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



U.S. Citizenship
and Immigration
Services

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By

MAY 15 2009

FILE: [REDACTED]
EAC 07 226 50824

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Battered 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 on September 9, 2008, determining that the petitioner had not established that she had been battered or subjected to extreme cruelty by her spouse.

On appeal, the petitioner's representative submits a statement, the petitioner's third affidavit, an additional psychological evaluation, and three additional declarations.

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 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 explained 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 under section 204(a)(1)(A)(iii) of the Act are further explained 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.

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(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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Colombia who was paroled into the United States on May 31, 2001 in the public interest. On August 14, 2006, the petitioner married R-M-¹, a United States citizen, in the State of Florida. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant on July 25, 2007.

Battery or Extreme Cruelty

In the petitioner's July 5, 2007 initial statement submitted in support of the petition, the petitioner provided the following information as it relates to the alleged abuse perpetrated by R-M-: that when R-M- returned to New Jersey to visit his dying cousin he was arrested; that the petitioner learned of the arrest on or about October 22, 2006; that R-M-'s arrest was for violating his probation by moving to Florida from New Jersey; that in November 2006, she learned that R-M- had been moved from jail to a detoxification program; that she visited the correction center on November 22, 2006, that she asked for

¹ Name withheld to protect individual's identity.

a translator as she did not speak English to try to find out what was going on; that she did not trust R-M- to translate for her as he had hid so many things from her; that the individual who translated for her told her that R-M- was detained because of a pending case a few years back; that although R-M- told her he would change and do everything in his power to make her happy, she did not believe him; that she visited R-M- again in December 2006 but she saw that R-M- "was the biggest liar that could ever exist;" and "it is very hard for [her] to live with a delinquent." The petitioner declared further:

Even now that I think about [R-M-] I try to come up with conclusions about what [R-M-] wanted to do with me. Today I can't think it was something good. The only good thing I can think of is that due to his cousin's death, he wasn't able to do whatever bad thing he had planned to do to me.

The petitioner indicated that she sought professional help for her anguish at being betrayed, at being mad at herself for being so stupid, and for not being able to imagine how a beautiful and wonderful person could be involved in something "like that." The petitioner also provided statements from friends and family regarding her disappointment with the marriage and describing the petitioner's nervousness and anxiety.

The record includes R-M-'s arrest record which shows that he pled guilty to possession of "CDS" on June 24, 2004; that he entered a guilty plea of receiving stolen property on September 19, 1996 and was sentenced to time served; and entered a guilty plea of receiving stolen property on March 26, 1999. The record also includes a January 16, 2007 letter from the unit manager of Delaney Hall, a substance abuse and behavior modification treatment center, who states that R-M- is an inmate of the Essex County Corrections Department and is receiving treatment at the center.

The petitioner also submitted an April 23, 2007 psychological evaluation prepared by [REDACTED] who stated: "[p]atient feels stupid, betrayed and unhappy" which started about three months after her marriage on August 14, 2007; and that her husband lied about his criminal history and did not tell her he was on probation for sale and use of drugs. [REDACTED] diagnoses the petitioner with post traumatic stress disorder, personality disorder, and "[t]raumatized by husband who is incarcerated."

In response to the director's request for further evidence (RFE), the petitioner provided a second statement dated June 11, 2008. In the petitioner's second statement she added: that R-M-'s mother told her that R-M- had been placed in solitary confinement during his incarceration, that R-M- had continued his drug abuse while in prison, and that she did not know if R-M- would be released in February 2008; that on March 14, 2008 the petitioner called R-M-'s mother and heard R-M-'s voice in the background; and that she asked to speak to R-M- and then told R-M- that she wanted a divorce. The petitioner indicated that after she asked for a divorce, R-M- told her she could not do that as he had a say in the matter and continued by stating "you do not know what I am capable of doing if you do what you are saying and do not even dare to go to the police because I will not answer for my actions." The petitioner noted that when she asked R-M- if he was threatening her, he responded by stating "be

careful with the consequences because I am capable of everything and if you call the police you will make this matter worse” and that he continued by stating “you do not know what I am capable of” and hung up the phone. The petitioner declared that she fears R-M-, especially after she found out he is a dangerous individual who has nothing to lose in his life. The petitioner noted that she has nightmares of R-M- killing her married daughter.

The record also includes a second undated psychological report prepared by [REDACTED] Dr. [REDACTED] noted: that the petitioner came across as very anxious; “obsessed verbally about her marriage, becoming tense, angry and distraught;” and referred frequently to her abuse in the marriage. Dr. [REDACTED] diagnosed the petitioner with post traumatic stress disorder, panic disorder, personality disorder deferred, and dysfunctional marriage (patient suffered trauma in the marriage).

The record further includes a temporary restraining order issued May 30, 2008 by a Florida Circuit Court to be served on R-M- residing in Newark, New Jersey. In the petition for the temporary restraining order, the petitioner recited the conversation she had with R-M- on March 14, 2008 and indicated she feared R-M- because of his drug addiction, because he had been in jail several times, and she believed he was a dangerous person.

On September 9, 2008, the director determined that the petitioner had not provided evidence that R-M- had threatened her life as she claimed. The director also found that the evaluations prepared by [REDACTED] were unclear as [REDACTED] had not explained how the petitioner could have panic disorder and trauma based on one comment made by her spouse. The director concluded that the petitioner had not established that she had been subjected to battery or extreme cruelty by her spouse.

