



U.S. Citizenship
and Immigration
Services

(b)(6)



JUN 23 2015

DATE:

FILE #:

PETITION RECEIPT #:

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,

 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 dismissed.

The petitioner seeks immigrant classification under 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 United States citizen spouse.

The director denied the petition, finding that the petitioner did not establish that she resided with her United States citizen husband, entered into the marriage with him in good faith, and that he subjected her to battery or extreme cruelty. 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 are further explicated in the regulation at 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 United States 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 . . . 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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Ghana, entered the United States on November 26, 2003 as a nonimmigrant visitor. She married A-H-¹, a U.S. citizen, on [REDACTED] 2005 in [REDACTED] Virginia and they later separated.² The petitioner filed the instant Form I-360 self-petition on January 19, 2011. The director subsequently issued two Requests for Evidence (RFE) of, among other things, the requisite battery or extreme cruelty, good faith entry into the marriage, and joint residence. 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 timely appealed.

We review these matters on a *de novo* basis. Upon a full review of the record, as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. The appeal will be dismissed for the following reasons.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal does not demonstrate the petitioner's good faith entry into her marriage. The record contains the petitioner's statements, her marriage certificate, copies of letters and envelopes from A-H-, letters from friends, photographs, income tax returns, joint bank account statements, cancelled checks, a renter's insurance policy record, joint mobile telephone bills, and documents regarding spousal benefits for servicemen.

In her statements, the petitioner indicated that she met A-H- in 2004 at the home of her aunt and uncle in [REDACTED] Virginia, where she was residing at the time. She stated that A-H- went to school with her aunt and uncle's daughter in Tennessee and he would come with her to visit during school breaks. The petitioner recalled that she was immediately attracted to A-H- and when he visited during spring break 2005, they began a romantic relationship. She stated that she often cooked for A-H-, they discussed educational goals, and though A-H- wanted to consummate their relationship, the petitioner wanted to wait until marriage consistent with her Christian beliefs. She indicated that they enjoyed one another's company, wanted to get married, wed on [REDACTED] 2005 with the support of her family, and shortly thereafter A-H- returned to school and the petitioner remained with her aunt and uncle. The petitioner's statements did not otherwise provide any probative details of her courtship, wedding ceremony, joint residence, or any shared experiences with A-H- apart from the claimed abuse.

The petitioner proffered a letter from her former roommate, [REDACTED] who briefly addressed the petitioner's claimed abuse by A-H- but did not substantively describe the former couple's relationship or his own shared experiences with them evidencing his knowledge of the petitioner's good faith marital intentions. Similarly, [REDACTED] letter did not address the petitioner's relationship with A-H-,

¹ Name withheld to protect the individual's identity.

² The petitioner asserts that she and A-H- were divorced on [REDACTED] 2013, but has not submitted a final divorce decree or other evidence that the marriage has been terminated. A public records search of the [REDACTED], Virginia Circuit Court confirms that a final decree of divorce was entered on [REDACTED] 2013. In any subsequent proceeding, the petitioner should submit a copy of her final divorce decree for the record.

apart from the claimed abuse, or her intentions in marrying him.

The remaining documentary evidence in the record is also insufficient to establish that the petitioner entered into the marriage with A-H- in good faith. While the marriage certificate establishes a legal marriage, it does not demonstrate the nature of the relationship or the petitioner's good faith intentions.

The copies of letters from A-H- with their corresponding envelopes indicate his state of mind, but do not demonstrate the petitioner's intentions toward him. The four joint bank account statements, dated between May 2006 and February 2009, do not show that the account was jointly used by both spouses. The cancelled check images in the statements and submitted separately show they were signed by the petitioner and do not evidence joint usage of the account. Similarly, copies of the first page of three telephone bills from 2006 and October 2008, a June 2008 one-year joint renter's insurance policy, and an identification card for and correspondence addressed to the petitioner as a spouse of a service member, whether considered separately or cumulatively, offer little insight into the petitioner's marital intentions toward A-H-. Likewise, the 2007 income tax return that the petitioner filed separately, and the 2006, 2008, and 2009 joint tax returns do not evidence her marital intentions, particularly as she stated that she had very little contact with A-H- during most of those years, as he was often away for a significant periods of time for school and military assignments.

On appeal, the petitioner asserts that the evidence submitted below established her good faith marital intentions and she submits additional evidence including two updated declarations, two photographs, and a letter, paystubs, and 2007 income tax records from her employer.³ The two photographs of the petitioner and A-H- together at unspecified times and locations provide some evidence of a relationship, but do not establish the petitioner's intentions in marrying A-H-. The records from the petitioner's employer show that she listed her marital status as married, but do not demonstrate that she entered the marriage in good faith. Lastly, her updated statements still do not contain probative details about her relationship with A-H- including their courtship, wedding ceremony, joint residence or shared experiences to establish her good faith marital intentions.

