

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

(b)(6)

DATE: MAY 19 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:

NO REPRESENTATIVE OF RECORD

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 sustained.

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 former spouse.

The director denied the petition for failure to establish that the petitioner was battered or subjected to extreme cruelty by her U.S. citizen spouse, and that she married him in good faith. On appeal, 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 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.

* * *

(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 Ukraine, last entered the United States on May 29, 2004, as a J-1 nonimmigrant visitor. The petitioner married M-F¹, a U.S. citizen, on [REDACTED], 2011, in [REDACTED], New York, and filed the instant Form I-360 self-petition on March 25, 2013. The director issued a request for additional evidence (RFE) of good-faith entry into the marriage, among other things. The petitioner timely responded with additional evidence, which the director found insufficient to establish her eligibility. The director subsequently issued a Notice of Intent to Deny (NOID) the

¹ Name withheld to protect the individual's identity.

petition, indicating that the petitioner failed to demonstrate that she had been battered or subjected to extreme cruelty by her husband, and that she entered into the marriage with him in good faith. The petitioner again responded with additional evidence, but the director ultimately denied the petition. The petitioner timely appealed.

We review these proceedings *de novo*. *De novo* review of the relevant evidence, as supplemented on appeal, demonstrates that the petitioner has established eligibility for the benefit sought. The appeal will be sustained for the following reasons.

Petitioner's Credibility

The director erred in finding that the petitioner lacked credibility based on perceived inconsistencies in the evidence. *De novo* review of the entire record reveals that the evidence does not contain material inconsistencies. On appeal, the petitioner has further clarified the perceived inconsistencies noted by the director. Accordingly, the director's adverse credibility finding is hereby withdrawn.

Battery or Extreme Cruelty

The preponderance of the relevant evidence, as supplemented on appeal, establishes that M-F- battered the petitioner. In her initial personal affidavit, dated February 25, 2013, the petitioner indicated that in March 2012, M-F- lost his job, and his prior alcohol and drug problems resurfaced. The petitioner stated that M-F- began taking cash from her wallet without telling her, and lied about paying the bills with money that she gave him. She recounted that M-F- came home drunk and forced her to engage in sexual relations. She also indicated that M-F- slapped her during arguments, pulled her hair, and pushed her, while he was under the influence of drugs and alcohol. The petitioner described an incident that occurred on [REDACTED], 2012. She stated that M-F- came home drunk and under the influence of drugs. The petitioner stated that when she refused to give him money, he destroyed the couple's bedroom, and slapped and pushed the petitioner. The petitioner indicated that she sought an order of protection from family court, and psychiatric services to deal with her resulting mental health issues.

The petitioner submitted a Temporary Order of Protection against M-F-, obtained on [REDACTED], 2012. In a report based on meetings with the petitioner in December 2012, and January and February 2013, psychiatrist [REDACTED] reported incidents of physical and sexual abuse that occurred when M-F- was under the influence of alcohol, methadone, and heroin. Dr. [REDACTED] also recounted the last incident on [REDACTED] 2012. Dr. [REDACTED] concluded that the petitioner suffered from post-traumatic stress disorder and major depressive disorder from her relationship with M-F-.

In response to the RFE, the petitioner submitted an affidavit from friend [REDACTED] signed on February 1, 2014. In the affidavit, Ms. [REDACTED] indicated that M-F- became violent and out-of-control as a result of his drug and alcohol problem, and that the petitioner stayed with her for two days in [REDACTED] 2012 due to M-F-'s physical abuse.

In response to the NOID, the petitioner submitted an affidavit from friend [REDACTED], dated May 11, 2014, who attested to observing M-F- slap the petitioner and break her glasses on [REDACTED] 2012.

