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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  
and Immigration  
Services

134



FILE:

EAC 07 019 51025

Office: VERMONT SERVICE CENTER

Date:

**AUG 07 2009**

IN RE:

Petitioner:



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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom  
Acting 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 husband subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief and a copy of the previously submitted July 17, 2007 letter from [REDACTED].

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 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 . . . 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 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 Ghana who married P-D-<sup>1</sup>, a U.S. citizen, in Ghana on June 26, 2004, and was admitted into the United States on August 17, 2005 as a K-3 nonimmigrant. On March 10, 2004, P-D- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on November 30, 2005, and ultimately revoked on May 19, 2006, based upon P-D-'s withdrawal of the petition.

The petitioner filed the instant Form I-360 on October 23, 2006. On May 14, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite qualifying relationship, joint residency, good-faith entry into the marriage, battery or extreme cruelty, and good moral character. The petitioner, through counsel, requested additional time to respond. On July 17, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite qualifying relationship, joint residency, good-faith entry into the marriage, battery or extreme cruelty, and good moral character. The petitioner, through counsel, timely responded to the NOID with additional evidence. On September 10, 2007, the petitioner filed the Form I-485, Application to Register Permanent Residence or Adjust Status. On May 2, 2008, the director denied the I-360 petition because the petitioner did not establish that her husband subjected her to battery or extreme cruelty during their marriage. On June 24, 2008, the director denied the I-485 application, based on the denial of the I-360 petition. Counsel timely appealed the denial of the instant I-360 petition.

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

On appeal, counsel claims that the facts of the case were not properly examined. Counsel explains or discounts certain factual inconsistencies and discrepancies cited by the director.

*Battery or Extreme Cruelty*

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- The petitioner's affidavits dated September 30, 2006, August 14, 2007, and August 15, 2007;
- An Incident Report, dated June 13, 2007, from the Orange County P.D., stating that the petitioner reported "a few occasions" whereby she received threatening email messages from an unknown person or persons, whom she believes to be her husband;
- Two email messages, dated May 30, 2007 and June 5, 2007, respectively, containing the alleged threats;
- An affidavit from [REDACTED], dated August 14, 2007;
- The July 17, 2007 letter from [REDACTED];
- The July 9, 2007 letter from [REDACTED]; and
- A DVD of P-D-'s homosexual relationship.

In her September 30, 2006 affidavit, the petitioner states that she was subjected to extreme cruelty by her husband upon finding him engaged in sexual intercourse with another man who lived in their house, supposedly as a tenant. The petitioner states that she left their marital home after her husband refused to remove his male partner from their home. The petitioner explains that she is distraught and emotionally distressed.

In her August 14, 2007 affidavit, the petitioner states that upon her arrival to the United States to join her husband, she met a man whom her husband described as a "tenant" living in their home. The petitioner states that one night after she woke and found herself alone in bed, she went downstairs and discovered her husband having sexual intercourse with their male tenant. The petitioner states that she also found a video of her husband having sexual intercourse with the male tenant, and after confronting her husband with the video, he threatened her, locked her up, "staved her to death," and threatened to kill her if she disclosed what she had seen. The petitioner also states that her husband took her passport and did not return it until she called 911. The petitioner explains that she was afraid for her life and had to do as he instructed. The petitioner states that her husband recorded her conversations with her family in Ghana to see if she was talking about his homosexual relationship. The petitioner states that she was a virtual prisoner in her husband's house, that she had no money, food, or transportation, and that he denied her medical attention. The petitioner states that she escaped from her husband's house to New Jersey while he was on vacation with his male partner, and since then she has received two email messages from her husband in which he threatened her life.

In her August 15, 2007 affidavit, the petitioner states that after a couple of months in the United

States, everything about her changed, that she is emotionally disturbed, unable to think straight, depressed, and stressed out. The petitioner states that she is unable to socialize, that she feels dirty and unclean because of her relationship with her husband, and that she is struggling to build back her life through counseling.

In his August 14, 2007 affidavit, [REDACTED] states that he assisted the petitioner in finding a job and a place to stay after she left her husband. [REDACTED] also states that the petitioner told him about her witnessing her husband with his male partner.

