



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 11 2015**

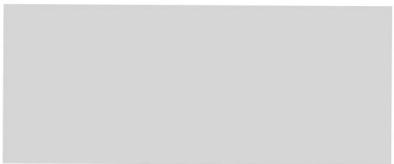
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: 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:

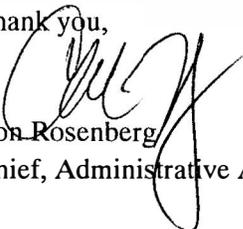


INSTRUCTIONS:

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 immigrant visa petition. 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 based on the petitioner's failure to establish that her husband battered her or subjected her to extreme cruelty, that she resided with him, and that she married him 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 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 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 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 Russia, represents that she last entered the United States on June 15, 2009, as a nonimmigrant visitor. She married R-R-¹, a U.S. citizen, on [REDACTED] 2010, in [REDACTED] New York, and filed the instant Form I-360 self-petition on January 24, 2012. The director subsequently issued a request for additional evidence (RFE) of joint residence, battery or extreme cruelty, and good-faith entry into the marriage. In the RFE, the director requested that the petitioner submit evidence of maternity and paternity of her daughter, and indicated that any test results should be sent to USCIS directly by the laboratory. On May 31, 2013, the director received the results of the petitioner's maternity test from the laboratory, and considered the test results to be the petitioner's full response to the RFE. The petitioner timely appealed, submitting a brief and additional evidence.

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

Joint Residence

The preponderance of the relevant evidence establishes that the petitioner and R-R- resided together during their marriage. On the Form I-360 self-petition, the petitioner stated that she resided with R-R- from September 2009 until July 2011. In her personal affidavit, dated January 19, 2012, the petitioner indicated that she moved into R-R-'s mother's house on [REDACTED] New York in the fall of 2009. The petitioner submitted a mobile phone statement dated March 2010 addressed to her at the [REDACTED] residence. The petitioner indicated that the couple moved to an apartment on [REDACTED] before finally moving to their last shared apartment on [REDACTED] New York.² She submitted photocopies of rent receipts for the [REDACTED] apartment made out to her and R-R-, a rental application for the apartment, and energy bills bearing both the petitioner's and R-R-'s names. The petitioner also provided credit reports for her and R-R-. In the RFE, the director noted that the submitted evidence was insufficient because R-R-'s credit report did not show that he resided at the [REDACTED] address.

¹ Name withheld to protect the individual's identity.

² The record contains conflicting information regarding where the petitioner resided prior to the [REDACTED] apartment. The petitioner submitted a rental application for the [REDACTED] apartment, indicating that the couple resided in [REDACTED] New York in March 2010. The petitioner also stated in her affidavit that the couple joined a gym in [REDACTED]. However, the petitioner also provided a welcome letter from the couple's bank, dated March 2, 2010, addressed to the couple at the [REDACTED] address. The petitioner did not submit evidence of her residence at R-R-'s [REDACTED] apartment. Thus, it is not apparent when the couple lived on [REDACTED], or in [REDACTED] New York.

On appeal, the petitioner submits an affidavit from [REDACTED] landlord of the [REDACTED] apartment, attesting that R-R- resided in the apartment with the petitioner from April 2010 until August 2011. The petitioner also submitted an affidavit from neighbor [REDACTED], who indicated that she met petitioner and R-R- when they moved to [REDACTED] visited the petitioner in her apartment, and witnessed the couple's relationship until R-R- moved out. The petitioner provided a copy of Ms. [REDACTED] government-issued identification card and government correspondence showing her residence as a close neighbor to the petitioner on [REDACTED]. The petitioner also submitted a confirmation of her renter's insurance, listing her and R-R- as the insured at the [REDACTED] apartment.

When viewed in its totality, the preponderance of the relevant evidence demonstrates that the petitioner and R-R- resided together during their marriage. Although there are some discrepancies with respect to their addresses prior to April 2010, the petitioner has submitted affidavits from her landlord and neighbor, as well as rent receipts and evidence of joint renter's insurance, indicating that the couple resided together on [REDACTED] beginning in April 2010. The statute requires only that the petitioner show that she lived with R-R- at some point during the marriage. Accordingly, a preponderance of relevant evidence demonstrates that the petitioner resided with her spouse during their marriage as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. The portion of the director's decision finding to the contrary will be withdrawn.

