and her intentions for marrying him. For example, she did not provide detailed information regarding the couple's courtship, wedding ceremony, shared residence, and shared experiences. The affidavit from Ms. [REDACTED] only briefly recounted witnessing the couple's marriage and stating she was invited to dinner at their house, and Mr. [REDACTED] briefly stated she saw the couple on several occasions together. However, they did not describe any particular visit or social occasion with the petitioner and M-M-, or any other interaction with the couple that would establish their personal knowledge of the relationship. Aside from photographs that are unidentified and undated, the only other relevant evidence consists of the couple's [REDACTED] joint income tax return, a joint bank account, and joint residential leases. Without a more detailed, substantive description from the petitioner herself about her marital intentions, the preponderance of the evidence does not show the petitioner entered the marriage in good faith. When viewed in the totality, the petitioner has failed to establish by a preponderance of the relevant evidence that she entered into marriage with M-M- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

On appeal, the petitioner has failed to establish by a preponderance of the relevant evidence that she resided with M-M- during their marriage, that he subjected her to battery or extreme cruelty during their marriage, and that the petitioner married M-M- in good faith.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The appeal is dismissed.