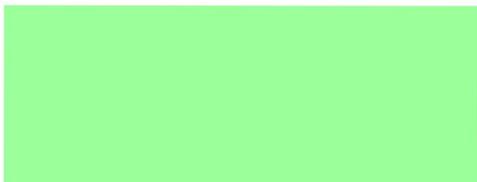


(b)(6)

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

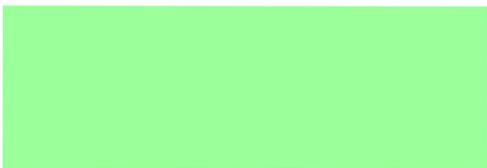


Date: **JAN 22 2015** Office: VERMONT SERVICE CENTER File:

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 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 acting director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage and that she married her husband in good faith. On appeal, the petitioner 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 for an abused spouse self-petition under section 204(a)(1)(A)(iii) of the Act are further explained in 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.

* * *

(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.

* * *

(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 Trinidad and Tobago who entered the United States on January 13, 2004, as a nonimmigrant visitor. The petitioner married S-T-¹, a U.S. citizen, on August [REDACTED] in [REDACTED] County, Pennsylvania. The petitioner filed the instant Form I-360 self-petition on December 17, 2012. The acting director subsequently issued a Request for Evidence of S-T's

¹ Name withheld to protect the individual's identity.

battery or extreme cruelty. The petitioner timely responded to the acting director's request with additional evidence, which the acting director found insufficient to establish the petitioner's eligibility. The acting director denied the petition and the petitioner filed a timely appeal.

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

Entry into the Marriage in Good Faith

In the petitioner's affidavit, dated December 6, 2012, she gave a probative, credible, and detailed account of how she first met S-T- and their wedding. In addition, the record contains numerous letters from the petitioner's friends attesting to the bona fides of the marriage. Letters from [REDACTED] described the couple as the perfect match and personally observed them to be a happy couple in love with each other. [REDACTED] also described attending the couple's beautiful wedding and the wedding reception afterwards. Moreover, the record contains evidence of a joint bank account statement, a lease they both signed for their apartment, a copy of the couple's wedding invitation, cards, and several photographs of the couple. When viewed in the totality, the preponderance of the relevant evidence establishes that the petitioner entered into marriage with S-T- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The acting director's decision to the contrary will be withdrawn.

Battery or Extreme Cruelty

The appeal cannot be sustained, however, because the petitioner has not established that she was battered or subjected to extreme cruelty by S-T- during their marriage. In the petitioner's affidavit, she recounted that a few months after they got married, S-T- became secretive. According to the petitioner, in April of [REDACTED] police officers arrested her and told her that S-T- had been accused of possessing child pornography. The petitioner stated she completely shut down and was shocked. She described confronting S-T- who denied everything and that he later tried to commit suicide. She explained that he is now in prison, that she is depressed, and that she had contemplated suicide herself, but has been able to keep living her life because of the support she receives from her church.

In response to the RFE, the petitioner submitted a psychological evaluation diagnosing her with Major Depressive Disorder as a result of S-T-'s deceit, criminal behavior, arrest, and conviction. On appeal, the petitioner submits several letters of support, describing the consequences S-T-'s conviction has had on her life.

The record shows that S-T- was convicted of possession of child pornography and sentenced to seventy-eight months in prison. Nonetheless, the petitioner did not make any allegation of physical assault or battery, and did not describe in probative detail any instance of actual or threatened violence, psychological or sexual abuse against her, or any other behavior that constituted extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The psychological evaluation and letters of support in the record also do not provide additional information regarding any

particular incident or behavior that would constitute extreme cruelty. The present record does not demonstrate that S-T-'s possession of child pornography or his arrest and conviction resulted in an ongoing cycle of battery or extreme cruelty against the petitioner. When viewed in the totality, the petitioner has failed to establish by a preponderance of the relevant evidence that S-T- subjected her to battery or extreme cruelty during their marriage, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

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

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.