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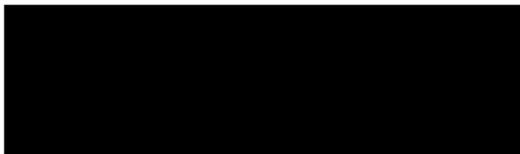


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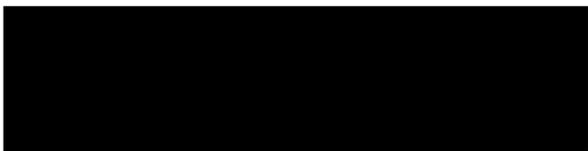
OCT 13 2010

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:

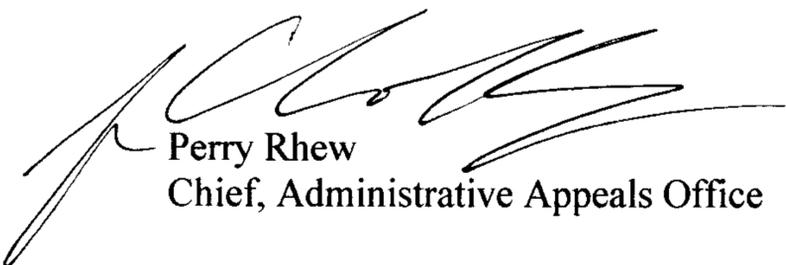


INSTRUCTIONS:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion to reopen will be granted. The AAO will affirm its dismissal of the appeal.

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 petitioner filed the instant Form I-360 on September 23, 2008. The director subsequently issued a request for additional evidence to which the petitioner, through counsel, submitted a timely response. The director denied the petition on October 1, 2009, on the basis of his determination that the petitioner had failed to establish that her former husband subjected her to battery or extreme cruelty. The AAO dismissed counsel's timely appeal on April 27, 2010. In its decision, the AAO affirmed the director's determination that the petitioner had failed to establish that she was subjected to battery or extreme cruelty and found further, beyond the decision of the director, that because the petitioner and her former husband divorced prior to the filing of the petition, and she had failed to establish that the termination of the marriage was connected to any abuse she suffered, she had also failed to establish her eligibility for immigrant classification based upon a qualifying relationship with a citizen of the United States.

Counsel filed the instant motion to reopen and reconsider on May 24, 2010. On motion, counsel submits a letter and additional evidence. Before considering the merits of this case, the AAO will first determine whether the petitioner's submission meets the filing requirements for motions to reopen and motions to reconsider.

Counsel's submission does not qualify as a motion to reconsider. The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part, the following:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner's motion does not meet these requirements. First, counsel cites no pertinent precedent decisions to establish that the AAO's decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. Furthermore, because counsel's motion is dependent upon the evidence he submits with the instant filing, he fails to establish that the AAO's decision was incorrect based upon the evidence of record at the time it was issued. Consequently, the petitioner's motion to reconsider must be dismissed.

Although counsel's submission does not qualify as a motion to reconsider, it does qualify as a motion to reopen. The regulation at 8 C.F.R. §103.5(a)(2) states, in pertinent part, the following:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

As counsel submits several new documents in support of the motion, the AAO grants the motion to reopen the proceedings, and will fully consider all evidence submitted.

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)(A)(iii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a citizen of the United States is eligible to self-petition under these provisions if he or she is an alien:

- (CC) who was a bona fide spouse of a United States citizen within the past 2 years and –
 - (aaa) whose spouse died within the past 2 years;
 - (bbb) whose spouse lost or renounced citizenship status within the past 2 years related to an incident of domestic violence; or
 - (ccc) who 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)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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:

- (i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

* * *

- (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.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .

* * *

- (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 pertinent facts and procedural history of this case were set forth in the AAO's April 27, 2010 decision. As such, the AAO will only repeat such facts as necessary here. The petitioner, a citizen of Trinidad and Tobago, married J-S-¹ a citizen of the United States, on March 6, 2003, and they divorced on April 24, 2008. She filed the instant petition on September 23, 2008.

As the AAO fully analyzed the evidence of record at the time of its prior decision, the AAO need only consider the evidence submitted into the record after that date, which includes the following:



Battery or Extreme Cruelty

In its April 27, 2010 decision, the AAO found that the petitioner had failed to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty; that the non-physical actions of J-S- were accompanied by any coercive actions or threats of harm; or that the actions of J-S- were aimed at insuring domination or control over the petitioner. The AAO also noted that the petitioner had failed to describe, in probative detail, specific instances of abuse.

