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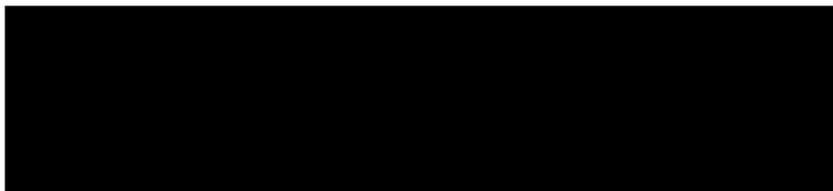
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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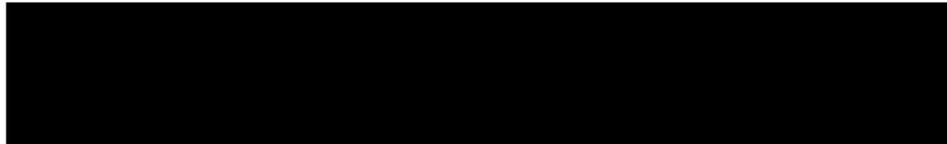
Date: SEP 13 2010

IN RE:



PETITION: Petition for Immigrant Abused 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 Immigration and Nationality Act (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 on the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty, and counsel filed a timely appeal. On appeal, counsel submits a letter.

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, 8 U.S.C. § 1154(a)(1)(J) 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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 petitioner is a citizen of the People's Republic of China. She married B-T-¹ a citizen of the United States, on October 31, 2007, and they divorced on October 24, 2008 (the divorce decree was later amended on December 30, 2008). A Form I-862, Notice to Appear, was issued to the petitioner on October 30, 2008.

The petitioner submitted the instant Form I-360 on April 14, 2009. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to the director's request for additional evidence, the director denied the petition on April 28, 2010.

The sole issue before the AAO is whether the petitioner has established that she was subjected to battery and/or extreme cruelty by B-T- during their marriage. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire

¹ Name withheld to protect individual's identity.

record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

In her November 21, 2008 self-affidavit, the petitioner stated that B-T- treated her differently after they married. She stated that B-T- would not allow her to display the couple's wedding pictures because he told his children that she was his girlfriend; that he did not want her to learn to drive; that he did not ensure that she learn English; that he did not want her to leave the house; that he threatened to send her back to China if she did not "act right"; and that he was secretive about his finances. The petitioner also stated that she felt as though B-T- loved his children, but not her.

In her February 19, 2009 self-affidavit, the petitioner described an incident during which she had to wait in a car for over 30 minutes while B-T- went into the couple's home to speak with his ex-wife. She also described incidents during which B-T- yelled at her after she expressed her dislike over a bed he had bought; after she expressed her disapproval over the tone of voice he used toward her during a trip to a shopping center; and after she did not clean the kitchen to his liking. B-T- also threw pots and a wok into the sink during the incident during which he said she did not clean the kitchen properly. The petitioner also stated that she feared B-T- would hit her. The petitioner also stated that B-T- wanted to control her, and did not like the fact that after she started working, she was meeting people outside the home. The petitioner stated that she felt like a housekeeper, as B-T- never thanked her for cooking, cleaning, doing laundry, and taking care of the dog. As such, she felt unappreciated. She also stated that B-T- did not allow her to display the couple's wedding pictures; refused to acknowledge her in front of his children; and told her to wait outside the house when his ex-wife was there. The petitioner also claimed that B-T- threatened her immigration status. She also explained how, on October 31, 2008, one of B-T-'s friends came to the house with a man and a woman who, after showing their badges, took her fingerprints and made her sign a document. Later that afternoon, B-T- arrived at the house with two women, one of whom told her that she would have to leave the house immediately. After the woman told the petitioner to leave the house, B-T- informed the petitioner that they were now divorced. According to the petitioner, this was the first time she had heard they were divorced. The petitioner also stated that she had been cooking when B-T- and the women arrived, and that she burned her fingers when she turned off the stove.

In an undated letter submitted in response to the director's December 16, 2009 request for additional evidence, the petitioner repeated the assertions of her February 19, 2009 affidavit and added that B-T- was cold and impossible to please.

The petitioner also submitted letters from two of her friends. In her undated letter, ██████████ stated that she took the petitioner into her home after she was ordered to leave the marital residence because she had nowhere to go. She also stated that she took the petitioner to a pharmacy because her finger was burned and needed treatment. In her undated letter, ██████████ stated that she met the petitioner when B-T- and the petitioner were traveling in Baltimore, Maryland. According to ██████████ she and the petitioner spoke by phone many times, and the petitioner told her that B-T- had a temper.

Finally, the petitioner submitted pictures of the burns she received on her fingers on the day she was removed from the house, as well as a copy of an injunction B-T- obtained against her, which ordered the petitioner to refrain from causing physical contact or bodily harm to B-T- or threatening injury; from communicating with B-T- in person, by telephone, or by written correspondence, and from coming within 100 feet of his home, or place of employment for any purpose.

On appeal, counsel states that a major of the petitioner's claim "was due to her husband having filed divorce papers, and having filed a restraining order, without giving [the petitioner] proper notice."

The AAO has reviewed the entire record and finds that, in sum, the relevant evidence fails to establish that B-T- subjected the petitioner to battery or extreme cruelty during their marriage. First, the petitioner does not allege, and the record does not establish, that the petitioner was the victim of battery perpetrated by B-T-.

Nor does the record demonstrate that B-T-'s non-physical behavior constituted extreme cruelty. The petitioner has failed to establish that his actions were comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include, for example, forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has the petitioner established that B-T-'s non-physical behavior was accompanied by coercive actions or that his behavior was aimed at insuring dominance or control over the petitioner. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner has failed to establish that B-T- 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 petitioner has failed to overcome the ground for denial, and has not established that B-T- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.