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Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: [Redacted]  
EAC 06 088 50162

Office: VERMONT SERVICE CENTER

Date: **AUG 22 2007**

IN RE: Petitioner: [Redacted]

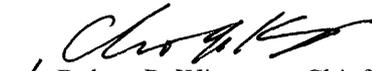
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, 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 Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition because the petitioner did not establish that her husband battered or subjected her to extreme cruelty.

The petitioner, through counsel submits a timely appeal.

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 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 standard and 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Vietnam who entered the United States on August 16, 2005 as a K-1 nonimmigrant. On September 6, 2005, the petitioner married D-N,<sup>1</sup> a U.S. citizen, in Nevada. The petitioner filed the instant Form I-360 on January 30, 2006. On April 3, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, requested additional time to respond to the director's request on May 30, 2006. On July 7, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded to the NOID. The petitioner's marriage to D-N- was dissolved on July 24, 2006 by order of the Madison Superior Court in Madison County, Indiana. The director denied the petition on October 3, 2006, finding that the petitioner failed to establish that she had been battered by or subjected to extreme cruelty during her marriage.

On appeal, counsel argues that the petitioner's claims adequately establish that she was subjected to extreme mental cruelty by her citizen spouse. As will be discussed, the evidence contained in the record is not sufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her citizen spouse. Counsel's argument on appeal is not sufficient to overcome this finding.

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<sup>1</sup> Name withheld to protect individual's identity.

Initially, we note that neither the petitioner nor counsel makes any claim related to threats of or actual physical abuse or battery and the record contains no evidence of physical abuse or violence. Thus, our discussion focuses only on the petitioner's claims of extreme cruelty.

In her initial declaration, dated January 24, 2005, the petitioner claimed that immediately after her marriage, her spouse took her back to his home where he wanted her to live and sleep with him and his girlfriend in Indiana. The petitioner states that from September 6<sup>th</sup> to December 9<sup>th</sup>, 2005 her spouse wanted her to stay home "as a parttime homekeeper [sic]" while her spouse and his girlfriend went to work at their nail salon together. The petitioner then claims that on December 9, 2005, her spouse and girlfriend attempted to get the petitioner to sign annulment papers. The petitioner did not know what the papers were and refused to sign them until someone translated the papers from English to Vietnamese. The petitioner claims that her refusal to sign the papers caused her spouse to be "very upset and hostile" towards her and threaten to "cut off his sponsorship." Due to "the urgent situation" the petitioner contacted her cousin in California who bought the petitioner a plane ticket to leave Indiana for California.

With the initial submission the petitioner also submitted a letter from [REDACTED] the owner of the store from which the petitioner placed the call to her cousin asking for help to leave Indiana. [REDACTED] indicates that when the petitioner came into his store she was in a "very fearful-distress situation" and after making several phone calls she "looked relaxed."

The petitioner also submitted a letter from her cousin, [REDACTED] who confirms receipt of a phone call from the petitioner on December 9<sup>th</sup> 2005 and that she bought the petitioner a plane ticket to California. While [REDACTED] did indicate that the petitioner felt "unsafe" staying with her spouse, she did not elaborate on the reason for the petitioner's feelings.

In response to the director's NOID, the petitioner submitted a statement dated August 23, 2006, in which she reiterated her previous claim that after her marriage her spouse made her live in a home with his girlfriend and wanted the petitioner to sleep with them in the same bed. The petitioner indicated that she refused acceptance of this relationship and tried to persuade her spouse to change his conduct. The petitioner then claimed that her spouse "scolded" her, spit at her, yelled at her, and "said profanity" to her in front of his girlfriend. The petitioner also claimed that she was totally isolated and dependent on her spouse until the incident where she refused to sign the annulment papers and contacted her cousin for help.

