

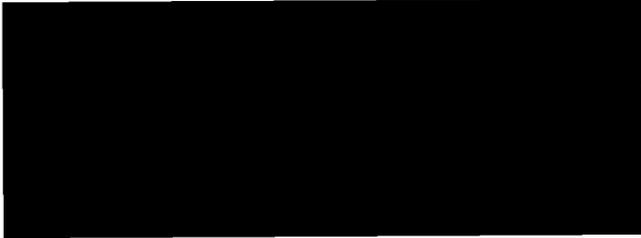
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE:

EAC 06 154 52196

Office: VERMONT SERVICE CENTER

Date:

MAR 09 2009

IN RE:



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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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

Counsel submitted a timely appeal on May 29, 2007

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 (ii) or (iii) of subparagraph (B) . . . , 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 record of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Mexico who entered the United States in L-1 status in September 2003. She married M-C-,¹ a United States citizen, on May 12, 2005. M-C- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on July 14, 2005. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on that same date. The Form I-130 was withdrawn, at M-C-'s request, on February 25, 2006. The Form I-485 was denied on February 25, 2006 as well. Counsel filed a motion to reconsider the denial of the Form I-485 on March 24, 2006.

The petitioner filed the instant Form I-360 on April 24, 2006. On September 22, 2006, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner shared a joint residence with M-C-; that she was subjected to battery and/or extreme cruelty

¹ Name withheld to protect individual's identity.

by M-C-; and that she is a person of good moral character. The petitioner responded on December 18, 2006, and submitted additional evidence. The director issued a notice of intent to deny (NOID) the petition on January 26, 2007, which notified the petitioner of deficiencies in the record and afforded her the opportunity to submit further evidence to establish that the petitioner shared a joint residence with M-C-; that she was subjected to battery and/or extreme cruelty by M-C-; and that the petitioner entered into marriage with M-C- in good faith. The petitioner responded on March 26, 2007 and submitted additional evidence. After considering the evidence of record, the director denied the petition on April 27, 2007.

At the outset of its analysis, the AAO will address counsel's assertion that one of the issues on appeal is whether the petitioner would suffer extreme hardship if the Form I-360 is denied. Counsel is mistaken. Hardship that would accrue to the petitioner should the Form I-360 be denied is not a factor to be considered here. The criteria to be established in this case were set forth previously, and any hardship that would accrue to the petitioner or her children is not a relevant consideration in this case.

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 perpetuated by M-C-. In support of her assertion that she was the victim of battery and/or extreme cruelty, the petitioner submits affidavits and medical records.

In her December 15, 2006 affidavit, the petitioner stated that she and M-C- met at a membership course at their church. M-C- moved into the petitioner's home, and things went smoothly for the first month. After that first month, however, problems arose. According to the petitioner, M-C- "let it be known" that the petitioner alone was responsible for house payments and her children's expenses. The petitioner stated that although she asked for assistance with the house payments, M-C- told her that he had outstanding debt and could not help her unless she acquired a home equity loan. The petitioner responded by informing M-C- that the house was for her children, and that she would not consider such a proposal. From that point, the relationship began to deteriorate. M-C- began criticizing the house, saying that it was too large and resembled a museum. According to the petitioner, M-C- also began fighting, and since the petitioner and her children are religious, they "did not accept his mean spirit." The petitioner stated that she and her children were not used to M-C-'s type of lifestyle or the types of movies he would watch. She said that M-C- would call the petitioner's employees and tell them about the couple's personal problems, which was embarrassing to the petitioner. He also told her employees that if things between he and the petitioner did not improve, he would not continue to sponsor her immigrant petition. According to the petitioner, she began suffering from mental anguish and depression due to his attitude. She reports that in September 2005, M-C- asked her to return the engagement ring so that he could take a picture of it for insurance purposes, but he never returned the ring. On September 30, 2005, one day before she was to organize an event, the petitioner asked M-C- to help her with the event. However, instead of helping the petitioner, M-C- informed her that he was moving out. A month later, he asked for forgiveness, the petitioner forgave him, and M-C- moved back into the marital

residence. However, things soon continued as before, with M-C- calling the petitioner during business meetings. On Thanksgiving Day, he again left the marital residence. He again asked for forgiveness, and to move back into the residence, but the petitioner refused. The petitioner spent some time with M-C- around Christmas, but it did not work out. The day before an appointment with USCIS, M-C- called the petitioner to tell her that he would not be submitting any of the documentation regarding her permanent residency application that had been requested. According to the petitioner, this was M-C-'s way of pressuring her. The petitioner stated that after withdrawing the Form I-130, M-C- called her to ask how her immigration processing was coming along. The petitioner states that it is her opinion that M-C-'s intentions have always been abusive.

