



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] EAC 06 117 50182

Office: VERMONT SERVICE CENTER

Date: MAR 14 2007

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:

SELF-REPRESENTED

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 immigrant classification under 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 former husband subjected her to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a statement.

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).

An alien who has divorced a United States citizen may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act also 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 pertinent facts and procedural history. The petitioner is a native and citizen of the Philippines who entered the United States on August 2, 2002 as a nonimmigrant visitor (B-2). On August 30, 2002 the petitioner married S-B-<sup>1</sup>, who was a lawful permanent resident of the United States at that time. On July 31, 2003, S-B- became a naturalized citizen of the United States. On February 14, 2006, the Circuit Court of DuPage County, Illinois dissolved the petitioner's marriage to S-B-. The petitioner filed this Form I-360 on March 13, 2006. The director subsequently issued Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence. The director denied the petition on October 6, 2006 for lack of the requisite battery or extreme cruelty and the petitioner timely appealed.

On appeal, the petitioner reiterates her previous statements regarding her former husband's extramarital affair. We concur with the director's determination. The petitioner's statements on

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<sup>1</sup> Name withheld to protect individual's identity.

appeal fail to overcome the ground for denial. Beyond the director's decision, the petitioner has also failed to establish a qualifying relationship with her former husband and her eligibility for immediate relative classification based on such a relationship.

*Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- The petitioner's July 21, 2006 statement submitted below and the petitioner's October 14, 2006 statement submitted on appeal;
- The August 9, 2006 statement of the petitioner's sister, [REDACTED];
- The July 28, 2006 statement of the petitioner's former classmate, [REDACTED];
- The court transcript and judgment from the petitioner's dissolution of marriage proceedings; and
- Photographs of the petitioner's former husband, another woman and their children.

In her statements, the petitioner explains that a friend first told her that her former husband was seeing another woman, but that when she confronted her former husband, he lied to her. The petitioner states that her former husband eventually removed her from his health insurance coverage without her knowledge, but the petitioner does not specify if the removal occurred before or after the former couple's separation. The petitioner also states that her former husband "filed for divorce with no consideration" for her or her immigration status, but she does not report any abusive actions on the part of her former husband during the dissolution proceedings. The petitioner reports that the experience was "really difficult" for her, that she could not focus, felt depressed and was crying all the time. The petitioner explains, "I didn't go to a specialist because [I] don't believe in those, rather [I] went to the church and start praying." However, the petitioner did not submit any testimony from clergy that counseled her regarding her marital problems.

The petitioner's sister, [REDACTED], states that the petitioner and her former husband lived with her when they were married. She reports that the petitioner's former husband was "the jealous type [who] never allowed [the petitioner] to go places especially when he is not around[.]" but [REDACTED] does not describe any specific incidents of jealous or controlling behavior that might constitute extreme cruelty. [REDACTED] confirms that the petitioner's former husband had an extramarital affair and eventually began living with another woman and their children. [REDACTED] also reports that the petitioner lost weight and cried during her marital difficulties.

The petitioner's former classmate, [REDACTED] states that another friend informed her that the petitioner's former husband was having an extramarital affair. [REDACTED] provides no further, relevant information and states that she lost contact with the petitioner after their graduation.

The petitioner, [REDACTED] and [REDACTED] indicate that the petitioner's husband had an extramarital affair, but their testimony fails to demonstrate that the petitioner's former 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). None of these affiants describe any specific incidents of actual or threatened violence by the petitioner's former husband against her. The petitioner, [REDACTED] and [REDACTED] also fail to discuss any specific incidents of nonviolent behavior that constituted psychological or sexual abuse or were part of an overall pattern of violence.

The remaining, relevant evidence also fails to support the petitioner's claim. The photographs of the petitioner's former husband with another woman and their children confirm that the petitioner's husband had an extramarital affair, but fail to establish that his infidelity involved battery or extreme cruelty against the petitioner. The court transcript and judgment state that the petitioner and her former husband lived separate and apart for over two years and that irreconcilable differences arose between the former couple, which led to the irretrievable breakdown of their marriage. The court documents do not indicate that the breakdown of the petitioner's marriage involved battery or extreme cruelty. In addition, the record shows that an attorney represented the petitioner in the dissolution of marriage proceedings and the petitioner does not indicate that she was unable to express to the court her account of the events leading to the breakdown of her marriage.

#### *Qualifying Relationship and Eligibility for Immediate Relative Classification*

Beyond the director's decision, the record also fails to establish that the petitioner had a qualifying relationship with her former husband. An alien who has divorced his or her U.S. citizen spouse is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As discussed in the preceding section, the petitioner failed to establish that her husband subjected her to battery or extreme cruelty. Accordingly, she has also failed to demonstrate the requisite connection between the dissolution of her marriage and such battery or extreme cruelty. The petitioner consequently has not established that she had a qualifying relationship with her former husband pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Beyond the director's decision, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on her relationship with her former husband, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to a U.S. citizen. Because the petitioner has not established that she had a qualifying relationship with her former husband, she has also not demonstrated that she was eligible for immediate relative classification based on such a relationship.

The record fails to establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage, that the petitioner had a qualifying relationship with her former husband and that she was eligible for immediate relative classification based on such a relationship. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.