Entry into the Marriage in Good Faith

The preponderance of the relevant evidence establishes that the petitioner married R-R- in good faith. With her initial Form I-360 self-petition submission, the petitioner provided a personal affidavit dated January 19, 2012. In the affidavit, the petitioner stated that she met R-R- in July 2010 at a [REDACTED] on Coney Island. She described their initial meeting, and indicated that they exchanged phone numbers. The petitioner described their courtship through the summer, and the activities they shared after her summer job ended and she had more free time. The petitioner discussed meeting and spending time with R-R-'s mother and sister, and ultimately moving in with them before she and R-R- got their own apartment. The petitioner indicated that R-R- proposed on New Year's Eve in 2009, and described the couple's wedding reception at a restaurant in Long Island. The petitioner also discussed several activities that the couple did together after they were married. In addition, the petitioner submitted traditional forms of documentation such as evidence of a joint bank account, income tax returns, and bills. In her affidavit, the petitioner indicated that the couple set up a joint bank account but did not use it, and that the cable television bill was in her name only due to R-R-'s prior delinquent account. The petitioner did not submit jointly filed tax returns.

On appeal, the petitioner submits evidence of the couple's joint residence, described above, and additional photographs of the petitioner and R-R-. The preponderance of the relevant evidence establishes that the petitioner married R-R- in good faith. The petitioner submitted a detailed affidavit describing her and R-R-'s courtship, wedding reception, and shared experiences. Although the petitioner did not present traditional forms of joint documentation, such as jointly filed tax returns or evidence of co-mingled finances, traditional forms of joint documentation are not required to demonstrate a self-petitioner's entry into the marriage in good faith under section 204(a)(1)(A)(iii) of

the Act. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, a self-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.” 8 C.F.R. § 204.2(c)(2)(vii). Here, the petitioner’s detailed personal affidavit contains probative information regarding the couple’s courtship, wedding reception, and other shared experiences beyond the claimed abuse. The petitioner’s statements are further supported by evidence that the petitioner and R-R- resided together. The preponderance of the relevant evidence submitted below and on appeal demonstrates that the petitioner entered into marriage with R-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The portion of the director’s decision finding to the contrary will be withdrawn.

Battery or Extreme Cruelty

The director did not err in finding that the petitioner did not establish that R-R- battered her or subjected her to extreme cruelty. In her personal affidavit, the petitioner stated that beginning in the fall of 2010, R-R- often went out without her, and sometimes disappeared for days. The petitioner indicated that in part she understood, because she was pregnant at the time and did not feel up to going out. The petitioner stated that she felt like R-R- spent too much time with his friends and not enough time with her, and that throughout the winter the couple became more estranged and began to argue. The petitioner stated that R-R- told the petitioner that he would drop off her immigration paperwork to a lawyer, but apparently never did it. The petitioner also indicated that R-R- was not present for the birth of their baby. The petitioner stated that she did not give her baby R-R-’s last name because R-R- had threatened to take the baby away from her.³ The petitioner did not further explain the threats. The petitioner indicated that she suffered from post-partum depression, and eventually sought mental health treatment to deal with her condition. The petitioner recounted that in March 2011, she opened a safe deposit box because she was afraid that R-R- would take her documents, but did not explain why she had such concerns. The petitioner stated that one night R-R- became aggressive when he saw her with a statement for the safe deposit box. She also recounted an incident when R-R- approached her in the park and asked her for forty dollars. The petitioner stated that he yelled at her all the way to their house, refused to tell her why he wanted the money, took the cash out of her wallet when they arrived home, and left. The petitioner stated that she attempted to improve their relationship, but that R-R- continued to stay away from the home for three or four days at a time without saying where he had been. The petitioner recounted that the last straw was when she learned from R-R-’s friend that R-R- had a criminal record, and she suspected that he was involved with drugs. She indicated that she downloaded a domestic violence incident report from the internet and filled it out with the details of the incident when R-R- demanded \$40.00 from the petitioner in the park, and told R-R- that she was going to file it with the police. R-R- then moved out on August 19, 2011. The petitioner submitted records from her visits with psychiatrist [REDACTED] indicating that the petitioner was seen for post-partum depression, and prescribed mood enhancing medication.

