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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B9



FILE:

[Redacted]  
EAC 06-212-50483

Office: VERMONT SERVICE CENTER

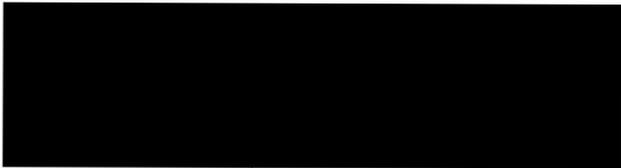
Date: MAY 15 2009

IN RE:

Petitioner: [Redacted]

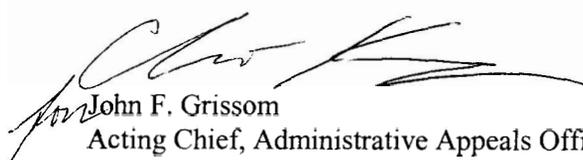
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

  
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 sustained.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as having been battered or subjected to extreme cruelty by her U.S. citizen spouse.

The director found that the petitioner did not establish that she had been battered or subjected to extreme cruelty by her spouse, noting that “in light of the discrepancies contained in the record, U.S. Citizenship and Immigration Services (USCIS) does not find the evidence sufficiently credible to demonstrate the petitioner’s qualification under this requirement.” Accordingly, the director denied the petition; he specifically noted that the petitioner had established all of the other eligibility requirements. The petitioner, through counsel, submits a timely appeal.

As we agree with the director’s determination that the petitioner has established all of the other eligibility requirements, the only issue on appeal is whether the petitioner has established by a preponderance of the evidence that she was battered or subjected to extreme cruelty by her husband. We find that she has met this burden.

*Eligibility for Immigrant Classification Under Section 204(a)(1)(A)(iii) of the Act*

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner’s spouse. In addition, the petitioner 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 or the self-petitioner’s child, 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.

*Procedural History and Pertinent Facts*

The petitioner is a native and citizen of India. She last entered the United States on December 20, 2002 on a B-2 nonimmigrant visitor visa. On December 5, 2003 the petitioner married S-B-<sup>1</sup> a U.S. citizen, in Virginia. On December 16, 2003, S-B- filed a Form I-130, Petition for Alien Relative, on the petitioner’s behalf, and the petitioner filed a Form I-485, Application to Adjust Status, on the

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

same date; both were denied on September 14, 2005. The petitioner divorced S-B- on December 11, 2006.

The petitioner filed the instant I-360 Petition on July 10, 2006, along with supporting documents. As evidence of abuse she submitted her own declaration; letters from her sister, her son's teacher, and a social worker; and the petitioner's letter to one of her son's teachers. On May 5, 2008 the director issued a Request for Evidence (RFE) of abuse, noting that, while the behavior the petitioner described would constitute battery or extreme cruelty, there were significant discrepancies between the petitioner's testimony and the information contained in the supporting letters. In response the petitioner submitted her supplemental declaration addressing the noted inconsistencies and providing additional details; a handwritten note dated October 9, 2001 signed by S-B-'s former wife; a second, more detailed statement from the petitioner's sister; and a declaration from a Tahirih Justice Center paralegal regarding attempts to get records from Child Protective Services. The director, noting additional discrepancies, found the evidence insufficient and denied the petition accordingly.<sup>2</sup>

On appeal, counsel for the petitioner asserts that the petitioner's detailed declarations and supporting letters are sufficient evidence of abuse and that any inconsistencies in the record are minor and explainable upon a more careful examination and consideration of the evidence. Counsel provides a detailed review of the evidence and also submits an additional affidavit, from a former neighbor who witnessed some of the abuse described by the petitioner. Upon review of all of the evidence, we find that the inconsistencies are minor or not material or have been reasonably explained by the petitioner, and that the petitioner has met her burden of proof by a preponderance of the evidence.

#### *Evidence of Battery or Extreme Cruelty*

The sole issue on appeal is whether the petitioner has demonstrated that she was subjected to battery or extreme cruelty by S-B-. In support of her claim that she was abused by S-B- the petitioner submitted her own detailed affidavits and the affidavits of others. The director found that because of discrepancies in these affidavits, the evidence is not "sufficiently credible" to establish the claimed abuse.

As noted above, any credible evidence relevant to the petition will be considered; and the determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). In this case, because all of the evidence related to the petitioner's claim of abuse is based upon statements made by the petitioner and others, we must make a determination regarding the credibility of these

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<sup>2</sup> Although required under former 8 C.F.R. § 204.2(c)(3)(ii)(2006), no Notice of Intent to Deny (NOID) was issued in this case. While it is no longer a regulatory requirement for petitions filed on or after June 18, 2007, a NOID is required in this case, as it was filed on July 10, 2006. However, as the AAO finds that the evidence submitted supports an approval of the I-360 Petition, no purpose would be served to remand for issuance of a NOID.

statements.

As his basis for determining that the evidence lacked credibility, the director pointed out certain perceived inconsistencies in the record:

1. The director noted that [REDACTED], a former Head Start teacher for the petitioner's son, stated that she received numerous phone calls from the petitioner reporting problems with her spouse; but the petitioner claimed that her son told [REDACTED] about the problems in the petitioner's marriage and [REDACTED] started calling the petitioner and sending letters home with her son.