In her decision, the director noted that M-F-'s conduct, as described by the petitioner, was sufficient to establish that he battered her or subjected to extreme cruelty; however, due to the perceived inconsistencies in the evidence, the petitioner's claims were not credible. As discussed above, the director's credibility finding is not supported by the record. *De novo* review of the relevant evidence, summarized above, establishes that M-F- battered the petitioner, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The director's determination to the contrary is hereby withdrawn.

Entry into the Marriage in Good Faith

The petitioner has also established by a preponderance of the evidence that she entered into her marriage in good faith. In her initial affidavit, dated February 25, 2013, the petitioner recounted meeting M-F- at a pub in the spring of 2011. The petitioner indicated that the couple began dating, and eventually married in [REDACTED] of that year. The petitioner mainly discussed the abuse, but also stated that she learned that she was pregnant in September 2012, but terminated the pregnancy on medical advice. The petitioner submitted documentation confirming that she terminated a pregnancy in September 2012. The petitioner also provided a letter from her landlord confirming that she and M-F- resided together, and cable television and electricity bills in both her and M-F-'s names. In addition, the petitioner submitted a letter from her bank stating that she and M-F- were both authorized signers on the same checking account, and an Internal Revenue Service tax return transcript showing that she and M-F- filed their taxes jointly in 2011. She also provided photographs of her and M-F- on numerous occasions.

In response to the RFE, the petitioner submitted an affidavit from friend and neighbor [REDACTED] dated January 1, 2014. In her affidavit, Ms. [REDACTED] attested to meeting M-F- at the laundromat while he and the petitioner were doing laundry together. She also reported seeing them grocery shopping together on various occasions, and stated that they invited her for dinner at their apartment. The petitioner also submitted an affidavit from friend [REDACTED] dated December 27, 2013. Ms. [REDACTED] recounted in probative detail her visit to New York in winter 2012, when she stayed with M-F- and the petitioner.² In an affidavit dated January 6, 2014, friend [REDACTED] attested to having dinner with the couple on various occasions in 2011 and 2012, and helping them bring new furniture to their apartment in February 2012. The petitioner also submitted joint checking account statements, and a documentation indicating that M-F- accompanied the petitioner to an August 2012 doctor's visit.

In response to the NOID, the petitioner submitted a personal affidavit in which she provided details of the couple's courtship, and her first meeting with M-F-'s mother and aunt. She also recounted experiences that the couple shared. The petitioner submitted rent bills for 2012 jointly addressed to her and M-F-. She also provided an affidavit from friend [REDACTED], who indicated that she celebrated the petitioner's birthday in 2012 with the couple at a restaurant in [REDACTED]. In addition, the petitioner submitted documentation indicating that M-F- accompanied her to medical appointments in

² In response to the NOID, the petitioner and Ms. [REDACTED] clarified that the visit took place in February 2012.

June and August of 2012. The petitioner also provided new copies of previously submitted affidavits from [REDACTED] and [REDACTED].

In her decision, the director discounted much of the relevant evidence, and found that the petitioner failed to establish that she married M-F- in good faith. On appeal, the petitioner submits additional evidence including documentation that she and M-F- filed state taxes together for 2011, and additional jointly addressed utility and cable television bills.

De novo review of the relevant evidence establishes that the petitioner married M-F- in good faith. The director erred in discounting relevant evidence based on perceived inconsistencies and credibility issues not supported by the record. To establish good-faith entry into marriage, 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); *see also* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i) (indicating that traditional forms of joint documentation are not required to demonstrate a self-petitioner’s entry into the marriage in good faith). Here, the petitioner credibly described the couple’s courtship, and shared experiences. Additional affidavits, photographs, and numerous forms of joint documentation also support the petitioner’s claims. The petitioner has therefore established by a preponderance of the relevant evidence that she married her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. The director’s determination to the contrary is hereby withdrawn.

Conclusion

On appeal, the petitioner has overcome the director’s grounds for denial and demonstrated that she was battered by her husband and that she married him in good faith. Consequently, the petitioner has established her eligibility 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 been met. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.