³ Public records indicate that the petitioner and an individual with the same last name as the petitioner’s daughter were the subjects of an eviction action in [REDACTED] New Jersey in 2013, shortly before the petitioner filed the instant appeal. See New Jersey Courts Public Access, case number [REDACTED] (Filed June 27, 2013).

On appeal, the petitioner submits a letter from her landlord, [REDACTED] indicating that there were disturbances in the petitioner's apartment, including noises and knocking on the walls. Ms. [REDACTED] indicates that R-R- apologized to her after each incident, but that she feels that he had a temper and that he behaved inappropriately toward the petitioner. The petitioner also provides an affidavit from her former neighbor, [REDACTED]. In the affidavit, Ms. [REDACTED] claims to have seen bruises on the petitioner when they were at the gym, a few months after the petitioner moved into the [REDACTED] apartment. She states that she saw the petitioner for a second time at the gym two months later, and the petitioner again had bruises on her arms and back. In addition, Ms. [REDACTED] reports that she visited the petitioner in spring of 2011 and saw that she had bruises on her arms, and on that occasion, she learned that R-R- was abusing the petitioner. Ms. [REDACTED] indicates that on one occasion, she saw R-R- run out of the couple's apartment, and found the petitioner holding her shoulder in pain. She also recounts that she saw R-R- yell at the petitioner at a nearby playground. Ms. [REDACTED] states that the petitioner did not tell her much about her home life.

On appeal, the petitioner further submits an affidavit from friend [REDACTED] dated July 17, 2013. In the affidavit, Mr. [REDACTED] states that he is a friend of the petitioner and R-R-, but does not further describe his relationship with either. He asserts that he has seen evidence of injuries on the petitioner's face, shoulder, and neck, including cigarette burn marks, and that the petitioner admitted to him that the injuries were inflicted by R-R-. The petitioner submits two unlabeled photographs of a woman's neck, with two light marks circled. The petitioner's counsel asserts that these marks are cigarette burns on the petitioner. The petitioner did not submit a personal statement on appeal explaining the photographs. In addition, the petitioner submits a letter from [REDACTED] confirming that she was a patient of the family health center between July 2010 and February 2011. The letter provides no further information regarding the treatment received during this period when the petitioner was pregnant with her daughter.

The preponderance of the relevant evidence does not establish the R-R- battered the petitioner or subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). In her personal affidavit, the petitioner attested to feeling neglected by R-R- while she was pregnant and after the birth of her baby. She indicated that the couple had two major arguments: one when R-R- discovered that she opened a safe deposit box, and another when R-R- approached her at the playground and ultimately stole money out of her wallet. The affidavits from Ms. [REDACTED] and Mr. [REDACTED] citing numerous bruises on the petitioner over an extended period of time are not consistent with the petitioner's own description of her relationship with R-R-. The affidavit from the petitioner's landlord indicates that she heard the petitioner and R-R- arguing, but does not specifically attest to behavior constituting battery or extreme cruelty. It is not apparent that the unlabeled photos submitted by the petitioner depict either the petitioner or injuries, nor do they demonstrate that the claimed injuries were a result of R-R-'s abusive treatment of the petitioner. The documentation of the petitioner's use of mental health services shows that she received treatment for post-partum depression, but does not demonstrate that she sought services related to marital abuse. When viewed in the totality, the preponderance of the relevant evidence does not establish that R-R- battered the petitioner or subjected her to extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

(b)(6)

NON-PRECEDENT DECISION

Page 8

Conclusion

The petitioner has not overcome all of the director's grounds for denial. On appeal, the petitioner has established that she resided with her U.S. citizen spouse during their marriage, and that she entered into their marriage in good faith, but she has not shown that her spouse battered her or subjected her to extreme cruelty. The petitioner is therefore ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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). Here, that burden has not been met. The appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.