The petitioner briefly described several instances of alleged abuse in her updated May 11, 2010 affidavit. She recounted that on December 31, 2004, they were hosting a party at their home, and J-S- became intoxicated. J-S- demanded money from the petitioner and, when she refused, he

¹ Name withheld to protect individual's identity.

² The precise spelling of [redacted] s last name is unclear.

became loud and aggressive, pointed his finger at her face, and threatened to hit her. The petitioner recounted another incident that occurred on June 10, 2005 while hosting another party in their home during which J-S- again demanded money from her and when she refused, J-S- threatened to hit her. Finally, the petitioner stated that, on October 30, 2006, a heated argument broke out between J-S- and the petitioner's son over J-S-'s treatment of the petitioner, and they pushed one another. The petitioner stated that similar incidents occurred on other occasions. According to the petitioner, during each of these incidents J-S- hinted to the petitioner that she might not get her "green card" if she did not do as he wanted.

In his May 5, 2010 letter, ██████████ stated that he attended several functions at the couple's home. He stated that at the couple's New Year's party on December 31, 2004, all the guests left the party as a result of J-S-'s behavior after he cursed at the petitioner and threatened to hit her with his glass. ██████████ also stated that on September 3, 2005, he witnessed J-S- calling the petitioner names.

In his May 5, 2010 letter, ██████████ reiterated the petitioner's account of J-S-'s behavior at the parties in the couple's home on December 31, 2004 and June 10, 2005. He stated that he also went to the couple's home on several occasions "to quiet things down" and to make sure that the petitioner and the children were safe.

In his May 5, 2010 letter, ██████████ stated that J-S- was controlling and demanding. He stated that J-S- started an argument with the petitioner during a party at the couple's home on September 3, 2005 and that after things became "heated," the party ended. He also stated that when he was visiting the petitioner on December 24, 2005, J-S- came into the room and demanded money from the petitioner. When she told him that she had no money, J-S- smashed a glass into the kitchen wall and threatened to punch her.

In her May 7, 2010 letter, ██████████ reiterated the petitioner's account of J-S-'s behavior at the June 10, 2005 party, and stated that J-S- was controlling and never allowed the petitioner to talk to her friends.

Upon review, we find these statements submitted on motion insufficient to overcome our April 27, 2010 decision. First, the petitioner does not allege, and the record does not establish, that she was subjected to battery perpetrated by J-S-. Although the petitioner claims that J-S- threatened her with physical violence, her testimony on motion regarding such threats is still lacks probative detail. Nor is the petitioner's testimony sufficiently detailed to establish that J-S- was abusive toward her son. Moreover, although the record contains testimony that J-S- was controlling and did not allow the petitioner to see her friends, the testimony submitted on appeal discusses multiple parties held at the couple's home, indicating that the petitioner was able to see her friends. The petitioner has failed to establish that J-S-'s non-physical behavior was comparable to the types of 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. Nor has the petitioner established that J-S-'s non-physical behavior was accompanied by coercive actions or that it 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 J-S- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Eligibility for Immigrant Classification

Nor does the motion to reopen overcome the AAO’s determination that petitioner failed to demonstrate the existence of a qualifying relationship with a United States citizen and that she is eligible for immigrant classification as an immediate relative on the basis of such a relationship.

The record establishes that the petitioner and J-S- were no longer married by the time the petition was filed. As set forth previously, the statute states clearly that in order to remain eligible for classification despite no longer being married to a United States citizen, an alien must make two demonstrations: (1) that he or she was the bona fide spouse of a United States citizen “within the past two years;” and (2) that there was a connection between the abuse and the legal termination of the marriage. 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). Although the petitioner satisfied the first requirement by filing the Form I-360 within two years of the couple’s divorce, she has not satisfied the second: as discussed above, she has not established that she was subjected to abuse by J-S-.

The petitioner, therefore, has not demonstrated the existence of a qualifying relationship with a United States citizen and that she is eligible for immigrant classification on the basis of such a relationship.

Conclusion

Counsel’s submission does not qualify as a motion to reconsider. Although his submission does qualify as a motion to reopen, that submission fails to sustain the petitioner’s burden. The petitioner has failed to establish: (1) that she was the victim of battery or extreme cruelty perpetrated by J-S- during their marriage; and (2) that she had a qualifying relationship with a United States citizen and that she is eligible for immigrant classification on the basis of such a relationship. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), 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.

ORDER: The director’s decision of October 1, 2009 and the AAO’s decision of April 27, 2010 are affirmed. The petition remains denied.