



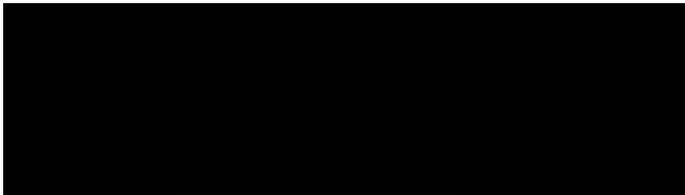
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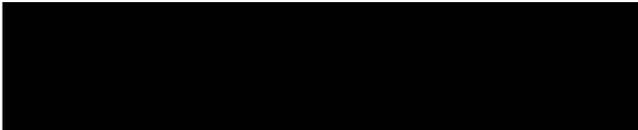


Office: VERMONT SERVICE CENTER

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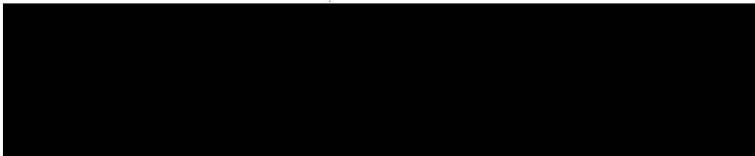
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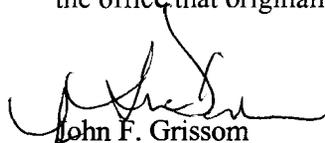
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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.


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The matter will be remanded for further action.

The petitioner seeks immigrant classification under 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 on the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty.

Counsel filed a timely appeal on June 27, 2008.

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, 8 U.S.C. § 1154(a)(1)(J) 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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 petitioner is a citizen of the Dominican Republic who married R-S-,¹ a citizen of the United States, on January 29, 2005. R-S- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on January 4, 2006. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date.

The petitioner filed the instant Form I-360 on June 15, 2007. On February 13, 2008, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner was subjected to battery or extreme cruelty by R-S-. The petitioner responded to the director's request on March 7, 2008.

After considering the evidence of record, the director denied the petition on May 29, 2008.

¹ Name withheld to protect individual's identity.

Battery or Extreme Cruelty

The sole issue on appeal is whether the petitioner has established that she was the victim of battery and/or extreme cruelty perpetrated by R-S-. The record of proceeding contains a self-affidavit, two letters from [REDACTED], a letter from [REDACTED], and evidence that the petitioner has been described medication.

In her undated self-affidavit, which was submitted in response to the director's February 13, 2008 request for additional evidence, the petitioner explained how she married R-S- while he was incarcerated. Although he treated her well while incarcerated, R-S- began swearing at the petitioner, and calling her names. R-S- then began having an extramarital affair. He also began to physically abuse the petitioner. The petitioner explains that, as a result of R-S-'s abuse, she began having gastric problems, migraines, insomnia, and ulcers. According to the petitioner, she was repeatedly told by doctors that these conditions had been caused by stress. She also states that R-S- was financially abusive, and describes an incident in which R-S- "talked me into an agreement which caused me to lose the other property I had in the Dominican Republic." The petitioner states that she stayed with R-S- until the day that he grabbed her neck and almost suffocated her.

In his May 4, 2007 letter, [REDACTED] states that the petitioner visited his office for acute gastritis in January 2007. She was diagnosed with both chronic gastritis and gastroesophageal reflux disease; both conditions were treated with medication. [REDACTED] states that the petitioner has been to his office on several occasions since January 2007.

In her May 24, 2007 letter, [REDACTED] a psychotherapist at [REDACTED], states that the petitioner had been receiving services from [REDACTED] for two weeks. [REDACTED] states that R-S- was incarcerated from 1992 until 2006 and that the petitioner told her that although the marriage had been loving and one of mutual support during his incarceration, R-S-'s behavior changed after his release from prison. She testifies that the petitioner told her that R-S- became indifferent toward her and became verbally abusive "this January." He also began an adulterous affair. [REDACTED] states her opinion that "[i]t is clear from the history taken so far that [the petitioner] is depressed and was abused by her husband." [REDACTED] also states that the petitioner's present diagnosis is Adjustment Disorder with Depressed Mood.

In his May 29, 2008 denial, the director found the petitioner's evidence unpersuasive. The director found that although it was apparent that the petitioner was feeling the typical sadness and depression that results from a deteriorating marriage, her reaction was not unlike the emotional stressors that typically result from a troubled relationship. The director also stated that marital tensions and incompatibilities such as apathy or infidelity, which place strains on a marriage, and may result in the disintegration of the marriage, do not, by themselves, constitute extreme cruelty.

