



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 03 2013

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Petitioner: [REDACTED]

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)

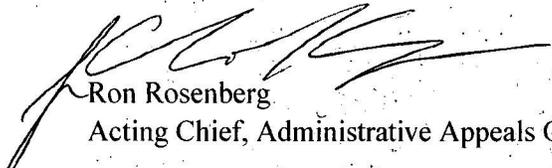
ON BEHALF OF PETITIONER:
[REDACTED]

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 with the field office or service center that originally decided your case by filing a 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 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 citizen of Israel who married a U.S. citizen on November 3, 2009 in Hollywood, Florida. The petitioner last entered the United States with advance parole on June 29, 2010. The petitioner filed the instant Form I-360 on June 6, 2011. The director subsequently issued a Request for Evidence (RFE) of the petitioner's husband's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel 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, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's claims and the evidence submitted on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty and the additional evidence submitted on appeal fails to overcome this ground for denial. In her initial statement, the petitioner recalled that her husband traveled from their residence in Florida to Colorado for one week to look for employment. She stated that when he returned to Florida she noticed that he had changed and was being loud. The petitioner recalled that

during an argument about their possible to move to Colorado, her husband yelled at her and called her names. She stated that her husband cooked food that was not Kosher so that she could not eat it. The petitioner recounted that her husband was no longer physically intimate with her, told her that he was not attracted to her, insulted her and had a short temper. She stated that her husband did not support her when she needed dental surgery and she had to travel to Israel alone for the surgery. The petitioner recalled that when she returned to Florida she realized that her husband had abandoned her and she found pictures of him with another woman. In her unsigned statement submitted in response to the RFE, the petitioner reiterated her previous statements. She added that when her husband came back from Colorado they had several disagreements during which her husband would call her names. The petitioner also recalled that in April 2010, her husband told her that she is overweight and he went out to dinner without her. She recounted that her husband wanted her to cook and clean and threatened her with deportation. The petitioner's statements do not indicate 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 petitioner initially submitted two letters from [REDACTED], Psy.D, L.M.H.C. of the Cognitive Health Network. Dr. [REDACTED] stated in one, undated letter that she had diagnosed the petitioner with adjustment disorder with depressed mood. In her other letter, Dr. [REDACTED] repeated her diagnosis and stated that the petitioner's husband abandoned her. Neither of Dr. [REDACTED]'s letters indicates that the petitioner was subjected to battery or extreme cruelty by her husband. The petitioner also submitted a letter from [REDACTED], MSW with the Jewish Community Services of South Florida. Ms. [REDACTED] stated that the petitioner was suffering from grief because her husband abandoned her. Ms. [REDACTED] noted that during the petitioner's marriage her husband was "taunting and condescending." Ms. [REDACTED] letter does not indicate that the petitioner was subjected to battery or extreme cruelty by her husband.

In response to the RFE, the petitioner submitted a psychological evaluation from [REDACTED] Ph.D., dated November 22, 2011. Dr. [REDACTED] reported that the petitioner stated that after her husband returned from Colorado he called her names, isolated her from her friends, threatened to call immigration officials, and controlled her eating habits. Dr. [REDACTED] further reported that the petitioner stated that her husband abandoned her and left pictures of himself and another woman. Dr. [REDACTED] opined that the petitioner was emotionally abused by her husband because he maintained economic coercion and control over her, isolated her and humiliated her. Although Dr. [REDACTED] indicated that the petitioner's husband isolated her from her friends, maintained economic control over her and controlled her eating habits, the petitioner does not herself describe these events in either of her personal statements. Dr. [REDACTED] also failed to describe in any detail the alleged economic coercion and control and social isolation by the petitioner's husband.

On appeal, counsel submits another statement from the petitioner, in which she reiterates that when her husband returned from Colorado he constantly ignored and insulted her. She recalls that her husband harassed her by cooking non-Kosher meat and other foods she could not eat. The petitioner briefly recounts that her husband demanded that she cook food, clean dishes, insulted her and socialized without her. She reiterates that her husband abandoned her when she went to Israel and he left photographs of himself and another woman. The petitioner's statements do not indicate that her

husband's behavior involved threats of violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulations.

On appeal, counsel asserts that the petitioner has been subjected to verbal and emotional abuse by her husband. Counsel states that the petitioner's husband verbally insulted her cooking, appearance and English skills and he harassed her by purchasing food products she could not eat. Counsel, however, does not describe how the petitioner's husband's behavior was part of a pattern of coercive control or otherwise constituted psychological abuse. 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

On appeal, the petitioner has failed to overcome the director's determination that she did not establish the requisite battery or extreme cruelty. She is consequently ineligible 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 not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.