Traditional forms of joint documentation are not required to demonstrate a petitioner's entry into the marriage in good faith. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a petitioner may submit "testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. . . . and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered." See 8 C.F.R. § 204.2(c)(2)(vii). In this case, the petitioner's statements, the letters from friends, and the evidence submitted below and on appeal do not provide sufficient detail to establish her good faith intent in marrying A-H-. When viewed in the totality, the preponderance of the relevant evidence does not demonstrate that the petitioner entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The petitioner has not established that she resided with A-H-. On the Form I-360 self-petition, the petitioner asserted that she and A-H- lived together from January 2006 to February 2007 and that

³ The petitioner also submitted a letter from her pastor addressing her good moral character, along with other previously submitted documents that are separately addressed in this decision.

their last joint residence was at a [REDACTED] address in [REDACTED] Maryland. The petitioner submitted below several documents as evidence of her shared residence with A-H- during this period, including income tax returns for 2006 and 2007, joint bank statements, joint mobile telephone bills, and the petitioner's 2007 paystubs. However, none of these documents demonstrate that the petitioner and A-H- actually resided together as asserted. While the first page of three joint bank statements, dated between 2006 and 2009, include both the petitioner's and A-H-'s names, the activity reflected does not show that the account was jointly used by both, and cancelled check copies indicate only the petitioner's usage of the account. The 2009 bank statement indicates an address at which the petitioner has never claimed that A-H- resided and is dated long after February 2007 when she asserted that they ceased living together.

As noted, traditional forms of joint documentation are not required, and a petitioner may submit "affidavits or any other type of relevant credible evidence of residency." See 8 C.F.R. § 204.2(c)(2)(iii). Here, the petitioner's initial statement did not set forth a clear history or timeline of shared residences with A-H- and did not describe in detail any claimed joint residences. In a subsequent statement, dated July 25, 2014 and submitted in response to the director's RFE, the petitioner provided a more detailed timeline of her shared residences with A-H-. She indicated that when she moved to the [REDACTED] residence, A-H- stayed with her for two weeks but was asked to leave by the owner of the group home for causing trouble. Thereafter, A-H- left for [REDACTED] and "disappeared for a few months," after which he returned and lived with her for another month in approximately January or February 2007 until she told him to leave for good. She stated that A-H- resided with her on [REDACTED] for a total of five to seven weeks.⁴

On appeal, the petitioner submitted two separate personal statements that are internally inconsistent and inconsistent with other evidence in the record. In her December 2, 2014 statement, the petitioner stated that she left her [REDACTED] residence in November 2006 and then she and A-H- moved to [REDACTED]. She asserts that he left after a couple of weeks, came back in February 2007, and left again later that month. However, in her December 30, 2014 statement, the petitioner inconsistently states that she resided at [REDACTED] through "early 2007" and only moved to [REDACTED] with A-H- in January or February 2007. The petitioner claims later in the same statement that she has, in these proceedings, "consistently stated . . . that she moved to [the [REDACTED] residence] around February of 2007." She also reasserts that in February 2007 A-H- came to stay with her at the group home for two weeks. She does not address, and the record does not contain an explanation for, her prior inconsistent statements that A-H- moved to the [REDACTED] residence several months before February 2007 and stayed there with her on two separate occasions, several months apart, totaling five to six weeks. Moreover, the petitioner's updated statements on appeal still fail to provide substantive information regarding the periods of joint residence she claims with A-H-, including descriptions of their homes and shared experiences during their joint residence.

Lastly, the letters of Mr. [REDACTED] and Mr. [REDACTED] submitted below are also insufficient to establish the petitioner's joint residence with A-H-. Mr. [REDACTED], whom the petitioner identified as her roommate,

⁴ In her July 2014 statement, the petitioner initially indicated that A-H- resided with her at the [REDACTED] residence for six to seven weeks, but later in the same statement, stated five to six weeks.

made no reference to A-H- residing with them and did not provide the address of the shared residence. Similarly, although Mr. [REDACTED] indicated that he visited the former couple at their [REDACTED], Maryland residence on February 12, 2007, he did not provide any probative details of the home establishing a joint residence.

On appeal, the petitioner contends that the evidence of record is sufficient to establish her joint residence with A-H- and she submits additional evidence. The two photographs of the petitioner and A-H- in the record do not appear to have been taken at a residence and do not establish that they physically resided together. The 2007 paystubs and other records from the petitioner's employer also do not establish a joint residence, particularly as she has provided inconsistent statements regarding the 2007 claimed shared residence with A-H- and has stated that they did not reside together for most of that year. Further, as discussed, the petitioner's updated statements on appeal are internally inconsistent and inconsistent with her prior statement regarding her claimed joint residence with A-H-. Accordingly, the record does not establish that the petitioner resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The petitioner has also not established that A-H- subjected her to battery or extreme cruelty during their marriage. The relevant evidence in the record includes the petitioner's statements and the letters of her friends. Traditional forms of documentation are not required to demonstrate that a self-petitioner was subjected to abuse. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "evidence of abuse may include . . . other forms of credible relevant evidence." 8 C.F.R. § 204.2(c)(2)(iv). However, here, the petitioner's statements are insufficient to establish the requisite abuse as they are internally inconsistent and inconsistent with other evidence in the record.

