

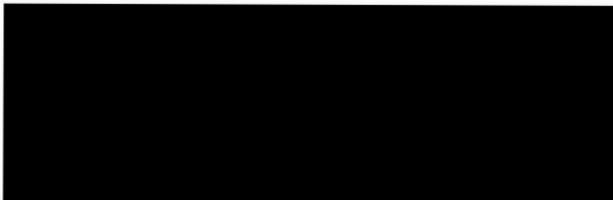
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
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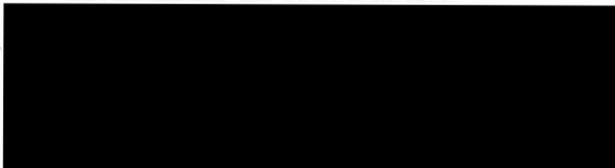
Office: VERMONT SERVICE CENTER

Date: **MAR 06 2009**

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)

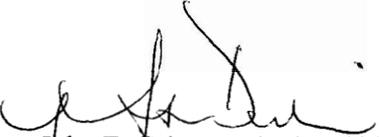
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting 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 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 because the petitioner did not establish that her husband subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel indicates that he is not submitting a separate brief or evidence. Counsel asserts that the petitioner has already provided ample documents and evidence to establish that she was subjected to extreme cruelty by her U.S. citizen husband.

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 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 filed 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 Thailand who was admitted into the United States on September 10, 2002, as a K-1 fiancée of a U.S. citizen. On September 17, 2002, the petitioner married V-R¹, a U.S. citizen, in Maywood, Illinois. On October 18, 2002, the petitioner filed a Form I-485, Application to Register Permanent Resident or Adjust Status, which was denied on September 25, 2003, due to abandonment. On October 21, 2003, the petitioner filed a second Form I-485, Application to Register Permanent Resident or Adjust Status, which was again denied on October 6, 2005, due to abandonment.

The petitioner filed the instant Form I-360 on October 5, 2005. On November 28, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite qualifying relationship, good moral character, and battery or extreme cruelty. The petitioner, through counsel, responded to the RFE with additional evidence. On March 21, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded to the NOID with additional evidence. On October 16, 2006, the director denied the petition on the aforementioned ground. Counsel timely appealed.

¹ Name withheld to protect individual's identity.

As stated above, counsel asserts on appeal that the petitioner has already provided ample documents and evidence to establish that she was subjected to extreme cruelty by her U.S. citizen husband.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- The petitioner's undated, unsigned statement submitted in response to the RFE; and
- The August 10, 2006 psychological report of the petitioner by [REDACTED]

In her undated, unsigned statement submitted in response to the RFE, the petitioner states that she and her husband married in September 2002 and lived with his family until 2004, whereupon they moved to their own place. The petitioner explains that their marital problems began in May 2005, at which time she refused her husband's request for all her money to send to his family in Thailand. The petitioner states that her relationship with her husband became very tense and that he made her feel stupid and afraid by calling her names. The petitioner further explains that she worked 60 hours or more at his family's restaurant while he hardly worked and stayed at home. The petitioner states that her husband threatened her with deportation if she did not work up to 70 hours a week and turn over all her money to him.

The petitioner does not explicitly state or otherwise indicate that her husband subjected her to battery. Accordingly, we will only discuss the petitioner's claim of extreme cruelty. The petitioner's testimony does not indicate that her husband's behavior beginning in May 2005 rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not describe in probative detail any particular incidents where her husband threatened her with physical or mental injury. The petitioner's statements regarding her husband calling her names, asking for her money, and working only minimum hours do not establish that her husband subjected her to psychological, sexual abuse or exploitation, or that his actions were part of an overall pattern of violence.

The report from [REDACTED] also fails to establish that the petitioner's husband subjected her to extreme cruelty. [REDACTED] states that the petitioner was referred by her counsel and that his report is based on one meeting with the petitioner of unspecified length on July 31, 2006, one year after the petitioner separated from her husband. [REDACTED] diagnoses the petitioner with "Adjustment Disorder with Depression" and states that it is his impression that the petitioner's "condition is transient and that she has strengths to rebound from her ill-fated marriage."

_____ testimony fails to establish that the behavior of the petitioner's husband rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Specifically, [REDACTED] finds that the petitioner seems to have been financially exploited by her husband and his family, and

concludes that the petitioner's condition is transient and that she has the strength to rebound.

The petitioner does not claim and the record does not indicate that the petitioner's husband subjected her to battery. The relevant evidence also fails to demonstrate that the petitioner's husband subjected her to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.