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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

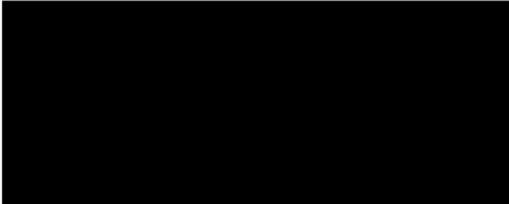
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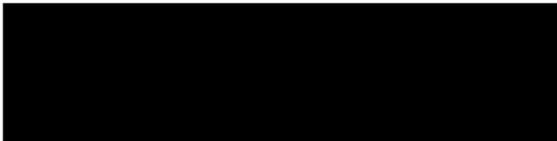


FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date:
EAC 06 264 50101

IN RE: [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)

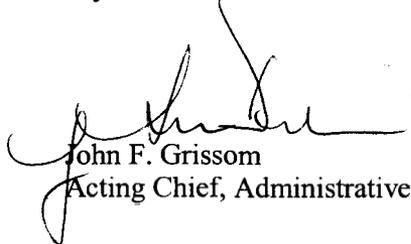
ON BEHALF OF PETITIONER:



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 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 filed a timely appeal on October 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 (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 Venezuela who married S-G-,¹ a citizen of the United States, on June 21, 2005. They divorced on November 6, 2006.

The petitioner filed the instant Form I-360 on September 22, 2006. On April 16, 2007, the director issued a request for additional evidence, and requested evidence regarding the status of the couple's marriage, as well as additional evidence to establish that S-G- subjected the petitioner to battery or extreme cruelty. The petitioner responded to the director's request on June 13, 2007, and submitted additional documentation.

The director issued a notice of intent to deny (NOID) the petition on July 20, 2007, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence

¹ Name withheld to protect individual's identity.

to establish that she had a qualifying relationship with a citizen of the United States; that she is eligible for preference immigrant classification on the basis of such a relationship; and that S-G- subjected her to battery or extreme cruelty. The petitioner responded on August 22, 2007.

After considering the evidence of record, the director denied the petition on September 25, 2007.

Battery or Extreme Cruelty

The sole issue on appeal is whether the petitioner has established that S-G- subjected her to battery or extreme cruelty. In her September 18, 2006 self-affidavit, the petitioner stated that after having worked in Venezuela for twelve years as a public accountant and for four years as the legal director of that country's principal telecommunications company, she decided to broaden her field of expertise by learning English and enrolling in graduate school. The petitioner met S-G- upon her arrival to the United States, as he was friends with one of her old friends from Venezuela. The petitioner stated that she enjoyed spending time with S-G-, as he was respectful, noble, and attentive; he was family-oriented with strong morals and religious principles; and he was a fun person to be around.

The petitioner stated that she returned to New York in January 2002 in order to begin her English language coursework at New York University. S-G- had been planning to move to Florida in October 2002 before he and the petitioner began dating, and he kept those plans. The petitioner stated that they called each other nearly every day, and she visited him in Florida in December 2002, and he met her family.

The petitioner stated that S-G- invited her to accompany him to a family reunion in Las Vegas over the Thanksgiving holiday of 2004. In Las Vegas, S-G- proposed marriage, and the petitioner accepted. The petitioner stated that her coursework in New York did not end until July 2005, so they made plans for her to move to Florida in August 2005. She decided that she would enroll in the University of Miami's one-year LL.M. program, which would begin in August.

The petitioner stated that although they had initially planned to marry in December 2005, S-G-'s father learned that he had cancer in February 2005, so they moved the wedding to June so that S-G-'s father would be able to attend the wedding. After her coursework in New York ended in July, the petitioner immediately moved to Fort Lauderdale, Florida to join S-G-.

According to the petitioner, S-G- was supportive in the beginning. However, he soon grew tired of taking the petitioner to school every day. She stated that S-G- began telling her that he was not her personal driver; that gas prices were too high; that his car was wearing down; that the petitioner never had time to do anything; and that her education was a bad investment. She also stated that he became aggressive and easily aggravated, and was always making comments about money. The petitioner also described how S-G- "would make [m]e feel like an idiot" when she told him about her days. For example, on one occasion, after she told S-G- about her day, he told her in a sarcastic tone that, lately, her conversations had become "very interesting and that they were beginning to

sound more and more like conversations that only Latinos would have.” According to the petitioner, “[i]t came to a point that I stopped telling him about my day.”

