



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: JAN 28 2013

Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-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)

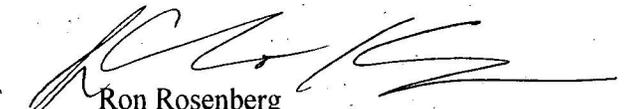
ON BEHALF OF PETITIONER:
[REDACTED]

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 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 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 request 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 that any motion must 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 submits a brief and an updated statement from the petitioner.

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).

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.

Facts and Procedural History

The petitioner is a citizen of Syria who entered the United States on October 6, 2002, as a K-1 fiancée. The petitioner married Z-S-¹ who is now a U.S. citizen, on November 30, 2002, in Illinois. The petitioner filed the instant Form I-360 on February 22, 2011. The director subsequently issued a Request for Evidence (RFE) of her husband's battery or extreme cruelty. The petitioner 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.

On appeal, counsel submits a brief and the petitioner's updated statement. In the brief, counsel claims that the petitioner has submitted sufficient evidence to establish her eligibility and that the petitioner's husband called her names on a consistent basis showing a pattern of mental abuse.

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 brief and evidence submitted on appeal, fails to establish the petitioner's eligibility. Counsel's contentions on appeal do not overcome the director's ground for denial. The appeal will be dismissed for the following reasons.

¹ Name withheld to protect identity.

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 arguments made on appeal fail to overcome this ground for denial. In her first statement, the petitioner stated that her husband began humiliating her and calling her names. The petitioner's brief reference to her husband's name-calling does not indicate that his behavior was part of an overall pattern of violence or otherwise constituted psychological abuse. 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 submitted two letters from [REDACTED] and [REDACTED] stated that the petitioner had been depressed for the past two years and that her husband had been verbally abusing her and leaving her home alone. [REDACTED] indicated that the petitioner's husband put her down, did not respect her, and humiliated her. None of the affiants discuss any battery, nor do they provide any specific, probative details of any behavior that constitutes extreme cruelty.

The record also contains a letter from [REDACTED] a psychiatrist, and his medical notes. Dr. [REDACTED] reported that after the petitioner's father condemned her and threatened to kill her, she developed symptoms of depression. The psychiatrist made no mention of any behavior by the petitioner's husband that could be construed as battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi), nor did he contend that the petitioner's husband battered or abused her. The director correctly found the relevant evidence submitted below insufficient to support the petitioner's claims of abuse.

On appeal, counsel contends that the petitioner's husband's conduct did not occur sporadically but on a consistent basis throughout the marriage, and that the "implicit intent of the applicant's spouse was control." Counsel, however, does not provide any evidence to support this contention. In her statement on appeal, the petitioner reiterates that her husband called her names and yelled at her. She recalls that her husband would accuse her of having affairs in public and yell at her in front of strangers. The relevant evidence does not establish that the petitioner's husband battered her or that his behavior involved threats of 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). 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

(b)(6)

Page 5

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.