The petitioner's former roommate, Mr. [REDACTED], stated that A-H- constantly assaulted the petitioner, but referenced only one incident during which he claimed to have witnessed A-H- hit the petitioner and push her to the floor in early 2006. Mr. [REDACTED] stated that A-H- threatened to kill the petitioner if he called the police. He did not, however, provide probative details about the incident, although the petitioner claimed in her statement that Mr. [REDACTED] asked A-H- to leave and advised her that A-H- broke down the door to their residence. Mr. [REDACTED] briefly stated that while visiting the former couple's home in [REDACTED] Maryland, on February 12, 2007, he witnessed A-H- threaten to kill the petitioner because she did not give him enough money. He stated that he attempted to act as a mediator, but A-H- shoved him away. Mr. [REDACTED] did not provide any further substantive information regarding this incident. The petitioner did not describe or reference this incident of claimed abuse in any of her own written statements. Mr. [REDACTED] also stated that sometime in March 2009, he took the petitioner and A-H- to dinner, during which A-H- was verbally abusive to the petitioner without justification. Mr. [REDACTED] account is inconsistent with the petitioner's initial statement, dated September 30, 2012, in which she indicated that A-H- relocated to California before this date and that she did not see A-H- after March 2007 until she visited him in California for one week in March 2009. The petitioner specifically recounted that during that week, she and A-H- were very happy together and she believed their marriage was back on track. She did not describe any incident of verbal abuse or threats by A-H- during that visit, and there is no indication in her detailed statement that she saw him again before his August 2009 deployment. In her July 2014 statement, the petitioner reaffirmed that after March 2007,

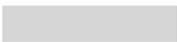
she did not see A-H- again until her March 2009 visit to California before his deployment. However, later in the same statement, as an apparent explanation for the discrepancy with Mr. [REDACTED] statement, the petitioner asserted for the first time that A-H- visited her from California for one month before he deployed and that it was during that visit that Mr. [REDACTED] took them out to dinner. She did not disclose when the newly claimed visit occurred or why she previously referenced seeing him only once, in March 2009 in California, before his August 2009 deployment.

On appeal, the petitioner asserts that the record below amply demonstrated that she was a victim of battery and extreme cruelty by A-H-, and that the inconsistencies identified by the director are not inconsistencies at all. However, as discussed herein, the inconsistencies are significant and the director correctly determined that the evidence below was insufficient to demonstrate that A-H- subjected the petitioner to battery or extreme cruelty. Moreover, the petitioner submits another statement on appeal containing additional discrepancies. Most notably, she now claims that when she visited A-H- in California in March 2009, Mr. [REDACTED] was also there and witnessed A-H-'s abusive character. The petitioner does not address her initial inconsistent assertions that her March 2009 visit to California was a happy one and that the claimed abuse Mr. [REDACTED] allegedly witnessed occurred when A-H- visited her on a separate occasion. The significant discrepancies described diminish the credibility and probative value of the petitioner's statements. The statements of the petitioner and her friends contain inconsistencies that have not been resolved on appeal and the petitioner's statement on appeal that she, A-H- and Mr. [REDACTED] were all in California together in 2009 represents a new, unresolved discrepancy in the record. Moreover, the letters of Mr. [REDACTED] and Mr. [REDACTED] are not alone sufficiently probative of the claimed incidents of abuse to demonstrate the requisite battery or extreme cruelty.

The petitioner further contends on appeal that United States Citizenship and Immigration Services (USCIS) erred by failing to apply the "any credible evidence" standard in adjudicating the instant petition. The consideration of any relevant, credible evidence is an evidentiary standard by which USCIS adjudicates petitions under section 204(a)(1)(A)(iii) of the Act. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). It is not a burden or standard of proof. A self-petitioner must still demonstrate his or her eligibility by a preponderance of the evidence that is applicable to all immigrant visa petitions. *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). USCIS has sole discretion to determine what evidence is credible and the weight accorded such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). Our review of the record does not show that the director failed to apply the correct evidentiary standard. Further, under the "any credible evidence" standard, we have considered here the probative value of all of the evidence, specifically noting deficiencies and inconsistencies in the record which have not been overcome on appeal, and conclude that the petitioner has not demonstrated by a preponderance of the evidence the requisite battery or extreme cruelty. Accordingly, upon *de novo* review of the record in its entirety, the petitioner has not established that A-H- 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

On appeal, the petitioner has not overcome the director's grounds for denial as she has not established that she entered into her marriage to A-H- in good faith, resided with him, and that he subjected her to battery or extreme cruelty during the marriage. She is consequently ineligible 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 eligibility by a preponderance of the evidence. 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.