The petitioner stated that she told S-G- that things would be better if she bought a car, but that in order to do so, she would need to start on her immigration paperwork. S-G- told her that he would not work with a Latino attorney. The petitioner found an attorney. However, she stated that S-G- did not want to become involved in the immigration paperwork, telling her that he had better things to do.

Finally, due to the difficulties involved in transporting the petitioner back and forth from Fort Lauderdale to the University of Miami campus, S-G- decided that it would be easier for the couple to rent an apartment near campus, so that she could stay there during the week. According to the petitioner, the process of moving into the apartment was exhausting, as she was worried throughout the process that she would say something wrong and make S-G- angry. However, after the petitioner had moved some personal items into the apartment, and she and S-G- had bought some basic things for the apartment, the petitioner felt they had done the right thing.

According to the petitioner, S-G- soon began traveling on weekends, and often called the petitioner to tell her that she should not come to the couple’s home in Fort Lauderdale, as doing so would be a waste of time because he would not be there. On other weekends, he would tell the petitioner that he was coming to see her, only to cancel at the last minute.

The petitioner stated that she attempted to rekindle the relationship during her December vacation from school, but that her efforts were to no avail. The petitioner stated that on December 30, 2005, S-G- told her that he needed private space to deal with his father’s illness, and that she should return to the apartment in Miami. According to the petitioner, she felt as though “he was kicking me out like a dog.”

According to the petitioner, she had trouble concentrating on her classes. Furthermore, S-G- was not cooperating with her in getting her immigration paperwork in order. For example, it took him nearly one month to send her some pictures. She stated the S-G- did not call her for Valentine’s Day, nor did he call her for her birthday (April 12), which led her to spend three days in bed in a deep depression.

The petitioner stated that S-G- called her on April 22. When she returned his call, he began screaming, and told her that she was a common Latina woman who was good only for cleaning houses. He told her that the marriage had been a mistake, and told her not to contact him. According to the petitioner, she became very depressed.

In her September 18, 2006 affidavit, [REDACTED] stated that she was a classmate of the petitioner at the University of Miami. According to [REDACTED], the petitioner was happy and outgoing during her first semester (the fall of 2005), and that she “was always willing to have coffee and talk about anything.” However, during the second semester (the spring of 2006), she changed: according to

the petitioner became a new person that “always tried to avoid any type of conversations or time for coffee.” [REDACTED] also discussed the apartment that the petitioner and S-G- rented near the university. She testified that, during the fall of 2005, the petitioner would go to Fort Lauderdale to spend the weekend with S-G- and return on Monday, or S-G- would spend the weekend at the apartment. She stated that the couple “kept to their arrangement” in the fall of 2005, but not in the spring of 2006.

In her July 11, 2006 psychological evaluation, [REDACTED] stated that “[a]s soon as [the petitioner] started sharing her life with [S-G-], he started to become mentally, emotionally, and physically abusive.” She also stated that S-G- “threw her out of the house on December 30, 2005,” and that the petitioner “still suffers the humiliation of this memory to this day.” [REDACTED] also stated that the petitioner “is in weekly psychotherapy treatment.”

The AAO notes several inconsistencies among these three documents. For example, [REDACTED] stated that the petitioner was always happy and outgoing during her first semester at the University of Miami, which would have been the fall of 2005, and that she was always willing to have coffee and talk about anything. However, the petitioner stated that “[f]rom my appearance it was evident that something was going badly in my life” during this period of time, and that she was so stressed out from S-G-’s behavior that her hair was falling out. As noted previously, [REDACTED] also testified that during the fall of 2005, the petitioner and S-G- “kept to their arrangement” of seeing each other on the weekends, with the petitioner either traveling to Fort Lauderdale or S-G- traveling to Miami. The petitioner, on the other hand, indicated that such visits rarely happened.

The petitioner’s testimony also conflicted with that of [REDACTED]. For example, [REDACTED] stated that S-G- began abusing the petitioner immediately after their marriage. However, the petitioner specifically stated that S-G- was supportive when she began taking classes. More importantly, [REDACTED] stated that S-G- had subjected the petitioner to physical abuse, while the petitioner made no such allegations.

These inconsistencies detract from the probative value of the testimony of the petitioner, [REDACTED] and [REDACTED]

In his April 16, 2007 request for additional evidence, the director stated that the testimony of the petitioner indicated marital discord. The director found that, while S-G-’s behavior was unpleasant, his behavior appeared to have been associated with events stemming from a deteriorating marriage, rather than from abuse. The director stated that marital tensions and incompatibilities which serve to place severe stains on a marriage, and may be the root cause of the disintegration of the marriage, do not, by themselves, constitute extreme cruelty. The director notified the petitioner that further evidence or testimony was necessary in order to make a finding of extreme cruelty. Counsel requested additional time during which to submit a response, and the director granted that request via his July 20, 2007 NOID.

