



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-A-B-M-

DATE: OCT. 14, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-360, PETITION FOR AMERASIAN, WIDOW(ER), OR SPECIAL
IMMIGRANT

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen. *See* section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Director denied the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, based on a finding that the Petitioner did not establish that she was battered or subjected to extreme cruelty by her U.S. citizen spouse. On appeal, the Petitioner submits a personal declaration and statements from two friends.

I. APPLICABLE LAW

Section 204(a)(1)(A)(iii)(I) of the Act provides that an alien who is the spouse of a U.S. citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the U.S. 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 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)(1), which provides, in pertinent part:

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(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.

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.

II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner last entered the United States on December 3, 2009 as an F-1 nonimmigrant student. She married T-M-, a U.S. citizen, on [REDACTED] 2012 in [REDACTED] New York. T-M- filed a Form I-130, Petition for Alien Relative, on the Petitioner’s behalf on July 13, 2012. The Petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on the same date. U.S. Citizenship and Immigration Services (USCIS) denied the Form I-130 and Form I-485 on July 10, 2014. The Petitioner filed the Form I-360 on July 15, 2014. The Director issued a request for evidence (RFE) that, among

other things, the Petitioner was battered or subjected to extreme cruelty. The Petitioner responded with additional evidence, which the Director found insufficient to establish that the Petitioner was battered or subjected to extreme cruelty during her marriage. Therefore, the Director denied the petition.

We review these proceedings *de novo*. The evidence submitted below and on appeal does not overcome the grounds for the Director's denial.

III. BATTERY OR EXTREME CRUELTY

The preponderance of the evidence does not establish that the Petitioner was subjected to battery or extreme cruelty by T-M- during their marriage. The Petitioner has not described in probative detail any specific instances of abuse or violence amounting to battery or extreme cruelty as defined in 8 C.F.R. § 204.2(c)(1)(vi).

In her personal declaration submitted with the Form I-360, the Petitioner alleged that T-M- abandoned her and would not return her calls. The Petitioner stated that she did not know why T-M- left and that she hoped for reconciliation. She claimed that she loved T-M- and suffered depression due to the breakdown of the marriage. She also asserted that T-M- used "derogatory words" toward her and took the money they had saved together. In response to the RFE, the Petitioner submitted a second personal declaration, in which she alleged that she only told one person about the abuse she experienced because she was embarrassed. The Petitioner stated, "The mental anguish suffered from his abuse is real," and that she experienced anxiety as a result. The Petitioner did not provide, in either declaration, a detailed, probative description of any specific incidents. She spoke generally about abuse by T-M- and did not explain her statements.

On appeal, the Petitioner provides a third personal declaration in which she states that T-M- isolated her from her friends by demanding that she limit her time with them and emptying the couple's shared bank account so that she could not afford to go out. The Petitioner recounts that she once went to the movies but was embarrassed when she could not pay for the ticket. She states that she later asked T-M- why she did not have money for the ticket, and he responded, "[T]hat's what you get." Additionally, the Petitioner claims that T-M- frequently told her that her "life was in his hands" and her "immigration status was at his mercy." The Petitioner also alleges that T-M- humiliated her in front of her sister, with whom the couple lived. She states that T-M- did not abuse her physically, but that she was embarrassed about the way T-M- spoke to her. She declares that, as a result of T-M-'s abuse, she has experienced anxiety and has isolated herself from others. Although the Petitioner's statement on appeal includes a description of one specific incident in which she did not have the money to pay for a movie ticket, the evidence does not establish that the incident amounted to battery or extreme cruelty. Additionally, the Petitioner's descriptions of T-M-'s isolation of the Petitioner and threats regarding her immigration status are generalized and lack context. The Petitioner's statement does not establish that T-M- committed violent acts, or psychological abuse amounting to a pattern of violence, constituting battery or extreme cruelty as discussed in 8 C.F.R. § 204.2(c)(1)(vi).

(b)(6)

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The letters of support the Petitioner submitted are similarly lacking in detail. With the Form I-360, the Petitioner provided a letter from her sister, [REDACTED] who stated that the Petitioner was “experiencing emotional distress.” [REDACTED] asserted that the Petitioner “was always sad and kept to herself” during her marriage to T-M-. [REDACTED] declared that she was “not pleased with the way [T-M-] handled” his marriage to the Petitioner. However, [REDACTED] provided no explanation for her statements or description of T-M-’s behavior. In response to the RFE, the Petitioner submitted a statement from a friend, [REDACTED] who claimed that the Petitioner became withdrawn and depressed in 2013, and told [REDACTED] “what was going on in her relationship” with T-M-. However, [REDACTED] did not describe what she learned was occurring in the relationship. [REDACTED] also alleged that the Petitioner was “broken and disappointed,” but [REDACTED] did not provide a reason for the Petitioner’s problems. The Petitioner also supplied a letter from [REDACTED], who stated that the Petitioner sought counseling because her friends felt she “was withdrawing and having memory lapses.” [REDACTED] indicated that the Petitioner was suffering from generalized anxiety disorder, and that she met with a counselor to discuss “growing up in Jamaica, coming to the US[, and] the break-up of her marriage.” [REDACTED] did not provide a reason for the Petitioner’s mental health issues or state that they were related to battery or extreme cruelty.

On appeal, the Petitioner submits a second statement from [REDACTED] who asserts that she noticed that the Petitioner sometimes did not have enough money to get to work. She recalls that the Petitioner told her that T-M- was controlling her money in an effort to keep the Petitioner at home. According to [REDACTED] T-M- also made demeaning statements to the Petitioner, such as, “You will never amount to anything.” [REDACTED] indicated that the Petitioner became “depressing and unmotivated” as a result of psychological and emotional abuse by T-M- during their marriage. Although [REDACTED] statement on appeal describes one insult by T-M- and one specific incident in which the Petitioner could not afford a movie ticket, her statement is otherwise vague. [REDACTED] does not provide a detailed description of the psychological and emotional abuse she alleges the Petitioner endured in her marriage to T-M-.

The Petitioner also submits on appeal a statement from [REDACTED] but [REDACTED] statement is a character reference for the Petitioner. The Petitioner does not explain the relevance of [REDACTED] statement to the Petitioner’s claim of battery or extreme cruelty.

The preponderance of the relevant evidence in this case does not establish that the Petitioner was battered or subjected to extreme cruelty by her U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

IV. CONCLUSION

The evidence does not establish that the Petitioner was battered or subjected to extreme cruelty by T-M- during their marriage. Therefore, the Petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the Petitioner bears the burden of proving eligibility for the benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013);

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Matter of Chawathe, 25 I&N Dec. 369. Here, the Petitioner has not met that burden. Accordingly the appeal is dismissed.

ORDER: The appeal is dismissed.

Cite as *Matter of J-A-B-M-*, ID# 14740 (AAO Oct. 14, 2015)