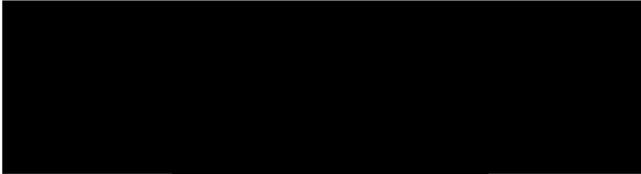


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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 18 2007
EAC 05 233 52699

IN RE: Petitioner: [REDACTED]

PETITION: Petition for 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. Wichmann, 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 immigrant classification 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 she was battered or subjected to extreme cruelty by her husband.

On appeal, counsel submits additional evidence.

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 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 facts and procedural history. The petitioner is a native and citizen of Cameroon who entered the United States on December 15, 1998 as a nonimmigrant visitor (B-2). On April 12, 2001, the petitioner married R-W-¹, a U.S. citizen, in Michigan. The petitioner filed this Form I-360 on August 22, 2005. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, battery or extreme cruelty. The petitioner, through counsel, responded with further documentation. On February 28, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, explained that the petitioner's response to the RFE addressed the grounds for intended denial cited in the NOID. On May 19, 2006, the director denied the petition for lack of the requisite battery or extreme cruelty. Counsel timely appealed.

On appeal, counsel submits additional affidavits and documents that she claims resolves the discrepancies cited in the director's decision. Counsel's claims and the evidence submitted on appeal fail to overcome the ground for denial.

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

- The petitioner's March 1, 2006 statement and June 13, 2006 affidavit submitted on appeal;

¹ Name withheld to protect individual's identity.

- The January 14, 2005 letter of the petitioner's counselor, [REDACTED] and [REDACTED] July 7, 2006 letter submitted on appeal;
- The January 13, 2006 written statement of the petitioner's friend, [REDACTED]
- The undated written statement of the petitioner's friend, [REDACTED]
- The January 13, 2006 letter of the petitioner's sister, [REDACTED]
- Statements dated between June 15, 2002 and July 15, 2003 for the joint checking account of the petitioner and her husband;
- A photocopy of the federal income tax refund check jointly addressed to the petitioner and her husband and related documents.

In her March 1, 2006 statement, the petitioner reports that by the end of 2001 she and her husband "began to disagree a lot" and eventually "argued all the time." The petitioner states that her husband stopped working and threatened not to attend their immigration interview when she refused to give him money. The petitioner reports that her husband belittled her, humiliated her and called her derogatory names. The petitioner explains that as a result of his behavior and the related economic pressures, she dropped out of school, lost her self-confidence, cried all the time and had difficulty sleeping.

The petitioner states that in 2002, her husband often stayed out late at night, would call to ask about her whereabouts and accuse her of lying when she said she was working. The petitioner reports that she once mistakenly locked her keys in the car and her husband yelled at her and refused to help her. On another occasion, the petitioner states that her husband slammed the telephone on the wall while they were arguing. The petitioner explains that she was afraid her husband would physically abuse her because of his bad temper and his admission that he had been jailed in the past.

The petitioner reports that after her parents came to the United States in May 2003, her father was hospitalized and she had to take care of him. The petitioner states that her husband moved out because he did not want her parents to live with them and thereafter only visited when he wanted money from the petitioner. In November 2003, the petitioner reports that she and her husband went to the bank to deposit their income tax refund check, but that her husband soon withdrew all of the money, leaving only \$25 in the account. The petitioner reports that after her father died in March 2004, she called her husband, but he never returned her calls. The petitioner's statements fail to establish that her husband battered or subjected her to extreme cruelty.

On appeal, the petitioner submits evidence that she and her husband deposited their \$698.21 income tax refund check on December 1, 2003. The petitioner also submits the first page of the former couple's checking account statement for November 18 through December 12, 2003, which states that a total of

\$903.45 was deposited and a total of \$883.57 was withdrawn from the account during this period, leaving a balance of \$20.05. Yet the petitioner did not submit a complete copy of the bank statement for this period showing the date of the alleged withdrawal by her husband or other evidence that he withdrew the money from the couple's income tax refund. Moreover, as noted by the director, the bank statements show that the balance on the account did not exceed \$40 from January 15 to July 15, 2003. Accordingly, the bank statements do not establish that the petitioner's economic situation was caused by her husband's use of the account rather than her own.

The petitioner's friends and sister confirm that the petitioner had a troubled relationship with her husband, but do not demonstrate that he battered or subjected the petitioner to extreme cruelty. states that he once mediated between the petitioner and her husband, but that when he tried to speak with the petitioner's husband a second time, he was threatened. states that he witnessed the petitioner's husband verbally abuse the petitioner and disrespect her on more than three unidentified occasions, but does not describe any of these incidents in detail. Similarly, states that the petitioner was withdrawn and confused and confided in her friend about her marital problems, but does not describe any particular incidents of abuse in detail. The petitioner's sister states that the petitioner eventually told her and their parents about the "abusive relationship," but does not indicate that she ever witnessed any incidents of abuse or describe any such incidents as related to her in detail by the petitioner.

The petitioner's counselor, states that she began seeing the petitioner for regular counseling sessions beginning in July 2005. In her January 14, 2005 letter, describes the behavior of the petitioner's husband as related to her by the petitioner and states that the petitioner presented symptoms of major depression, anxiety and post traumatic stress disorder. As noted by the director, there are several factual and chronological discrepancies between the petitioner's statements and s January 14, 2005 letter. In her July 7, 2006 letter submitted on appeal, clarifies the chronological details and states that one factual discrepancy was due to her own error. In her affidavit submitted on appeal, the petitioner also clarifies certain chronological details and explains that certain discrepancies may have arisen from s misunderstanding of some of the petitioner's statements.

Regardless of these discrepancies, the testimony of the petitioner, her friends and sister do not establish that the petitioner's husband subjected her to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The evidence does not indicate that the petitioner's husband threatened her with violence, that his nonviolent behavior was part of an overall pattern of violence or that his mistreatment constituted psychological abuse.

The record fails to establish that the petitioner was battered or subjected to extreme cruelty by her husband. 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.