



U.S. Citizenship
and Immigration
Services

(b)(6)

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IN RE: Petitioner:

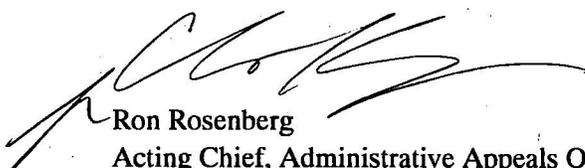
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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,


Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks immigrant classification pursuant to 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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s husband subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel reasserts the petitioner’s eligibility and submits additional evidence.

Relevant Law and Regulations

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 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].

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 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.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Japan who married J-B-¹, a United States citizen, in Harpswell, Maine on [REDACTED]. The petitioner was last admitted to the United States on June 9, 2010 under the visa waiver program. She filed the instant Form I-360 on September 7, 2010. The director subsequently issued a Request for Evidence (RFE) to show that the petitioner was subjected to battery or extreme cruelty during her marriage. The petitioner, through counsel, timely responded with additional evidence, which the director found insufficient to establish the petitioner's eligibility. Counsel filed a timely appeal.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims and the evidence submitted on appeal have overcome the director's grounds for denial and the appeal will be sustained for the following reasons.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal demonstrates that the petitioner was subjected to extreme cruelty and battery during her marriage. In the affidavit the petitioner initially submitted, dated September 2, 2010, she stated that she, J-B- and their three children resided in Japan where he was stationed in the military. She recounted that during their marriage J-B- had a short temper and

¹ Name withheld to protect the individual's identity.

frequently demeaned her. She stated that in April 2008, J-B- became angry at a wedding reception and when she attempted to calm him, he yelled at her and grabbed her arm. She stated that later that evening he repeatedly slapped her in their hotel room. The petitioner recalled that in November 2009, two days after she informed J-B- of her plans to separate from him, he chained the door to their home to prevent her from entering. The petitioner recalled that while she was away for a week in May 2010, J-B- took their three children to the United States without her knowledge or permission and requested an ex parte custody order. The petitioner stated that she subsequently learned that J-B- accessed her personal electronic mail account and monitored her telephone calls.

The petitioner submitted a psychological evaluation from [REDACTED] who assessed the petitioner on two occasions in August 2010. [REDACTED] reviewed the petitioner's history and concluded that the petitioner suffered repeated verbal abuse and public humiliation during her marriage to J-B-. He specifically found that J-B-'s act of taking their three children to the United States without the petitioner's consent was vindictive and consistent with a pattern of abuse and humiliation. [REDACTED] diagnosed the petitioner major depressive disorder and generalized anxiety disorder, which he found to be a function of the abuse in the marriage. In response to the RFE, the petitioner submitted a letter, dated November 7, 2011, from a licensed clinical social worker, [REDACTED] stated that the petitioner, who at the time of the letter had been his client for one year, was suffering from Posttraumatic Stress Disorder (PTSD) as a result of repeated verbal and mental abuse by J-B-. He opined that J-B-'s decision to take their three children to the United States without the petitioner's knowledge was an abusive act committed to maintain power and control.

In denying the petition, the director acknowledged that the petitioner's separation from her children was a traumatic experience, but stated that this incident is a child custody issue that is common in divorce proceedings. The director noted that name calling is not considered battery or extreme cruelty for immigration purposes. The director further noted that the petitioner's assertion that she was slapped by her husband is contradicted in previous testimony. On appeal, counsel asserts that the director analyzed each incident of abuse in a vacuum instead of determining whether the incidents are part of an overall pattern of violence. Counsel contends that the record does not reflect a contradiction in testimony and the director does not specifically identify the location of the alleged contradiction. Counsel submits a second letter from [REDACTED] who opines that J-B- committed parental kidnapping in an effort to control the petitioner. [REDACTED] asserts that this incident combined with other abusive tactics by J-B- established a pattern of control that resulted in the petitioner suffering from PTSD.

Upon a review of the record, the AAO finds that the petitioner has established that she was subjected to battery and extreme cruelty during the marriage. The petitioner in her affidavit describes in probative detail the verbal, mental and physical violence she suffered by her husband, including the kidnapping of their three children. The description of these incidents is consistent throughout the record. When considered in the aggregate, the incidents constitute an overall pattern of violence by her husband. Therefore, the petitioner has demonstrated by a preponderance of the evidence that her husband subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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Page 5

Conclusion

On appeal, the petitioner has overcome the basis of denial and established that she was subjected to battery and extreme cruelty during her marriage. She is consequently eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these 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, 375 (AAO 2010). Here, that burden has now been met. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.