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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: NOV 06 2006
EAC 05 184 52762

IN RE: Petitioner: [Redacted]

PETITION: Petition for Special Immigrant Battered 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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of 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 because the petitioner did not establish that her husband battered or subjected her to extreme cruelty.

On appeal, counsel submits a brief.

Section 204(a)(1)(A)(iii) 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 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 . . . , 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 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:

Evidence for a spousal self-petition –

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Lithuania who entered the United States on June 28, 2000 as a nonimmigrant visitor (B-2). On January 14, 2004, the petitioner married D-B-¹, a U.S. citizen, in Illinois. The petitioner filed the instant Form I-360 on June 14, 2005. Her marriage to D-B- was dissolved on November 9, 2005 by order of the Circuit Court of Cook County, Illinois. On August 30, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded. On December 22, 2005, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded to the NOID. The director denied the petition because the record did not demonstrate that the petitioner's former husband battered or subjected her or her child to extreme cruelty during their marriage.

On appeal, counsel claims that the evidence established the petitioner's eligibility and that the director did not consider certain evidence. Counsel's contentions do not overcome the ground for denial and the appeal will be dismissed.

¹ Name withheld to protect individual's identity.

The petitioner submitted the following evidence relevant to her claim of battery or extreme cruelty:

- Her handwritten statement;
- The written statement of [REDACTED] the mother of the boyfriend of the petitioner's daughter;
- The written statement of [REDACTED] the boyfriend of the petitioner's daughter;
- The written statement of [REDACTED] the petitioner's employer;
- A letter from [REDACTED] who employs the petitioner's daughter and whose parents employed the petitioner;
- A written statement of [REDACTED] the petitioner's neighbor;
- Court records showing that the petitioner's husband was arrested and charged, but not convicted of, simple assault, theft, and aggravated driving under the influence of alcohol.

In her statement, the petitioner describes ten incidents between February and December 2004 when her husband was drunk and called her names, insulted her, asked her for money or threatened her. The petitioner states that on March 20, 2004, her former husband threatened to divorce her and get her and her daughter deported and that she was scared, could not sleep and was depressed. On April 1, 2004 the petitioner states that she saw a psychiatrist and began to use two prescription medications.

Ms. [REDACTED] states that the petitioner's daughter often complained about the "constant arguing between her mother and her husband, his drinking problems and abusive behavior towards [the petitioner]." Ms. [REDACTED] does not provide any probative details about the abusive behavior or indicate that she ever witnessed such abuse. Mr. [REDACTED] her son, states that the petitioner's daughter stayed at his house many times because she "couldn't listen to the constant arguments between her mother and her husband." Mr. [REDACTED] also states that the petitioner's daughter often complained about "her step-father's drinking and rage out-breaks, abusive and irrespective [sic] behavior towards her mother." Yet Mr. [REDACTED] does not discuss particular incidents of abuse in any probative detail or indicate that he ever witnessed the abuse.

Mr. [REDACTED] states that the petitioner confided in him about her marital problems and stated that her former husband's "drinking and ill will towards her were creating concerns for the futures [sic] of her marriage." Mr. [REDACTED] states that the petitioner also confided in him about her marital difficulties and expressed her fear of her former husband and her difficulty sleeping. Mr. [REDACTED] believes that the petitioner sought medical treatment for her stress and sleeping problems. Ms. [REDACTED] states that she often heard the petitioner's former husband screaming at the petitioner and that he looked drunk almost every time Ms. [REDACTED] saw him. Ms. [REDACTED] further states that on February 14, 2004, she heard the petitioner crying and the petitioner's former husband screaming at her with slurred speech for about one hour until the petitioner's former husband left their apartment.

The testimonial evidence fails to establish that the petitioner's former husband battered or subjected her or her daughter to extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The petitioner and the other affiants do not indicate that her former husband ever physically assaulted

her or her daughter, threatened them with violence or that his nonviolent actions were otherwise part of an overall pattern of violence. The testimonial evidence also does not establish that the petitioner's former husband's behavior constituted psychological abuse.

The relevant documentary evidence also fails to support the petitioner's claim. The court records indicate that the petitioner's former husband was charged with several offenses before and during their marriage, but the charges were dropped or stricken with leave to reinstate. The court records do not indicate that the petitioner was an alleged victim of, or was otherwise involved in, any of the underlying incidents.

The petitioner and Mr. [REDACTED] state that she received medical treatment for her insomnia and depression and on appeal, counsel claims that the petitioner submitted copies of her medical records. However, the record is devoid of any documentary evidence of the petitioner's purported medical treatment and the petitioner submitted no other evidence of battery or extreme cruelty of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The record fails to establish that the petitioner's former husband battered or subjected her or her daughter to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.