



U.S. Citizenship
and Immigration
Services

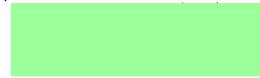
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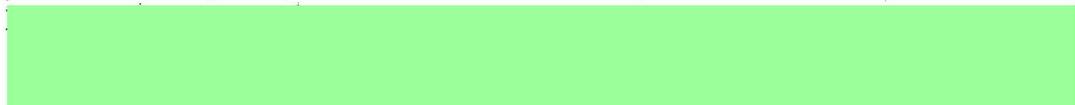
Date: JAN 03 2013

Office: VERMONT SERVICE CENTER

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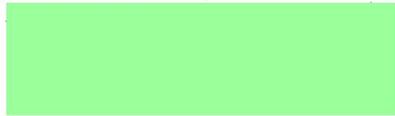


IN RE:



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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630 or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

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 dismissed.

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 United States citizen spouse.

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

On appeal, the petitioner, through counsel, submits a brief and 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 or the self-petitioner's child, 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 citizen of Guyana who entered the United States as a B-1 visitor on July 13, 2005. The petitioner married [REDACTED] a U.S. citizen, in Santa Ana, California on August 27, 2009. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty by [REDACTED] against her. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

¹ Name withheld to protect the individual's identity.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's husband did not subject her to extreme cruelty and the evidence submitted on appeal fails to overcome this ground for denial. The petitioner initially submitted a personal affidavit as evidence of the alleged abuse inflicted upon her by [REDACTED]. In response to the RFE, the petitioner submitted a second personal affidavit, hospital medical reports, a letter from Dr. [REDACTED] and letters from friend [REDACTED] and daughter [REDACTED].

In her first affidavit, the petitioner stated that she met [REDACTED] in 2006, had a nice relationship and got married on August 27, 2009. She stated that shortly after they were married, [REDACTED] filed an immigrant visa petition on her behalf and attended the interview with her on March 10, 2010. During the interview, the U.S. Citizenship and Immigration Services (USCIS) officer requested additional documents and a second interview was scheduled. The petitioner recounted that [REDACTED] did not appear for the second interview and the case was dismissed due to abandonment. The petitioner further recounted that [REDACTED] successfully reopened the case and another interview was scheduled. [REDACTED] - again failed to appear at the interview and the case was dismissed for a second time. The petitioner stated that due to [REDACTED]'s failure to appear at the two scheduled interviews, she suffered emotionally and mentally. She stated that she began to have trouble sleeping, became depressed, and sought medical treatment for the "emotional turmoil" that she was experiencing. In her second affidavit submitted in response to the RFE, the petitioner stated that [REDACTED] repeatedly lashed out at her when she suggested ways of obtaining the documents requested by the USCIS officer. She stated that he forced her to make payments on back taxes that he owed and that she was fearful of him. The petitioner did not, in either of her affidavits, cite to specific examples or incidents of abuse or provide any probative details about [REDACTED]'s treatment of her. The petitioner's statements do not demonstrate that her husband ever battered her, or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The director also correctly determined that the remaining relevant evidence in the record did not establish that the petitioner was subjected to extreme cruelty by [REDACTED]. The medical reports indicated that the petitioner may have hypertension and did not mention the petitioner's husband or any domestic violence as a causative factor of her physical health condition. The letter from Dr. [REDACTED] is brief and stated only that the petitioner has been seen twice by his office for treatment. The letter did not mention [REDACTED] or any domestic violence as a causative factor of her mental health condition. Likewise, the letters from the petitioner's daughter [REDACTED] and her friend [REDACTED] did not provide probative details regarding the claimed abuse. Ms. [REDACTED] stated that the petitioner told her of one occasion when [REDACTED] threw food that the petitioner had prepared for dinner onto the floor, calling it dog food. She did not provide further information about this incident. Ms. [REDACTED] stated that the petitioner is afraid of [REDACTED] but she did not describe whether specific incidents of abuse were witnessed or otherwise establish her knowledge of such abuse.

On appeal, counsel argues that the petitioner is a "victim of extreme cruelty" because [REDACTED] "maliciously" failed to attend the USCIS interviews. However, as the director explained, the record

failed to demonstrate that [REDACTED]'s actions constituted extreme cruelty and the evidence submitted on appeal further fails establish the requisite battery or extreme cruelty. The petitioner submits a psychological evaluation from [REDACTED], Doctor of Psychology, and a third personal affidavit. In her affidavit, the petitioner states that due to the abuse, she has gained weight, feels anxious and depressed, and discovered that her husband was unfaithful. She does not give further probative information regarding any specific incidents of the claimed abuse. In his evaluation, Dr. [REDACTED] diagnoses the petitioner with Major Depression and attributes it to [REDACTED]'s abandonment of her. While we do not question Dr. [REDACTED]'s expertise, he does not state the basis for this conclusion and he provides no further, substantive information regarding the claimed abuse. When viewed in the aggregate, the relevant evidence in the record is insufficient to establish that [REDACTED] battered the petitioner, or that his behavior constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

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 not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.