On appeal, counsel argues that the petitioner has established her eligibility due to her spouse's extreme mental cruelty "by insisting to have a[n] open bigamous relationship." Counsel then cites to *Hernandez v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> Cir. 2003), and argues that the petitioner's claims fall "squarely" within the court's definition of extreme cruelty in *Hernandez*. We do not find counsel's arguments to be persuasive. Contrary to counsel's assertions, neither the petitioner's statements nor any document in the record supports the conclusion that the petitioner's spouse was a bigamist. *Black's Law Dictionary* (6th Ed., West 1990) defines bigamy as:

The criminal offense of willfully and knowingly contracting a second marriage (or going through the form of a second marriage) while the first marriage, to the knowledge of the offender, is still subsisting and undissolved.

The record contains no evidence to establish that the petitioner's spouse entered into a second marriage while still married to the petitioner. The allegation that the petitioner's spouse was engaged in an extramarital affair, while it may be indicative of his insensitivity and unkind treatment, does not establish a claim of extreme cruelty as contemplated by the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The actions and incidents described by the petitioner and by [REDACTED] and [REDACTED] also fail to meet the standard described in [REDACTED]. In [REDACTED] the petitioner [REDACTED] had been violently physically assaulted by her spouse on several occasions. After two assaults, which took place while [REDACTED] resided with her spouse in Mexico, [REDACTED] fled to the United States fearing that her spouse would be able to find her in Mexico. After a time, the petitioner's spouse obtained [REDACTED] phone number in the United States and persuaded her to let him visit her in the United States. Once in the United States, [REDACTED] spouse convinced [REDACTED] of his remorse and agreed to marriage counseling. The two returned to Mexico where, after a brief period, [REDACTED] was again brutally attacked by her spouse. After receiving medical treatment for her injuries, the petitioner returned to the United States. The petitioner was placed in proceedings and sought suspension of deportation.<sup>2</sup> The immigration judge denied [REDACTED] suspension request finding that her testimony lacked credibility and that she failed to prove that she was a victim of domestic violence. On appeal to the Board of Immigration Appeals (BIA), the BIA reversed the Immigration Judge's adverse credibility determination but concluded that because the physical violence occurred in Mexico, [REDACTED] was unable to show that she had been battered by or subjected to extreme cruelty in the United States.<sup>3</sup> In reviewing the BIA's decision, the Ninth Circuit court found there was no dispute that the abuse suffered by the petitioner in Mexico would qualify as battery or extreme cruelty. The sole question considered by the Court was whether the petitioner's spouse's actions "in seeking to convince [REDACTED] to leave her safe haven in the United States in which she had taken refuge can be deemed to constitute extreme cruelty." *Id.* at 836. In determining that the petitioner had been subjected to extreme cruelty, the court found that the "interaction between [REDACTED] and her spouse in Los Angeles made up an integral stage in the cycle of domestic violence, and thus the actions taken by [REDACTED] spouse in order to lure [REDACTED] back to the violent relationship constitute extreme cruelty." *Id.*

These facts are not applicable to the instant case in which the petitioner has not shown that there was any cycle of domestic violence. The Ninth Circuit court recognized that the interaction that took place between [REDACTED] and her spouse in the United States was during "a well-recognized stage within the cycle of violence," known as the "contrite" phase is both "psychologically and practically crucial to maintaining the batterer's control." *Id.* at 828. In this case, the petitioner makes clear that she was able

<sup>2</sup> Although not relevant to this discussion, we note that Hernandez also sought relief based upon adjustment of status through a Form I-130 filed on her behalf by her spouse.

<sup>3</sup> Although the current law does not contain the requirement that the abuse have occurred in the United States, the law applicable at the time of [REDACTED] petition did include this requirement.

to repeatedly refuse her spouse's requests and demands. These facts do not demonstrate that the petitioner's spouse attempted to or actually ever maintained control over the petitioner. The petitioner's claims that her spouse made her do housework, scolded her, and spit at her, lack specific details and also do not amount to a finding of extreme cruelty. As noted by the *Hernandez* court, because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship [rises] to the level of domestic violence . . . ." *Id.* at 840.

The general claims made in the testimonial evidence fail to establish that the petitioner was the victim of any act or threatened act of violence, including any forceful detention, psychological or sexual abuse or exploitation, or that her spouse's actions were part of an overall pattern of violence. Accordingly, the petitioner has failed to establish that she was battered by or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the petitioner is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.