We find, however, that [REDACTED] statement is not inconsistent with the petitioner's claims. [REDACTED] indicated that she received telephone calls from the petitioner during the school year regarding problems with her husband; that the petitioner sought her advice because she feared for her safety and the safety of her son; and that [REDACTED] referred the petitioner to crisis assistance offices and to a Head Start social worker who provided follow-up information on emergency housing, women's shelter, women's legal services and Child Protective Services. She described the abusive incidents reported by the petitioner consistent with the petitioner's accounts. The petitioner initially provided a 39-paragraph statement covering her relationship with S-B- from the time she met him in 2000, through her marriage in 2003 and the developments in their marriage, until she left him in 2005. While her initial account may have lacked some details about her communications with her son's teacher, she later explained the perceived discrepancies by giving details about her interactions with [REDACTED]. She explained that [REDACTED] called her a few times at home, but S-B- had tapped the telephone and the petitioner did not feel safe talking to her at home; the petitioner would instead call [REDACTED] from a nearby phone booth, and [REDACTED] would send her notes via her son. Both [REDACTED] and the petitioner provided credible and relevant information that they communicated about S-B-'s abusive behavior; we see no material inconsistency.

2. The director noted that [REDACTED], the petitioner's sister, claimed to have witnessed an incident in the park when S-B- tried to drag the petitioner into a cab, causing the petitioner to hit her forehead on the corner of the car door; an incident that the petitioner failed to mention in her initial declaration. The director also noted that the petitioner later claimed that, when her sister visited, S-B- would abuse her in the bedroom and not in front of [REDACTED]. The director also noted that [REDACTED] and the petitioner offered different descriptions of the circumstances surrounding the petitioner's separation from S-B-.

Contrary to the director's statement, the petitioner did describe, in her initial declaration, an incident in the summer of 2004 when she was at the playground with her son and S-B- went looking for her. She stated that he yelled at her from his car, and, when she leaned in to talk to him, he pushed open the door, hitting her in the head with the door and causing a bruise and a cut that did not heal for several weeks. We find this description consistent with [REDACTED] description, and note that it occurred during [REDACTED] first visit. We find little significance in the petitioner's failure to note in

her initial declaration that her sister [REDACTED] was visiting at the time this incident occurred. [REDACTED] noted that she visited twice; that the incident occurred during her first visit, a period of approximately five months beginning April 11, 1004; and that she returned on May 11, 2005 at a time when the petitioner wanted to end her relationship with S-B-. The petitioner initially focused only on [REDACTED] second visit when she came from India and helped her move away from S-B- in August 2005; she initially failed to describe her sister's first visit. In her supplemental statement, the petitioner provided the details of the prior visit. We note that the petitioner's claim that her husband abused her behind closed doors does not rule out that other abuse was witnessed by [REDACTED] her failure to include every detail when describing each abusive incident is also understandable. We also see no contradiction in the different descriptions of the circumstances surrounding the petitioner's separation from S-B-. The petitioner provided many details of her and her son's emotional and physical state at that time; [REDACTED] provided her own summary view. While perhaps different in their focus and detail, they are not inconsistent.

The petitioner provided reasonable explanations to resolve the discrepancies noted by the director. In addition, on appeal she provided a statement from her former neighbor, [REDACTED] who confirmed the petitioner's initial claims that [REDACTED] witnessed abusive treatment by S-B- and that she tried to help the petitioner during her marriage, including by referring her to the Tahirih Justice Center.

Upon review, we can find no reason to doubt the veracity of the petitioner's statements. She does not appear to have exaggerated her claims regarding the actions of her spouse or to have made claims that were not genuine. Upon review of the record, we find that the petitioner's statements contain specific and lengthy descriptions of her spouse's actions which document repeated instances of both battery and extreme cruelty perpetrated against her by her spouse; and the supporting statements credibly corroborate the petitioner's claims.

The petitioner credibly described the sexual and physical abuse she suffered and the extreme emotional abuse both she and her son suffered at the hands of her husband. She related how S-B- stole from her; controlled and monitored her movements, preventing her from leaving the house, making telephone calls and receiving mail; forbade her to answer the door or speak to anyone who came to the house; forced her to have sex and was physically violent with her; and threatened to have her deported. She also described times when S-B- prevented her from caring for her son and prevented them both from getting medical care. She stated that S-B- yelled at her son, forced him to stay all day in his bedroom; and that her son became fearful when he witnessed S-B-'s violence against her. The petitioner's claims are corroborated by others who witnessed S-B-'s abusive actions, including her sister and her neighbor, and by others with whom she communicated, including her son's teachers and the staff at the Tahirih Justice Center, where she sought help. The relevant evidence of record establishes that S-B- was physically abusive and degrading to the petitioner and extremely emotionally abusive to both the petitioner and her son. The petitioner has demonstrated that S-B- subjected her and her son 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 maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Upon review of the entire record of proceeding, the AAO finds that the petitioner has established by a preponderance of the evidence that S-B- subjected her and her son to battery or extreme cruelty during their marriage. The AAO concurs with the director's determination that the petitioner meets all other statutory requirements. Accordingly, the petitioner has established that she is eligible 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 will be approved.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal is sustained.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained, and the petition is approved.