



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

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

MATTER OF T-L-S-

DATE: MAY 4, 2016

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* Immigration and Nationality Act (the Act) section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii). Under the Violence Against Women Act (VAWA), an abused spouse may self-petition as an immediate relative rather than remain with or rely upon an abuser to secure immigration benefits.

The Director, Vermont Service Center, denied the petition. The Director concluded that the Petitioner has not established that her spouse subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The matter is now before us on appeal. On appeal, the Petitioner submits a statement. The Petitioner claims that Director erroneously determined that she did not establish battery and extreme cruelty.

Upon *de novo* review, we will dismiss the appeal.

I. 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.

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 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.

....

The evidentiary guidelines 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[.]

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II. RELEVANT FACTS AND PROCEDURAL HISTORY

The Petitioner is a citizen of Jamaica, who entered the United States with a B-2 nonimmigrant visa. The Petitioner married C-F-¹ a U.S. citizen and later filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The Director subsequently issued a request for evidence (RFE) of, among other things, the requisite battery or extreme cruelty. The Petitioner timely responded with additional evidence, which the Director found insufficient to establish the Petitioner's eligibility. The Director denied the Form I-360 and the Petitioner timely appealed.

III. ANALYSIS

We find no error in the Director's determination that the Petitioner's spouse did not subject her to battery or extreme cruelty. In her affidavits, the Petitioner stated that she met C-F- through a mutual friend. She recalled that he invited her to [REDACTED] for lunch. While they ate, C-F- told her about his family and his love of cricket, football and Jamaican food. The Petitioner recalled telling him about her two children and her past relationships. The Petitioner further recalled that she thought C-F- was a gentleman who treated her like a lady and that she fell in love with him.

The Petitioner recounted that sometime in December 2009 shortly after they married, C-F- became verbally abusive towards her. The Petitioner recounted that during their marriage, C-F- had extramarital affairs, kept the funds that she made cleaning homes, and threatened to report her to immigration authorities. The Petitioner further recounted that she later met a man with whom she had an affair and subsequently became pregnant. The Petitioner stated that when she told C-F- about the pregnancy, he agreed to help her with the baby, if she gave the baby his last name. The Petitioner recalled that after the baby was born, C-F- wanted to keep the baby a secret. The Petitioner stated that during this period, C-F- began to leave the house for extended periods of time and she later realized he was having an affair. The Petitioner recalled that ultimately, C-F- left their home and never returned. The Petitioner did not, however, describe specific acts or incidents of abuse in probative detail or otherwise demonstrate that she was subjected to ongoing intimidation, coercion, duress, stress, threats or acts of violence during the marriage.

The Petitioner also submitted affidavits from friends, [REDACTED] [REDACTED] and [REDACTED]. These affidavits attested to the Petitioner's good faith marriage, but they did not address any incidents of abuse. In response to the RFE, the Petitioner submitted a supplemental self-affidavit; a letter from [REDACTED] a letter from [REDACTED] notarized letters from [REDACTED] [REDACTED] and [REDACTED] and a supplemental affidavit from [REDACTED]. In his letter, [REDACTED] attested to the Petitioner's character, but made no mention of any abuse in the relationship. Similarly, in their letters, [REDACTED] and [REDACTED] affirmed that they knew both the Petitioner and her spouse, but they did not provide any details of any incidents of abuse. [REDACTED] in her letter, recalled that a year after their marriage, C-F- began to verbally abuse the Petitioner. However, she

¹ Name withheld to protect the individual's identity.

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does not cite to any specific incident of verbal abuse. In her supplemental affidavit, [REDACTED] [REDACTED] recounted that she saw the Petitioner crying and once witnessed C-F- threatened to have the Petitioner deported to Jamaica. [REDACTED] did not further discuss these incidents or describe any other behavior that would constitute abuse and extreme cruelty.

The Petitioner also furnished records from [REDACTED] a non-profit domestic violence intervention and prevention organization as well as a letter from [REDACTED] Advocacy Program director, [REDACTED]. The records from [REDACTED] indicated that the Petitioner attended a number of sessions but did not provide substantive information about the claimed abuse. In her letter, [REDACTED] concluded that based on the Petitioner's regular participation at their support group meetings, it is her professional opinion that the Petitioner has been a victim of domestic violence. While we do not question [REDACTED] professional expertise, her assessment likewise did not provide sufficient detailed information about the claimed abuse.

In her brief statement on appeal, the Petitioner asserts only that the Director erred in finding marital incompatibility issues rather than instances of battery and extreme cruelty. The Petitioner does not provide any additional information to address the claimed instances of battery and extreme cruelty, nor does she provide details of other specific incidents of battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the Petitioner has not established that C-F- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

IV. CONCLUSION

In these proceedings, the Petitioner bears the burden of proof to establish eligibility. 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.

ORDER: The appeal is dismissed.

Cite as *Matter of T-L-S-*, ID# 17858 (AAO May 4, 2016)