In his March 13, 2007 affidavit, [REDACTED], the assistant principal at her children's school, states that the petitioner told him that she did not consider M-C- to be an appropriate example for her children; that she and M-C- had differing opinions on finances, the raising of children, and moral issues; and that, although she wanted the relationship to work, she would not allow it to affect her children.

In her February 28, 2007 letter, [REDACTED], a licensed professional counselor and licensed psychological associate, states that the petitioner has been attending counseling sessions to cope with psychological distress, and that the petitioner exhibits symptoms of depression and anxiety. [REDACTED] also states that the petitioner told her that although M-C- was very caring at the beginning of the relationship, there were adjustment difficulties, and that M-C- soon began putting financial pressure on the petitioner. She states that the petitioner told her that M-C- wanted to consolidate his own credit card debt into the petitioner's home equity, and that he soon began threatening the petitioner's immigration status. The record contains documentation to indicate that the petitioner attended four psychotherapy sessions with [REDACTED] in February and March 2007.

The record also contains documentation from the [REDACTED] in McAllen, Texas from January 2006 indicating that the petitioner had been prescribed Lexapro, and that she would probably need to eventually take statins.

Upon review, the AAO agrees with the director's determination that the petitioner has failed to establish that she was subjected to battery and/or extreme cruelty by M-C-. The assertions of Mr. [REDACTED] and [REDACTED] do not establish that she was the victim of battery and/or extreme cruelty. [REDACTED] assertions are based solely upon the petitioner's testimony to him; he was not a first-hand witness to any of the events described in his letter. Counsel's statement on appeal that [REDACTED] testimony was based upon his observations is incorrect; [REDACTED] did not state that he had observed any of the events described in his letter. Rather, as noted previously, his testimony is entirely based upon what the petitioner told him. The evidentiary weight of his testimony is, therefore, limited.

Nor does the testimony of [REDACTED] establish that the petitioner experienced battery and/or extreme cruelty. Again, [REDACTED] version of the events that occurred during the petitioner's marriage to M-C- was based upon the petitioner's testimony. Further, the record indicates that the

petitioner only began seeking psychotherapy after she had received the director's notice of intent to deny the petition. Although [REDACTED] states that the petitioner exhibits depression and anxiety symptoms, she does not indicate that she has treated or recommended any treatment for the petitioner's condition. While the AAO does not question the expertise of [REDACTED], her testimony fails to establish that the petitioner was the victim of battery and/or extreme cruelty perpetrated by M-C-.

Nor do the medical records from the Heart Clinic establish that the petitioner was the victim of battery and/or extreme cruelty perpetrated by M-C-. Seven problems are listed in the doctor's January 20, 2006 report: (1) Type A personality, likely obsessive/compulsive; (2) borderline mitral valve prolapse with redundant mitral valve; (3) mild dyslipidemia; (4) current smoker; (5) dyspnea on exertion for five years; (6) palpitations with emotional stress; and (7) the petitioner's poor compliance with medication. While the AAO does not discount the severity of any of these problems, there is no evidence in the record to connect any of them to her treatment by M-C-, despite counsel's statement on appeal that the petitioner "had to receive medical attention" as a "direct consequence of the situation she was experiencing." Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Nor does the applicant's testimony indicate that she was the victim of battery and/or extreme cruelty perpetrated by M-C-. Disagreements over finances and moral issues do not constitute extreme cruelty, as marital tensions and incompatibilities which serve to place strains on a marriage, and in fact may be the root of the marriage's disintegration, do not, by themselves, constitute extreme cruelty. While the AAO acknowledges the petitioner's statements that M-C- threatened her immigration status, it is unclear whether such threats were constant or limited to a few isolated incidents. Similarly, the petitioner's assertions with regard to M-C-'s harassing phone calls to her place of employment are presented in terms too vague and generalized for the AAO to make a determination that they rose to the level of extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). 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" Again, such acts 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.

While M-C-'s actions as described in the affidavits 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,

again, include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The affidavits submitted on behalf of the petitioner fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that M-C-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. The petitioner has failed to establish that M-C- 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 concurs with the director's determination that the petitioner has failed to demonstrate that M-C- subjected her to battery and/or extreme cruelty. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.