



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAR 11 2015** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-Petitioner: [REDACTED]

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:

SELF-REPRESENTED

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

The director denied the petition for failure to establish that the petitioner entered into marriage with her husband in good faith and that he subjected her to battery or extreme cruelty during their marriage. On appeal we withdrew the director’s decision, in part, finding that the petitioner had entered into the marriage in good faith, and affirmed the director’s decision that the petitioner had not established that she was battered or subjected to extreme cruelty by her U.S. citizen spouse.

On motion, the petitioner submits 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:

(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.

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.

* * *

(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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Ghana who entered the United States on November 23, 2010, as the K-1 fiancée of a U.S. citizen, G-A-.¹ The petitioner married G-A- in New Jersey on [REDACTED]. The petitioner filed the instant Form I-360 self-petition on April 13, 2012. The director denied the petition, and on appeal, we affirmed the director's decision that the petitioner had not established that she was battered or subjected to extreme cruelty by her U.S. citizen spouse, and dismissed the appeal. The petitioner then submitted this motion to reopen.

The petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). The petitioner asserts that her husband subjected her to extreme cruelty and supports her motion with an additional statement. Accordingly, the motion to reopen is granted.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty. In her affidavits submitted below, the petitioner stated that G-A- refused to allow her to attend college or to run errands with him, controlled their finances, and insisted that she

¹ Name withheld to protect the individual's identity.

work as a live-in caregiver for the elderly. The director correctly determined that the petitioner did not describe any behavior by G-A- that constituted extreme mental cruelty as that term is defined by the regulation. The letters from the petitioner's friends also failed to provide substantive information about any specific incidents of abuse. Likewise, the psychological evaluation prepared by Dr. [REDACTED], a licensed psychologist who diagnosed the petitioner with depression, did not establish that G-A-'s treatment of the petitioner constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). In our July 18, 2014 decision, we determined that the record did not contain sufficient probative detail of any incident or pattern of behavior to establish that the petitioner was subjected to extreme cruelty. Our prior decision is incorporated here.

On motion, the petitioner submits a new personal affidavit. She repeats her earlier statements and recounts that after they married, G-A- became cruel, called her demeaning names, and became very controlling. She recounts that she was not allowed to buy groceries for the house, could not use the telephone or the computer, and that she could not leave the house without G-A-. She states that he broke things, put holes in the walls, and that his menacing physical expressions frightened her. The petitioner does not, however, describe any specific acts of this claimed behavior by G-A- towards her. She briefly recounts an incident when he screamed at her for not having any money to buy her own feminine products and another incident when he was angry at her for bringing the wrong beverage when his friends came over. The petitioner does not provide further probative details about these incidents or any other specific incidents of abuse. She indicates that she had no privacy when he was home, that he looked through her things and listened to conversations she had with her parents. She indicates that she felt controlled and intimidated, and was devastated when he threatened to divorce her, as in her culture, it is the woman's fault if she cannot keep her husband happy. She indicates that she was able to obtain employment in secret but that G-A- later wanted her to get several jobs caring for sick people in their homes because they did not have enough income. Although the petitioner provides some details about her relationship with G-A-, she does not provide sufficient information to demonstrate that G-A-'s behavior constituted extreme cruelty, or a pattern of abuse as defined in the regulation.

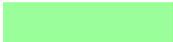
The preponderance of the evidence does not show that G-A- ever battered or threatened the petitioner with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established on motion that her husband subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On motion, the petitioner has failed to establish that her husband subjected her to battery or extreme cruelty 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.

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NON-PRECEDENT DECISION

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ORDER: The motion is approved. The July 18, 2014 decision of the Administrative Appeals Office is affirmed. The appeal remains dismissed and the petition remains denied.