In response to the director's request for additional evidence and NOID, the petitioner's description of the abuse to which she was subjected escalated. In her August 21, 2007 affidavit, the petitioner stated that S-G- tried to control her "in every way." The petitioner stated that S-G- pressured her to take out a \$30,000 loan to pay for her coursework, and then insisted that the money be placed into their joint account. She stated that S-G- had insisted that she rent the apartment near the university in order to continue controlling her. She stated that S-G- began calling her horrible names, and that she was afraid he would hit her at any moment. She stated that S-G- "would throw anything that was around him"; that he slammed doors "all the time"; and that "he would pound his fist right in front of my face." She stated that, by December 2005, S-G- pounded his fist at her face "all the time." The petitioner also testified that S-G- began exclusively demanding anal sex in June 2005, even though the petitioner told him that she did not like it and was painful. According to the petitioner, S-G- did not seem to care, and that "whenever we had sex it was only anal intercourse." The petitioner stated that toward the end of their relationship, S-G- "became more forceful and violent when we had anal sex." She stated that on December 30, 2005, when S-G- told the petitioner to leave, S-G- "became enraged and again began to pound his fist in front of my face as if he was going to hit me," and that she feared for her safety.

The abuse described by the petitioner in her August 14, 2007 affidavit was of such a greater severity than that described in her initial submission that the AAO finds it to be contradictory, rather than clarifying, in nature. For example, the petitioner made no mention in her initial statement of having been called names, of having been sexually abused, or of having feared for her physical safety. The AAO notes that the petitioner's September 18, 2006 statement was nine pages long; it was not a summary description of the couple's marriage. It is unclear why, in a petition based upon abuse, the petitioner would have elected not to mention the strongest aspects of her claim to abuse until specifically placed on notice that her earlier description of abuse was inadequate to warrant approval. This extreme escalation in the severity of the alleged abuse undermines the credibility of the petitioner's testimony.

introduced further inconsistencies with her August 14, 2007 letter. For example, stated that the petitioner "was sleeping on an air mattress in an empty apartment." However, the petitioner's specifically stated the following in her September 18, 2006 affidavit:

I moved some of my personal things in that weekend and together we went to buy other basic things for the apartment.

also stated that in August 2005, S-G- isolated the petitioner in her apartment, and had complete control over her. noted that, without friends or family, the petitioner was completely dependent. However, the implication that the petitioner was without friends during this time conflicts with testimony that the petitioner was "always willing" to meet for coffee and talk "about anything." also stated that S-G- only wanted anal sex toward the end of the marriage, which conflicts with the petitioner's August 14, 2007 testimony that he began demanding anal sex exclusively in June 2005, the month during which they were married. Finally, stated that she had met with the petitioner on four occasions: (1) June 29,

2006; (2) May 29, 2007; (3) July 7, 2007; and (4) August 14, 2007. This conflicted with her statement in her July 11, 2006 evaluation of the petitioner, in which she stated that the petitioner was in weekly psychotherapy treatment. These inconsistencies detract from the credibility of the petitioner's testimony to [REDACTED]

[REDACTED] August 20, 2007 affidavit is of little probative value, as it does not appear as though she witnessed any incidents of abuse. Rather, [REDACTED] speaks to the depression that the petitioner suffered as a result of the breakup of her marriage to S-G-.

In her July 27, 2007 affidavit, [REDACTED] described an incident during which she was in the petitioner's apartment near the university, and S-G- called. According to [REDACTED] the petitioner "became extremely nervous and she signaled me to keep silent by putting her index finger in front of her mouth." According to [REDACTED], the petitioner told her that S-G- would not appreciate her having someone in the apartment when it was not presentable. The petitioner had told S-G- that she was going to the grocery store, and she told [REDACTED] that she needed to use a credit card to pay for her purchase or else S-G- would not believe her that she had actually gone to the grocery store. The AAO notes that the petitioner made no mention of such an event in her testimony. Furthermore, [REDACTED] stated that this event occurred in October 2006 which, according to the petitioner, was six months after the last time the petitioner and S-G- spoke to one another on April 22, 2006, which severely undermines the evidentiary weight of [REDACTED] testimony.

