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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **JUL 01 2011** OFFICE: VERMONT SERVICE CENTER

FILE:



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.

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 sustained.

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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that her former husband subjected her to battery or extreme cruelty during their marriage. The petitioner, through counsel, filed a timely appeal. On appeal, counsel submits a memorandum of law reasserting the beneficiary's eligibility and additional testimonial evidence.

Applicable Law

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).

Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, an individual who has divorced an abusive U.S. citizen remains eligible to self-petition under these provisions if he or she "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:

- (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 standard and 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.

Pertinent Facts and Procedural History

The petitioner, who holds citizenship in Canada and Bosnia-Herzegovina, married D-G-¹ a citizen of the United States, on December 31, 2002. They divorced on February 7, 2007. The petitioner filed the instant Form I-360 on July 15, 2008. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. After considering the evidence

¹ Name withheld to protect individual's identity.

of record, including the petitioner's response to the RFE, the director denied the petition on May 19, 2010.

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 record, we find that the petitioner has overcome the director's ground for denying this petition.

Evidentiary Standard and Burden of Proof

Counsel asserts on appeal that the director incorrectly applied the "any credible evidence" standard. However, counsel has conflated the evidentiary standard set forth by section 204(a)(1)(J) of the Act with the petitioner's burden of proof. Section 204(a)(1)(J) of the Act requires U.S. Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." *Id.* This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the [agency's] sole discretion." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for establishing the petitioner's claim list examples of the types of documents that may be submitted and reiterates, "All forms of relevant credible evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). However, in this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily satisfy the petitioner's burden of proof.

Battery or Extreme Cruelty

In both the undated self-affidavit submitted at the time she filed the petition and in her November 24, 2009 handwritten letter, the petitioner recounted in credible detail how D-G- subjected her to psychological and physical abuse during their marriage. For example, she explained how D-G- called her names; ridiculed her religious and ethnic backgrounds; was controlling and wanted to know exactly with whom she spoke while outside the home. and would call her multiple times while she was working, leave vindictive messages and verbally abuse her when she called him back. The petitioner stated that when D-G- was intoxicated, he "was always angry," and grabbed her shoulders and pushed her into walls. She also described an incident during which D-G- became angry with her after she had worked an unexpected late shift and punched her several times after she returned to the home.

The petitioner also submitted several letters from friends and acquaintances that support her claims. For example, the petitioner's brother stated in his February 26, 2008 letter that he witnessed D-G- slap the petitioner's wrist with a fork because she flipped a chicken cooking on a grill without first asking for his permission to do so, and he described other actions of D-G- which indicate a pattern of control. In his March 10, 2011 statement submitted on appeal, the petitioner's brother stated his opinion that D-G- was psychologically abusive and that he "never let her go anywhere." The petitioner's brother

further explained that the petitioner confided in him that she wanted to commit suicide rather than continue living with D-G-. [REDACTED] testimony that D-G- prohibited her from helping the petitioner secure employment; and that D-G- hung up the telephone when Ms. [REDACTED] called, telling the petitioner that a telemarketer had called, also support the petitioner's claim that D-G- tried to control her and restrict her access to others.

The testimony of the petitioner's mother, with whom the couple lived, also supports the petitioner's allegations of abuse. She described an incident in her February 26, 2008 letter during which she tried to tell D-G- that he could not yell, argue, and bang things in her home and that, in response, D-G- grabbed the petitioner by the hand and forcibly dragged her into another room and yelled at her. In her March 10, 2011 letter submitted on appeal, she stated that she saw the petitioner with a black eye shortly after she heard D-G- yelling at her.

The petitioner also submits a March 21, 2011 letter on appeal from [REDACTED], an advocate at the Seeds of Hope Agency in Waterloo, Iowa, a domestic violence outreach agency. Ms. [REDACTED] stated that the petitioner told her that D-G- physically abused her, called her names, and purposefully kept her awake at night; and that she still has trouble trusting people due to the abuse she suffered. Ms. [REDACTED] described witnessing the petitioner endure physical pain under the stress of recalling her former husband's abuse. Ms. [REDACTED] also confirmed that the petitioner had attempted suicide and continued to suffer from insomnia and other enduring effects of the abusive relationship.

When viewed in the aggregate, the preponderance of the relevant evidence submitted below and on appeal establishes that during their marriage, D-G- subjected the petitioner to both battery and extreme cruelty as those terms are defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

As set forth above, the petitioner has overcome the director's ground for denial. She has established on appeal that D-G- subjected her to battery and extreme cruelty during their marriage. Accordingly, the petitioner has demonstrated her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the appeal will be sustained.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met her burden.

ORDER: The appeal is sustained and the petition is approved.