



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

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

In Re: 16709847

Date: FEB. 15, 2022

Appeal of Vermont Service Center Decision

Form I-360, Petition for Abused Spouse or Child of U.S. Citizen

The Petitioner seeks immigrant classification as an abused spouse of a U.S. citizen under the Violence Against Women Act (VAWA) provisions codified at 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 of the Vermont Service Center denied the Form I-360, Petition for Abused Spouse or Child of U.S. Citizen (VAWA petition). The matter is now before us on appeal. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A petitioner who is the spouse of a United States citizen may self-petition for immigrant classification if the petitioner demonstrates that they entered into the marriage with a United States citizen spouse in good faith and that during the marriage, the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. Section 204(a)(1)(A)(iii)(I) of the Act; 8 C.F.R. § 204.2(c)(1)(i). In addition, petitioners must show that they are eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and are a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act; 8 C.F.R. § 204.2(c)(1)(i).

Petitioners bear the burden of proof to demonstrate eligibility by a preponderance of evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). They may submit any credible evidence relevant to the VAWA petition for us to consider; however, we determine, in our sole discretion, the credibility of and the weight to give such evidence. Section 204(a)(1)(J) of the Act; 8 C.F.R. § 204.2(c)(2)(i). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

II. ANALYSIS

The Petitioner is a native and citizen of Serbia who entered the United States in 2010 as J1 exchange visitor. In [] 2014 she married her U.S. citizen spouse, N-S-E-¹, with whom she claims she resided from January 2013 to June 2015. With the VAWA petition and in response to the Director's request for evidence she submitted a personal affidavit, a letter from a psychotherapist, a statement from her mother and from a friend, financial records, a medical record, civil documents, and photographs. The

¹ We use initials to protect individual identities.

Director denied the VAWA petition, finding that the Petitioner did not establish she was eligible for immigrant classification, battered or subjected to extreme cruelty by her U.S. citizen spouse, and entered into her marriage in good faith. With the appeal the Petitioner submits a brief, updated affidavit, and legal decisions in unrelated cases.

In her affidavit below the Petitioner stated that she met N-S-E- at a 2012 party, started dating, began living together in 2013, he proposed with rose petals scattered around the house, and they had a small wedding at city hall in [] 2014. She asserted that N-S-E- seemed romantic and concerned and that “everything was perfect.” The Petitioner claimed that in October 2014 N-S-E- came home drunk, cursed her, and said he was tired of supporting her, and that his behavior then continued to where they barely spoke and at times he would not come home. The Petitioner discovered text messages between N-S-E- and a woman where he promised to leave the Petitioner. She asserted that she was shocked, that N-S-E- told her he no longer loved her, that she moved out, and that she later learned the girlfriend was pregnant. The Petitioner maintained that afterward N-S-E- never checked on her, that she became so depressed that she went to a hospital emergency room, and that she sought a psychologist. She claimed the couple never divorced because N-S-E- would not pay and she did not have income to find a divorce attorney. The Petitioner contended that she overstayed her visa because of N-S-E-, put hope and energy into their future, could not return to Serbia because of shame to her family, and had thoughts of killing herself.

A statement from a friend recalled that when the Petitioner met N-S-E- she was all smiles, but a few months after marriage she seemed preoccupied, explained that her spouse had a girlfriend, and told the friend about “all of the preceding events.” The friend described N-S-E- as emotionally abusive. The Petitioner’s mother stated that the Petitioner sounded happy when she talked about N-S-E-, the mother could see she was in love, and the couple told her they were working hard to be able to start a family. The mother recalled that the Petitioner later stopped calling her, hid what was going on, and then explained N-S-E- was cheating on her, called her names, and said he could not support her. The mother described the Petitioner as heartbroken, devastated, and depressed. The psychotherapist diagnosed the Petitioner with major depressive disorder, generalized anxiety disorder, and persistent depressive disorder with low esteem, feelings of worthlessness, guilt, diminished ability to concentrate, insomnia, weight change, and muscle tension all due to lies by her spouse.

As stated, the Director denied the VAWA petition, finding that the Petitioner did not establish she was eligible for immigrant classification, battered or subjected to extreme cruelty by her U.S. citizen spouse, and entered into her marriage in good faith. Specifically, the Director noted that the Petitioner submitted her spouse’s unsigned social security card but did not provide evidence to establish he was a current U.S. citizen, therefore could not demonstrate that she was eligible for immigrant classification. The Director then referred to the Petitioner’s claim that her spouse was unfaithful and called her names but found it showed marital incompatibility rather than instances of battery or extreme cruelty. The Director observed that the psychotherapist’s letter did not discuss abuse and that affidavits from the friend and the Petitioner’s mother only briefly discussed what the Petitioner told them about her spouse’s infidelity so did not demonstrate the Petitioner’s qualification under this requirement. Regarding good faith marriage, the Director found that the Petitioner’s affidavit provided few details of their courtship, was not sufficiently detailed about her intentions upon entering marriage and did not provide sufficient detail about daily routines to determine that she entered the marriage in good faith or that they resided together. Addressing submitted documentation, the Director noted that

a medical bill contained a different address than the marital address, a joint bank statement showed a minimal balance with few transactions normally associated with a *bona fide* marriage, one residential lease was signed only by the spouse while another had no signature, and there was no supporting evidence to show commingling of financial responsibility. The Director further found that photos captured one-time events with no explanation, so were not sufficient to show the Petitioner married with the intention of creating a life together, and that affidavits from the Petitioner's friend and mother were vague without detail about courtship, wedding ceremony, or experiences in married life.