The petitioner does not explicitly state or otherwise indicate that her husband subjected her to battery. Accordingly, we will only discuss the petitioner's claim of extreme cruelty. While we do not discount the emotional pain the petitioner experienced when she found out that her husband was involved in a homosexual relationship, her testimony does not indicate that her husband's behavior rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). As noted by the director, the petitioner claimed that she was the victim of emotional abuse in her September 30, 2006 affidavit, and she did not make any of her subsequent claims, such as her husband's alleged threats to kill her, recording of her phone calls, imprisoning her in his home, "staving her to death," denial of medical attention to her, theft of her passport, and threatening email messages, until after the director issued his RFE and NOID, in which the director informed the petitioner that infidelity was not considered abuse for the purposes of the instant petition. Furthermore, as discussed by the director, the record contains unexplained discrepancies. For example, the petitioner states in her September 30, 2006 affidavit that she left her marital home because her husband refused to remove his homosexual partner from their home, while in her August 14, 2007 affidavit, after the issuance of the director's RFE and NOID, the petitioner states that she was a "virtual prisoner" in her husband's house and that she had to escape from his house through her husband's lady friend, who "arranged for someone she knows in New Jersey to find me accommodation and a job." The record contains no explanation for this discrepancy. Another discrepancy pertains to the alleged theft of the petitioner's passport. Again, the petitioner makes no mention of the alleged theft in her September 30, 2006 affidavit, while in her August 14, 2007 affidavit, after the issuance of the director's RFE and NOID, the petitioner states that her husband took her passport and "never gave it back" until she called 911. On appeal, counsel claims that the director misstated and misunderstood the petitioner's 911 call, that the petitioner's husband had stolen her passport to cripple her movement and then surrendered it to her after the 911 call. The December 8, 2005 police report, however, reflects that the petitioner specifically reported the "location of loss" as New York and the "date of loss" as November 23, 2005. As such, it is not clear from the evidence that the petitioner's husband stole her passport to cripple her movement and returned it to her after her 911 call. In addition, as stated by the director, the record contains no evidence that the alleged email threats, dated May 30, 2007 and June 5, 2007, respectively, were from the petitioner's husband. Moreover, if the petitioner feared for her life, it is not clear why she did not report the alleged threats to the police until June 13, 2007. It is additionally noted that the record contains no evidence that the petitioner's husband was recording her phone calls, a claim that also was not mentioned by the petitioner in her September 30, 2006 affidavit. Upon review of the record in its entirety, the petitioner does not describe in probative detail any particular incidents where her husband threatened her with physical or mental injury. On appeal, counsel claims that the director trivialized the petitioner's claims

that her husband stole her passport and starved her to death. However, in light of the discrepancies, we determine the director's concern regarding these issues to be reasonable. The petitioner's claims of her husband's alleged threats to kill her, recording of her phone calls, imprisoning her in his home, "staving her to death," denial of medical attention to her, theft of her passport, and threatening email messages, are equivocal and do not fully resolve the discrepancies in the record. The petitioner has not provided any credible testimonial evidence in support of these claims. Nor has the petitioner explained the discrepancies discussed above that diminish the evidentiary value of her statements. The petitioner's statements regarding her husband carrying on a homosexual relationship do not establish that her husband subjected her to psychological, sexual abuse or exploitation, or that his actions were part of an overall pattern of violence.

In his August 14, 2007 affidavit, [REDACTED] does not indicate that he witnessed the petitioner's interactions with her husband and provides no probative details regarding the petitioner's relationship with her husband and their interactions with each other.

The July 17, 2007 letter from [REDACTED], and the July 9, 2007 letter from [REDACTED] also fail to establish that the petitioner's husband subjected her to extreme cruelty. Ms. [REDACTED] who states that the beneficiary came to their social service agency in February 2007, and is receiving weekly counseling "to understand what she has experienced and how to deal with the feelings of betrayal, the pain and the disappointment" caused by her husband, provides no probative details, such as a diagnosis of the petitioner and the dates and length of the petitioner's counseling sessions. [REDACTED] states that the petitioner has been under her care since November 2006, and reports that the petitioner was afraid of having contracted a sexually transmitted disease, and also complained of appetite loss, weight loss, sleepless nights, an irregular menstrual cycle, and emotional stress due to her discovery of her husband's homosexual activities. [REDACTED] also states that she realized that "stress and sever[e] depression could be factors of what she was going through." [REDACTED] states that she "prescribed some medication for her and reassured her," that the petitioner is examined every three months, and that the petitioner "is doing good and feels much better as compared to the first time I saw her." Again, [REDACTED] does not provide any definitive diagnosis of the petitioner or provide any specific information indicating that the alleged abuse by the petitioner's husband was a causative or contributing factor to the petitioner's mental and/or physical health condition.

While we do not question the expertise of [REDACTED] and [REDACTED], their testimony fails to establish that the behavior of the petitioner's husband rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Neither [REDACTED] nor [REDACTED] provides a diagnosis of the petitioner. Both [REDACTED] and [REDACTED] briefly attest to the petitioner's pain of discovering her husband's homosexuality, but do not provide substantive, probative information indicating that his behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

The petitioner does not claim and the record does not indicate that the petitioner's husband subjected her to battery. The relevant evidence also fails to demonstrate that the petitioner's husband subjected

her to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his 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.