

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

RUBLIC COPY

B9



FILE:

EAC 05 064 53681

Office: VERMONT SERVICE CENTER

Date:

JAN 23 2008

IN RE:

Petitioner:



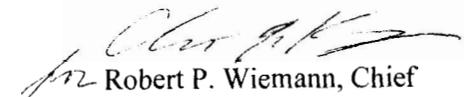
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the petition for further action by the director. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The July 2, 2007 decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (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 further 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].

As the facts and procedural history have been adequately documented in the previous decision of the AAO, we will only repeat certain facts as necessary here. The director initially denied the petition on August 10, 2005, finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her citizen spouse during their marriage. On appeal, the AAO concurred with the findings of the director but remanded the case on June 1, 2006 because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Upon remand, the director issued a NOID on November 14, 2006, which addressed the petitioner's failure to establish her claim of battery or extreme cruelty. The petitioner, through counsel, timely responded to the director's NOID with additional evidence. On January 10, 2007, after addressing the additional evidence received into the record, the director found that the petitioner failed to establish her claim of abuse. The director's discussion will not be repeated here. The director certified his decision to the AAO for review and notified the petitioner that she could submit a brief to the AAO within 30 days of service of the director's decision. No further evidence has been submitted. Accordingly, the record is considered to be complete as it now stands.

Our review focuses on the evidence submitted subsequent to the AAO's remand decision. The evidence consists of the petitioner's affidavit, a psychosocial assessment, a letter from the petitioner's daughter, and an affidavit from a friend of the petitioner. In her affidavit, the petitioner claims that on one occasion, her spouse "forced himself on [her] sexually." As an explanation for her failure to make this claim in any of her three previous statements, the petitioner states:

I did not tell anyone about these private matters because I was too embarrassed to talk about them. I preferred to keep these things to myself. I also was afraid to say anything. I was afraid to tell anyone because I used to live with my husband's parents. I was afraid that he would find out that I was telling these things. I was scared that my husband would physically harm me if he knew that I told someone.

We do not find the petitioner's explanation to be convincing. First, it is unclear why she was "afraid" to share this information with her spouse's parents and "scared" that her spouse would find out she was talking about him given the fact that he was already aware of the numerous allegations the petitioner had made against him. Moreover, the petitioner's spouse's in-laws were already aware of the petitioner's claim of abuse and had submitted statements in support of the petitioner and the claimed abuse. Given these facts, the petitioner's explanation is not persuasive.

The psychosocial assessment, provided by [REDACTED], L.C.S.W., A.C.S.W., based upon a single interview with the petitioner and her children, discusses the claims previously made by the petitioner that her spouse had affairs with other women and neglected the petitioner and her children. The assessment also discusses the petitioner's new claim of having been sexually abused by her spouse. [REDACTED] attributes the petitioner's failure to assert this claim previously due, in part, to the petitioner's failure to realize that "a husband's having sex against his wife's will is tantamount to rape." However, we note that [REDACTED] describes the incident of claimed sexual abuse with significant detail that the petitioner herself fails to mention in her affidavit.

The letter from the petitioner's daughter describes being prevented from seeing and calling the petitioner while living with her father and being "brainwashed." She does not, however, provide examples of specific incidents or actions by her father to support a claim that either she or the petitioner were battered or subjected to extreme cruelty. Although the assessment by [REDACTED] provides a description of the time during which the petitioner's daughter spent with her father, we do not find the claims support a finding of battery or rise to the level of extreme cruelty. The assessment indicates that initially the petitioner's spouse and his girlfriend treated the petitioner's daughter "nicely," but as time went on he took an "inordinate interest in what he imagined her relationships with boys to be." The petitioner's daughter makes clear that her father never "touched her inappropriately or approached her sexually," but as punishment, made her cut her hair very short and left her with "only one unattractive outfit." Ultimately, the petitioner's daughter felt "[s]he couldn't take it anymore when they made her move in with 7 year old stepbrother" and tried "to kill herself" by drinking cough syrup. We do not find the allegations described by the petitioner's daughter support a finding that the petitioner or her daughter were battered or that her father's actions rose to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

The affidavit from [REDACTED] describes phone calls received at his home from the petitioner's spouse, beginning around October 2005, nearly one year *after* the petitioner filed this petition. As the petitioner must establish eligibility at the time of filing, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Regardless, [REDACTED] does not provide probative details sufficient to make a finding of battery or extreme cruelty. Mr. [REDACTED] generally claims that the petitioner's spouse once "yelled" at the petitioner and threatened her with deportation in an attempt to dissuade her from filing court papers for child support. It is noted that in her affidavit, the petitioner states that she did, indeed, file for child support. [REDACTED] also indicates that the

petitioner's spouse made several more phone calls to his home, sometimes leaving "nasty" messages. He does not provide a description of the messages or any other details regarding their content.

Upon review, we note that each successive statement from the petitioner contains allegations not previously claimed. The petitioner initially claimed that her spouse had an affair and left her when she was pregnant. In her second statement, the petitioner claimed that she was verbally abused and that her spouse wanted her to abort their baby. She claimed that although her in-laws went to the police, they stated nothing could be done "without any physical harm." On appeal, in addition to the verbal threats regarding abortion, the petitioner described an incident where her spouse began "hitting [her] bedroom door," "grabbed" her by the arm to "pull her out of the room," saying that "we were going to have the abortion right then." Finally, in her most recent statement, the petitioner claims that she was sexually abused by her spouse. Although the petitioner attempts to explain why she failed to previously assert a claim of sexual abuse, we do not find her explanation to be plausible. As such, we find that at best, the claims made by the petitioner are exaggerated; at worst, they are inconsistent and contradictory. The remaining additional evidence, which consists of the letter from her daughter and from [REDACTED], as discussed above, also fails to establish that the petitioner or her daughter were battered or subjected to extreme cruelty.

Accordingly, we concur with the findings of the director that the petitioner failed to establish that she or her daughter were battered or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the petitioner is ineligible for immigrant classification under 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 July 2, 2007 decision of the director is affirmed and the petition is denied.

ORDER: The petition is denied. The July 2, 2007 decision of the director is affirmed.