On appeal, the petitioner’s representative asserts that the petitioner suffered extreme mental cruelty, not just normal marital incompatibility. The petitioner’s representative contends that R-M-’s deception regarding his past constituted betrayal; that R-M-’s words “you do not know what I am capable of” constituted a death threat in the Hispanic culture; and that the petitioner had good reason to fear R-M- based on his extensive criminal background. The petitioner, in her October 28, 2008 third statement, reports that she was shocked and disillusioned to realize that her husband was a totally different person than the one she married and that she fell into a deep depression as a result. The petitioner indicates her inability to carry on with her normal life, her inability to deal with her pain and hurt and attributes her difficulties to R-M- destroying her life. The petitioner also reiterates her fear and terror that R-M- will come after her since she asked for a divorce and emphasizes her belief that R-M- is a dangerous person.

The record on appeal includes a third evaluation prepared by [REDACTED] Dr. [REDACTED] states that the petitioner “is living in an extremely difficult life due to the abuse she suffered in her marriage.” Dr. [REDACTED] reiterates his diagnosis that the petitioner suffers from post traumatic stress disorder, panic disorder, personality disorder deferred and dysfunctional marriage (that she suffered trauma in the marriage). The record on appeal also includes statements from the petitioner’s work colleagues who attest to the petitioner’s emotional problems and who opine that an individual who causes such a trauma is an abuser.

Upon review of the totality of the record, the AAO affirms the director's determination that the petitioner has not established the requisite battery or extreme cruelty. The AAO has considered the petitioner's suffering, pain, outrage, and despair experienced because her husband did not reveal his criminal background. However, such suffering due to a spouse's betrayal does 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. The AAO does not doubt that the petitioner is suffering from psychological problems; however, there is nothing in the record that demonstrates her emotional trauma is **directly related to acts that constitute extreme cruelty**. The AAO has considered [REDACTED]'s reports. [REDACTED]'s first report noted the petitioner's mental condition and attributed her mental instability to her spouse's betrayal or lying about his criminal history, behavior that is not considered extremely cruel behavior for the purposes of VAWA petitions. [REDACTED]'s second report added that the petitioner was "obsessed verbally about her marriage, becoming tense, angry and distraught;" and referred frequently to her abuse in the marriage. [REDACTED] does not describe the abuse allegedly perpetrated by R-M- other than that the petitioner indicated that she had been extremely fearful about the divorce process due to a threatening comment made to her on several occasions whenever she mentioned divorce. [REDACTED] does not provide the name of the individual threatening the petitioner and more importantly indicates that the petitioner has experienced threats on several occasions, a fact not set out in the petitioner's statements to U.S. Citizenship and Immigration Services (USCIS). [REDACTED]'s third report again references abuse suffered by the petitioner in her marriage but does not describe the abuse. The AAO acknowledges that each of [REDACTED] reports provide a diagnosis of trauma suffered by the petitioner by her husband who is incarcerated (the first report) or that the petitioner has suffered trauma in the marriage. The AAO finds however, that [REDACTED] does not identify specific behavior of the petitioner's spouse other than betrayal by not revealing his criminal background to the petitioner. As noted above, betrayal does not constitute extreme cruelty for VAWA purposes. The AAO finds that the reports do not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's post traumatic stress disorder, panic disorder, personality disorder deferred and dysfunctional marriage.

The AAO has also considered the words used by the petitioner's husband when she told him via telephone that she wanted a divorce. The AAO also notes the petitioner's belief that her husband is a dangerous person. There is little in the record, however, to substantiate the petitioner's belief. The AAO has reviewed the petitioner's spouse's police record provided. The petitioner's husband's police record shows guilty pleas in 1996 and 1999 for receiving stolen property and a guilty plea for possession of "CDS" in June 2004. The petitioner's incarceration in 2006 appears to be from violating his probation. The AAO notes that the petitioner's husband is also receiving treatment for substance abuse and behavior modification. The record before the AAO does not include any evidence that the petitioner was either a direct or indirect victim of R-M-'s criminal behavior. The record includes only one instance of the petitioner's spouse using a threatening phrase, an instance where R-M- had just been told via telephone that the petitioner wanted a divorce. There is no other information to substantiate the petitioner's belief that R-M- wants to hurt her. Moreover, the record does not include any evidence from other sources that R-M- threatened the petitioner. The AAO has considered the

temporary restraining order granted by a Florida court based on the petitioner's statement but does not find a final restraining order. The information in the temporary restraining order is based on the petitioner's statements and does not provide the detail necessary to ascertain that the petitioner's husband perpetrated extreme cruelty upon the petitioner. The AAO finds that the record does not include sufficient evidence to establish that the petitioner has met her burden of proof that her spouse subjected her to extreme cruelty.

The AAO has also considered the declarations submitted on the petitioner's behalf and observes that the declarants note the petitioner's behavior but do not establish that they witnessed any actions of the petitioner's spouse. Moreover, the declarants have not established their expertise to support their opinions that the petitioner's spouse is an "abuser."

The claims made by the petitioner, [REDACTED] reports, and the general statements submitted on her behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that R-M-'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 record is simply insufficient in this regard. The record does not demonstrate that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.