In her August 20, 2007 affidavit, [REDACTED] described a November 2005 incident during which the petitioner "became paranoid" over paying a bill at a restaurant with her credit card, because S-G- examined her credit card bills. According to [REDACTED], the petitioner was "afraid to go eat lunch with a friend." However, the AAO finds this story inconsistent with [REDACTED] testimony. Again, [REDACTED] stated that the petitioner was happy and outgoing during her first semester of coursework, and that she "was always willing to have coffee and talk about anything." This inconsistency diminishes the probative value of the testimony of [REDACTED]

In her August 20, 2007 affidavit, [REDACTED] stated that she was a classmate of the petitioner during her time in New York. According to [REDACTED], she and the petitioner "had serious conversations about [S-G-'s] controlling attitude and the anti-social behavior he displayed towards our friends." The petitioner, however, made no mention of such conversations in her testimony.

The letters from University of Miami personnel are of limited probative value, as it does not appear as though they witnessed any incidents of abuse.

In his September 25, 2007 denial of the petition, the director noted multiple discrepancies between the petitioner's affidavits, as well as between her testimony and the other testimony of record. The director, therefore, discounted the reliability of the petitioner's testimony.

On appeal, counsel contends that the director erred in denying the petition. Counsel submits another affidavit from the petitioner, another evaluation from [REDACTED], and a letter in support of his appeal.

In her October 22, 2007 affidavit, the petitioner described the financial abuse to which she was allegedly subjected; states that she could not continue with weekly sessions with [REDACTED] because she could not afford to do so; and explained the format of her transcript.

[REDACTED] submits an updated evaluation, dated October 18, 2007. Although she had previously testified that she had only met with the petitioner on four occasions, she now states that she had in fact met with the petitioner on five occasions. With regard to the inconsistencies between her first and second evaluations, she states that she did not describe the extreme cruelty of the abuse perpetrated by S-G- "since my first report was symptomatic and not diagnostic in nature." The AAO does not find this explanation convincing, as [REDACTED] did describe the humiliation felt by the petitioner upon being told to leave the marital home in Fort Lauderdale. Although that incident is no longer the worst of the alleged abuse, at the time the petition was filed it was one of the primary components of the petitioner's claim of abuse. Nor does [REDACTED] explain the inconsistencies outlined above with regard to her previous testimony.

On appeal, counsel attempts to resolve the inconsistencies among the petitioner, [REDACTED] and the other affiants of record. However, counsel's assertions do not resolve the multiple inconsistencies identified above. With regard to the director's statement that neither the petitioner nor [REDACTED] raised the issue of sexual abuse at the time the petition was filed, counsel contends that previous counsel did raise the issue in her letter of support. The AAO, however, disagrees. In her September 18, 2006 letter, previous counsel stated that the couple's intimate relations were violent because S-G- insisted on having anal sex exclusively, which were "merely a way for his to avoid any type of intimate activity." Those statements, however, differed from the petitioner's later testimony that toward the end of their relationship, S-G- "became more forceful and violent when we had anal sex"; that S-G- "was very forceful and strong with me"; that she screamed in pain; and that she "believed he enjoyed seeing me in pain." S-G-'s sexual demands were characterized as an issue of intimacy avoidance by previous counsel at the time the petition was filed; by the time the petitioner filed her response to the NOID they were characterized as violent physical abuse and the intentional infliction of physical pain.

Counsel spent most of her brief recounting the testimony of the petitioner, her friends, and [REDACTED]. However, as noted previously, much of that testimony contains unresolved inconsistencies and discrepancies, which diminishes its probative value.

At the time the petition was filed, the petitioner's claim to abuse consisted primarily of namecalling, disrespect, cultural insensitivity, and abandonment. After she was informed that her testimony was indicative more of a discordant and deteriorating marriage, the petitioner escalated her description of events to include financial control and abuse; verbal abuse; sexual violence; and physical violence. Again, the petitioner's initial affidavit was nine pages long, and was a comprehensive

narrative of the couple's relationship. It is unclear why, when filing an immigrant petition based upon abuse, and writing a comprehensive narrative of her marriage, the petitioner would not have discussed the abuse to which she was subjected. Furthermore, as outlined previously, the testimony of the petitioner, the testimony of her friends, and the testimony of [REDACTED] is rife with unresolved inconsistencies and discrepancies. In this case, the numerous inconsistencies and discrepancies catalogued above lead the AAO to discount the reliability of the testimony of record. The petitioner 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. The petitioner, therefore, is ineligible for immigrant classification pursuant to 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.