On appeal the Petitioner argues through counsel that the Director's decision disregarded legal principles and compelling evidence to conclude that she failed to establish eligibility for classification as the abused spouse of a U.S. citizen. The Petitioner contends that the Director failed to recognize that an individual fleeing a marital home has no opportunity to gather evidence, particularly proof of an abuser's citizenship, that an unsigned social security card is still valid, and that U.S. Citizenship and Immigration Services has the ability to verify an identity that she does not.

The Petitioner next argues that psychological abuse is extreme cruelty even without physical battery, contends that the Director's decision is counter to law and judicial decisions, and cites legal decisions finding psychological abuse is violent and extremely cruel behavior that can be indirect. She recounts that her spouse began coming home drunk, called her names and a financial burden, isolated her by barely speaking and failing to come home, and had an affair. The Petitioner argues that the Director ignored the devastating impact and claims that to overcome her sadness she fled their home, was so desperately unhappy that she went to an emergency room, sought professional help, and considered taking her own life. The Petitioner further contends that the medical bill verifies she visited an emergency room for help with depression and the extent of her trauma. In her updated affidavit the Petitioner adds that N-S-E- once grabbed her by the neck and slammed her against a wall when she confronted him about his behavior and explains she had not mentioned the incident out of shame.

Finally, the Petitioner states that for immigration purposes marriage must be valid at inception and that any credible evidence must be considered. She argues that the Director gave little weight to evidence, was dismissive of supporting statements, and used the wrong standard of evidence. The Petitioner claims that her statement vividly describes a marriage that began in good faith, her falling in love with N-S-E-, the touching way he proposed to her, how she was shocked by his affair, and that she remained in the United States because of him. She further contends that the Director disregarded documentary evidence where the bank statement contains both of their names but explains that neither of them had much income so used cash for many transactions. The Petitioner explains that the lease has the initials of each and matches the address on their marriage license but is otherwise not required to prove a *bona fide* marriage. She further argues that the psychotherapist report documents that she entered the marriage in hopes for success and her devastation at the marriage failing.

With a review of civil records, we are able to confirm the Petitioner's contention that her spouse is a U.S. citizen by his birth in Puerto Rico. Therefore, we withdraw the Director's finding that the Petitioner did not establish a qualifying relationship and that she was eligible for immigrant classification based on that qualifying relationship.

However, review of the entire record shows the Director correctly assessed the evidence to find that the Petitioner did not establish her eligibility for immigrant classification under VAWA. Under

section 204(a)(1)(A)(iii)(I)(bb) of the Act, a VAWA self-petitioner must demonstrate that they were “battered or subjected to extreme cruelty” perpetrated by their spouse during the marriage. This term 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.

8 C.F.R. § 204.2(c)(1)(iv).

The Petitioner asserts on appeal for the first time that her spouse physically grabbed and shoved her but provides no further details surrounding the incident and does not otherwise assert or describe any instances of battery. Rather, she claims generally that there were instances of her spouse calling her names and a financial burden, that he had had an affair and a child with another woman, and that he claimed he did not love the Petitioner. The letters from the Petitioner’s friend and her mother each state that the Petitioner told them of N-S-E-’s behavior, and they observed the effect on her, but they provide little specific detail and no accounts of witnessed incidents or description of the circumstances surrounding them. We recognize the diagnosis found by the psychotherapist from incidents as reported by the Petitioner, but the report is general and does not provide detail sufficient to demonstrate that the Petitioner was subjected to extreme cruelty.

We acknowledge that the Petitioner faced difficult circumstances due to her spouse’s behavior, however, the record as it stands does not indicate that the Petitioner was subjected to any of the conduct described in 8 C.F.R. § 204.2(c)(1)(iv). The Petitioner’s affidavit and other evidence in the record does not demonstrate that N-S-E- inflicted or threatened violence against the Petitioner, psychologically or sexually abused or exploited her, or engaged in any other abusive actions that were part of an overall pattern of violence. Although evidence suggests that the behavior of N-S-E- adversely affected the Petitioner, the record does not demonstrate that she was subjected to battery or extreme cruelty during marriage. On appeal, the Petitioner argues that evidence shows she was abused by her spouse, but the record remains insufficient to establish by a preponderance of the evidence that the Petitioner was subjected to battery or extreme cruelty.

The Director further determined that the Petitioner did not demonstrate that she entered into marriage in good faith. As the Petitioner’s inability to establish that she was subjected to battery or extreme cruelty during marriage is dispositive of her appeal, we decline to reach and hereby reserve the Petitioner’s appellate arguments on this issue. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.