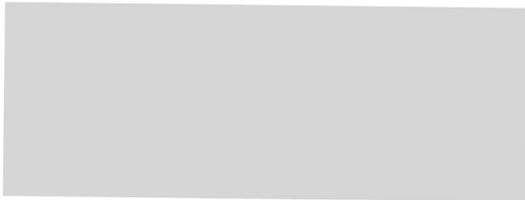


(b)(6)

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: MAY 13 2015



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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (the director) denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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 a United States citizen.

The director denied the petition, determining that the petitioner did not demonstrate that her spouse subjected her to battery or extreme cruelty.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

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 explained further 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 standard and guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further 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 was born in Jamaica and last entered the United States as a J-2 nonimmigrant on February 18, 2002. She divorced her first husband on [REDACTED] and married V-L-, a U.S. citizen, on [REDACTED] in [REDACTED] New Jersey.¹ The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on March 4, 2014. The director issued a request for evidence (RFE) that the petitioner's U.S. citizen spouse battered her or subjected her to extreme cruelty. The petitioner timely responded, and the director denied the petition on this ground.

We review these proceedings de novo. A full review of the record, including the evidence submitted on appeal, sufficiently establishes the petitioner's eligibility.

Battery or Extreme Cruelty

In her initial affidavit, the petitioner asserted that she initially found that V-L- had been keeping secrets from her when he picked up the wrong marriage certificate and she realized that he was illiterate. She recounted that V-L- became abusive, controlling, and manipulative within a year of their wedding,

¹ Name withheld to protect the individual's identity.

primarily after he lost his job in February of 2013. The petitioner indicated that V-L- did not tell her he was fired, but instead pretended to go to work each day until his coworker told the petitioner that V-L- had been fired. The petitioner stated that when she confronted V-L-, he pointed his finger in her face and told her it was his business in a very loud voice. The petitioner alleged that V-L- subsequently began to sleep late, did not appear to be searching for a new job, and still expected the petitioner to work, pay bills, cook, and clean. She reported that he disdained her cooking and used derogatory language against her that made her feel demeaned. When V-L- began to stay out longer, the petitioner advised that she once tried to look for him but when she found him at his friend's home, V-L- shouted at her to stop embarrassing him in front of his friends and to stop tracking him down. She advised that V-L- remained sexually demanding, and that although she "submitted...[she] felt betrayed and degraded," suspecting him of infidelity and fearful of catching a disease. The petitioner recounted an episode when V-L- became verbally abusive and spat on her. She advised that the Internal Revenue Service (IRS) withheld their tax refund because of debts that V-L- had never disclosed to her, and yet he continued to "drain" their bank account and loan money to friends even though he and the petitioner could not pay their own bills. The petitioner explained that even as her self-esteem diminished, V-L- continued to be verbally abusive. The petitioner advised that V-L- eventually failed to appear at two appointments related to her immigration status, after which he abandoned her.

The petitioner submitted affidavits from friends and family. [REDACTED] asserted that he had known the petitioner for 20 years and introduced her to V-L-, to his later regret. [REDACTED] asserted that "[a]fter they married I never saw any problems," but that the petitioner told him that V-L- had been abusive. [REDACTED] confirmed that he was surprised that V-L- did not tell the petitioner that he had been fired from his job, but did not claim to have witnessed any specific abusive interactions between V-L- and the petitioner. [REDACTED], the petitioner's cousin, described how the petitioner changed after her marriage to V-L-, becoming withdrawn, stressed, and unhappy. [REDACTED] described talking to the petitioner on the telephone on numerous occasions and hearing V-L- using epithets and other derogatory language against the petitioner in the background. [REDACTED] and [REDACTED] both described witnessing V-L- using explicit and derogatory language to abuse the petitioner in front of them.

The petitioner also included a psychosocial report from a licensed clinical social worker who recounted the episodes of abuse that the petitioner described to him, and diagnosed the petitioner with major depressive disorder and posttraumatic stress disorder. He advised that "[t]here can be no question that [the petitioner] has been the victim in a spousal abuse case in which there has [sic] been direct threats to her well-being and safety in several forms of abuse."

In response to the RFE, the petitioner provided additional statements from her friends and family describing V-L-'s abusive behavior toward the petitioner in more detail. On appeal, the petitioner submits a separate brief recounting V-L-'s abusive behavior. She cites to additional case law, asserting that V-L-'s acts toward her constituted battery and that she has established by a preponderance of the evidence that V-L- subjected her to battery or extreme cruelty.

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). The statements of the petitioner, her friends, and licensed clinical social worker contain credible, relevant, and probative details. The petitioner has established by a preponderance of the evidence that V-L- subjected her to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has overcome the director’s ground for denial and she is consequently eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The petitioner bears the burden of proof to establish her 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 (AAO 2010). Here, the petitioner has met that burden. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.