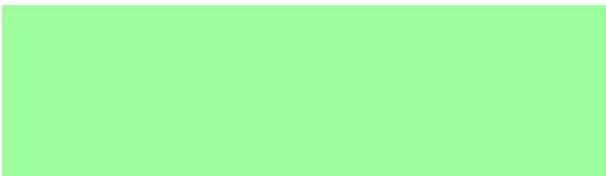


(b)(6)

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

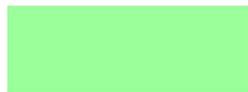


U.S. Citizenship
and Immigration
Services

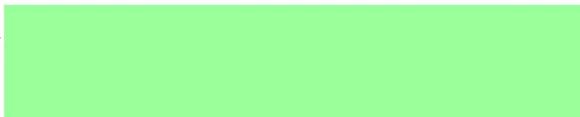


Date: FEB 05 2015 Office: VERMONT SERVICE CENTER

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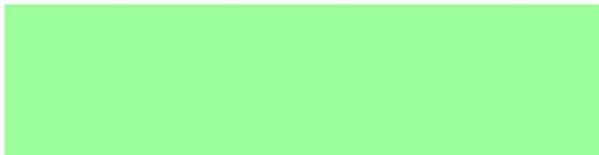


IN RE: Self-Petitioner:



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 of the Vermont Service Center (the director) denied the immigrant visa petition (Form I-360) 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 her U.S. citizen spouse. 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 submits a statement.

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 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 or the self-petitioner's child, 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:

Evidence for a spousal self-petition –

(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.

Facts and Procedural History

The petitioner, a citizen of Trinidad, was admitted into the United States as a nonimmigrant visitor on March 8, 2007. She married J-R-¹, a United States citizen, in New York on February [REDACTED]. The petitioner filed the instant Form I-360 on June 10, 2013. The director issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty to which the petitioner timely responded with additional evidence. In a decision dated June 3, 2014, the director found that the evidence in the record was insufficient to establish that the petitioner’s spouse subjected her to battery or extreme cruelty during their marriage. The petitioner timely appealed.

We conduct *de novo* appellate review. Upon review, the petitioner has failed to overcome the grounds for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

In her initial statement, the petitioner recounted that in April 2012, J-R- became secretive, his computer usage increased, and she learned that he had befriended and made suggestive comments to another

¹ Name withheld to protect the individual’s identity.

woman online. The petitioner indicated that J-R- angrily denied her accusations when she confronted him about his behavior. The petitioner recounted further that around mid-May 2012, J-R- began to spend nights away from their home, and that he lied about his whereabouts. The petitioner described that in June 2012 she discovered that J-R- had taken another woman to a concert and he again angrily denied that he was with another woman when she confronted him about it. The petitioner recounted that J-R- left their home a few days later stating that, "he needed to clear his head," he returned one day later to pick up his belongings, and he has had no further contact with the petitioner. In a June 5, 2013 letter, the petitioner additionally indicated that J-R- denied her access to their mailbox and mail which resulted in the denial of the Form I-130 J-R- filed on the petitioner's behalf.

In response to the director's RFE, the petitioner submitted documentation containing additional claims of abuse not made in her initial statement. In her second affidavit, signed on February 10, 2014, the petitioner stated that J-R- yelled at her, called her names, and picked up the computer monitor and threw it towards her when she questioned him about having an affair in April 2012. She indicates that J-R- also yelled at her son and called him names, and that later that night J-R- yelled at, and physically pushed a friend of hers, [REDACTED] out of the house. The petitioner indicated further that J-R- constantly insulted her and her son, and that he prohibited her from going out with her friends. In addition, the petitioner stated that J-R- came home drunk and slapped her in the face on one occasion, and that he threatened to punish her if she was disobedient. She also recounted that in mid-May 2012, J-R- threatened her immigration status and slapped her, and that he hit her in the head, pinched her on the buttock, and threatened to break her bones. The petitioner indicated that J-R- made her sit in a corner for almost two hours on that occasion, and that he forced her to dance for him in a degrading manner. In addition, the petitioner recounted that J-R- went to a concert with another woman on June 10, 2012, and that he insulted the petitioner when she asked about it, threatened to harm her, and pinched her arm and buttock causing her to "scream from pain." Contrary to her June 5, 2013 statement that J-R- denied her access to mail, the petitioner indicated that J-R- was no longer residing with her in August 2012 and when she received the interview notice regarding the Form I-130, she "called [J-R-] just to inform him about the interview."

Regarding the disparate claims of abuse contained in her two statements, on appeal the petitioner asserts that a non-attorney prepared the initial statements and documentation and that after receiving the director's RFE, the petitioner obtained new counsel and drafted responses "based on the direct information provided by the Petitioner herself."² The petitioner's explanation fails to resolve the inconsistencies in the record and does not address all of the discrepancies noted by the director, including the differences in claims made by her friend, [REDACTED] and those contained in the letters from [REDACTED]. In her initial statement, dated July 1, 2013, Ms. [REDACTED] did not describe any claimed abuse of the petitioner. In her second statement, dated February 17, 2014, she claimed that the petitioner told her of J-R-'s abuse in May 2012, and that J-R- physically pushed her out of the petitioner's house. She also indicated that she went to the petitioner's house on June 10,

² There is no remedy available for an individual who assumes the risk of authorizing an unlicensed attorney or unaccredited representative to undertake representations on his or her behalf. See 8 C.F.R. § 292.1. We may only consider complaints based upon ineffective assistance against counsel or accredited representatives. See *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988).

2012, and that she saw bruises on the petitioner's body. Similarly, the initial letter from [REDACTED] submitted at filing, indicated only that the petitioner claimed that she had been verbally and emotionally abused by J-R-. The second letter indicated that the petitioner claimed that J-R- "pushed," "screamed," and "cursed at [the petitioner], and "controlled her every move and did not want her to go out with her friends." The petitioner does not explain the differences in claims between the initial statements and in response to the RFE.

Given the difficulties posed by a marriage with domestic violence, the regulations do not require a petitioner to submit documentary evidence. 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "affidavits or any other type of relevant credible evidence of abuse may be submitted." 8 C.F.R. § 204.2(c)(2)(i). In this case, however, the documents and affidavits submitted by the petitioner are inconsistent and detract from the credibility of her claimed abuse.

Even if the petitioner had overcome the inconsistencies in the above-referenced evidence, the totality of the evidence in the record does not establish, by a preponderance of the evidence, that J-R- subjected the petitioner to battery or extreme cruelty during the marriage, as the term is defined at 8 C.F.R. § 204.2(c)(1). The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of [USCIS]. Section 204(a)(1)(J) of the Act. All credible relevant evidence will be considered. 8 C.F.R. § 204.2(c)(2)(iv). Although the petitioner and [REDACTED] indicated generally that J-R- mistreated and abused the petitioner, the statements lack probative details of the alleged incidents and are insufficient to establish that the petitioner was battered or subjected to extreme cruelty by her spouse during the marriage. Similarly, the letters from [REDACTED] generally indicate that the petitioner was physically, verbally, and emotionally abused but do not describe any alleged incident in probative detail. The petitioner's friend, [REDACTED] provided a similar general claim of abuse in a letter dated February 17, 2014, and letters from the petitioner's friends, [REDACTED] do not mention abuse by J-R- against the petitioner. The petitioner's evidence offers no specific or probative details of the alleged abuse and fails to establish that the petitioner was battered or subjected to extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1). The petitioner has therefore failed to establish, by a preponderance of the evidence, that J-R- 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

The burden of proof in these proceedings rests solely with the petitioner. 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, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.