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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

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER
EAC 03 197 52878

Date: OCT 08 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)

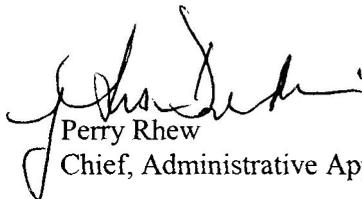
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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).


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

Section 204(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I), 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 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 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 pertinent facts of this case were discussed in the prior decisions of the director and the AAO, incorporated here by reference, and will only be summarized as follows. The petitioner is a citizen of Vietnam. She and her former husband have a daughter who was born in 1994. The petitioner married her former husband, a U.S. citizen, on January 8, 1997, in Vietnam. The petitioner's former husband filed a Form I-130, petition for alien relative, on the petitioner's behalf, which was approved on September 17, 1997, but revoked on January 6, 2006 due to its withdrawal by the petitioner's former husband. The petitioner and her daughter entered the United States on June 2, 2002 in nonimmigrant status. The petitioner filed the instant Form I-360 on June 23, 2003. The petitioner and her former husband were divorced on October 6, 2004.

The director determined that the petitioner did not demonstrate that she or her child was subjected to battery or extreme cruelty by her former husband. The director initially denied the petition on this basis on December 20, 2004. The petitioner subsequently filed a motion to reopen and reconsider that decision. On July 14, 2005, the director granted the motion and affirmed his prior decision, which the petitioner timely appealed. On March 30, 2006, the AAO concurred with the director's determination that the petitioner had not established the requisite battery or extreme cruelty and further found that the petitioner had not demonstrated the requisite joint residence with her former husband. However, the AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the former regulation at 8 C.F.R. § 204.2(c)(3)(ii) (2006). On remand, the director issued a NOID. The petitioner responded to the NOID with further evidence, which the director found established the petitioner's residence with her former husband, but did not demonstrate the requisite battery or extreme cruelty. The director issued his final decision, which he certified to the AAO for review, on January 4, 2007.

The petitioner previously submitted letters from her psychiatrist, medical records regarding her treatment for depression in 2005 and her medical examination after an automobile accident in 2005, documents related to her divorce proceedings, copies of a deed showing the transfer of property from the petitioner's former husband to another woman in January 2003, and statements from the petitioner, her daughter, her former attorney, and two acquaintances. This evidence was fully discussed in the prior decisions of the director and the AAO. As previously determined, the relevant evidence demonstrated that the petitioner's former husband had an extramarital affair, began the divorce proceedings, filed a restraining order against the petitioner and did not live with or fully support the petitioner and their daughter upon their arrival in the United States. The relevant evidence also established that the petitioner was treated for depression in 2005. However, as explained in the prior decisions, the preponderance of the evidence submitted below failed to demonstrate that the petitioner's former husband subjected her or her daughter to battery or extreme cruelty during their marriage.

On certification, the petitioner reiterates her claims of abuse and submits copies of documents previously filed and letters from herself, her employer and psychiatrist. The prior letters of the petitioner's psychiatrist, [REDACTED], and related medical records indicate that the petitioner did not seek mental health treatment until January 18, 2005, a year and a half after she filed the instant petition. The record from the petitioner's examination that day states that the petitioner reported having headaches, insomnia, feeling depressed, unable to concentrate and worried because her "husband wants divorce" and she "fear[ed] deportation to Vietnam." The record reports the physician's assessment as "anxiety and reactive depression" and shows that the petitioner was prescribed medication for depression and anxiety. In his February 22, 2005 letter, [REDACTED] stated that the petitioner was being treated for "major depression, recurrent, severe" and was taking medication and attending weekly therapy sessions. In his September 7, 2006 letter, [REDACTED] confirmed that he formerly treated the petitioner for major depression. In these brief letters, [REDACTED] did not discuss the basis for his diagnosis, the circumstances or contributing factors to the petitioner's illness or provide any further, detailed information that would indicate that the petitioner's mental health condition was related to her former husband's battery or extreme cruelty.

In his January 30, 2007 letter submitted on certification, [REDACTED] states that the petitioner's depression was "a direct result of her husband's abandonment," which caused the petitioner to suffer "extreme duress, severe sadness, insomnia, poor appetite, poor concentration, fatigue and suicidal ideation." [REDACTED] provides no explanation for why he did not include this determination in his prior letters. [REDACTED] also does not indicate that he continued to treat the petitioner after 2005. While [REDACTED] letters and other relevant evidence show that the petitioner suffered from depression and anxiety, the record does not demonstrate that the petitioner or her daughter was subjected to battery or extreme cruelty.

The petitioner's statements and the evidence submitted on certification fail to establish that her former husband subjected her or her daughter to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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. The petitioner has not sustained that burden.

ORDER: The director's decision of January 4, 2007 is affirmed. The petition is denied.