On appeal, counsel submits updated letters from [REDACTED] and [REDACTED]. In his March 18, 2008 letter, [REDACTED] states that the petitioner has been under his care since June 2006.

Although much of his letter is illegible, it appears as though he is stating that the petitioner is taking medication for depression and peptic ulcer disease.

In her July 21, 2008 letter, [REDACTED] largely repeats the assertions of her earlier letter, except that she now states that R-S- was incarcerated from 2002 through 2006, whereas in her previous letter she stated that he had been incarcerated from 1992 through 2006. [REDACTED] also states that it is clear that the petitioner was abused by her husband, both verbally and physically. She also states that the petitioner's diagnosis is still Adjustment Disorder with Depressed Mood.

The record also contains evidence of the petitioner's prescription medication.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition. The petitioner has not established that she was subjected to battery or extreme cruelty. With regard to battery, the petitioner's generalized assertions in her testimony are insufficient. As noted previously, the petitioner's descriptions of the battery she allegedly suffered consist of her statements that she was physically abused, and that on one occasion R-S- grabbed her neck and almost suffocated her. However, such generalized statements are insufficient. In a case such as this, where there is no documentary evidence of abuse, such as restraining orders or police reports, the petitioner's testimony is critical. However, the petitioner's testimony fails to provide probative, detailed information regarding specific instances of abuse.

Nor does the petitioner's testimony establish that she was subjected to extreme cruelty. While the actions of R-S- may have been cruel and unkind, the petitioner's testimony does not indicate that they rose to the level of extreme cruelty. As noted by the director, marital tensions and incompatibilities that place severe strains on a marriage, and in fact may lead to the marriage's disintegration, do not, in and of themselves, constitute extreme cruelty. There is no indication that his non-physical behavior was accompanied by coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner.

Nor do the letters from [REDACTED] and [REDACTED] establish that the petitioner was subjected to battery or extreme cruelty. [REDACTED] draws no connection between the petitioner's medical conditions and any abuse that she suffered. While [REDACTED] states that the petitioner was subjected to abuse, inconsistencies between her two letters undermine the credibility of her assertions. In her May 24, 2007 letter, [REDACTED] stated that although R-S- had been released from prison in January 2006, he did not become verbally abusive until "this January" (i.e., January 2007). However, in her July 21, 2008 letter, [REDACTED] stated that R-S- had been released from prison in January 2006, and that he became verbally abusive "that January" (i.e., January 2006). [REDACTED] claimed in her first letter that R-S- became verbally abusive in January 2007, and she claimed in her second letter that R-S- became verbally abusive in January 2006. She also claimed in her first letter that R-S- was incarcerated in 1992, but claimed in her second letter that he was incarcerated in 2002. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies.

Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, even if her testimony did not contain these inconsistencies, it would still be insufficiently vague and generalized to establish the petitioner's claim. [REDACTED] also fails to indicate the frequency of the petitioner's visits to Inwood.

Nor does the evidence that the petitioner has been prescribed medication establish that she was subjected to battery or extreme cruelty, as there is no evidence of record to link any of these prescriptions to any abuse that she suffered.

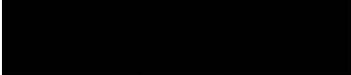
Again, while R-S-'s actions as described in the record may have been unkind and inconsiderate, they do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor does the record establish that R-S-'s non-physical behavior was accompanied by coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. As noted by the court in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), 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. . . ." The petitioner has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. She has failed to establish 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

The AAO agrees with the director's determination that the petitioner has failed to establish that her husband subjected her to battery or extreme cruelty. However, the record indicates that the director did not issue a notice of intent to deny the petition (NOID) before he issued his decision. Although the record establishes that the petitioner is ineligible for the benefit sought, the petition must be remanded, solely on procedural grounds, so that the petitioner has the opportunity to respond to a NOID. The petition must be remanded to the director for issuance of a NOID in compliance with the regulation in effect at 8 C.F.R. § 204.2(c)(3)(ii)² on the date this petition was filed. On remand, the director need only address the issues before the AAO on appeal; i.e., whether the petitioner has demonstrated that she was subjected to battery or extreme cruelty by R-S-.

As always, the burden of proving eligibility for the benefit sought rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

² USCIS promulgated a rule on April 17, 2007 related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (Apr. 17, 2007). The rule became effective on June 18, 2007, *after* the filing of this petition on June 15, 2007.



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ORDER: The director's May 29, 2008 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which, if adverse to the petitioner, is to be certified to the AAO for review.