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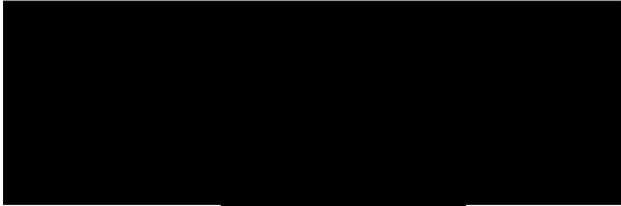
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

By

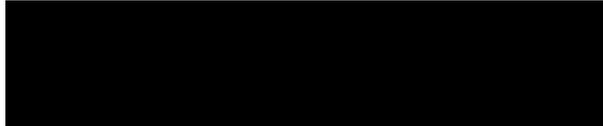


FILE: [Redacted]
EAC 07 019 50650

Office: VERMONT SERVICE CENTER

Date: APR 26 2010

IN RE: Petitioner:



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

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reopen and reconsider. The motion will be granted. The previous decision of the AAO, dated March 24, 2009, will be affirmed and the petition will be denied.

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.

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 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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are

not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition filed 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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated March 24, 2009, only certain facts will be repeated as necessary here. In this case, the petitioner is a native and citizen of the Philippines who entered the United States on October 19, 2003, as a K-1 nonimmigrant. On November 2, 2003, the petitioner married S-W¹, a U.S. citizen, in the Commonwealth of Virginia. The director initially denied the petition on October 10, 2007, finding

¹ Name withheld to protect individual's identity.

that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage. In its March 24, 2009 decision on appeal, the AAO concurred with the director's determination, and found, beyond the decision of the director, that the petitioner failed to establish that she entered into the marriage in good faith.

On motion, counsel submits a brief and copies of previously submitted documentation. Counsel asserts that the portion of the AAO's dismissal pertaining to the issue of a good-faith marriage is not based on substantial evidence and is a violation of due process, as the service director never questioned this issue. Counsel also asserts that the AAO further violated the petitioner's right to due process "by failing to properly consider the probative details of the abuse that [the petitioner] suffered at the hands of her former husband."

Battery or Extreme Cruelty

In its March 24, 2009 decision, the AAO found the evidence submitted by the petitioner and on the petitioner's behalf insufficient to establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. The AAO found that the petitioner claimed that she felt suffocated and depressed in her marriage to S-W-, but did not claim that she was subjected to battery perpetrated by S-W-. The AAO also found that the petitioner did not provide any evidence substantiating her claim that she attended weekly therapy sessions to assist her in overcoming her feelings about her marriage, and that the statements provided by the petitioner's relatives did not contain information that they personally witnessed any type of abuse. The AAO found that the relevant evidence failed to demonstrate that S-W- subjected her to battery or extreme cruelty during their marriage.

On motion, counsel states that, in her declaration, the petitioner reported the following abuse: S-W- "constantly abused her verbally and mentally and made threats to deport her . . ."; S-W- controlled her daily schedule and made her ask for permission to see her family or friends; S-W- treated her like a servant and used her for his financial gain by demanding that she work and find higher-paying jobs; and S-W- humiliated her in front of her family. Counsel also states that the petitioner further reported that the pattern of the "social isolation and extreme emotional, psychological and verbal abuse by [S-W-] . . . caused her to endure harm severe enough to constitute extreme cruelty."

The petitioner's October 14, 2006 affidavit is adequately discussed by the AAO in its March 24, 2009 decision and need not be repeated in detail here. As stated by the AAO, none of the petitioner's evidence demonstrates that the actions by S-W- 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. Moreover, although the AAO also found that the petitioner did not provide any evidence substantiating her claim that she attended weekly therapy sessions to assist her in overcoming her feelings about her marriage, counsel does not address this issue on motion. The record contains no explanation for this deficiency.

Again, the actions by the petitioner's husband 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. The claims made by the petitioner and on her behalf fail to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty, that her husband'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's statements and the statements on her behalf regarding the petitioner's husband sleeping in a separate bedroom, refusing to give her access to their joint bank account, complaining about her cooking, laundry, and housekeeping, criticizing her in front of her family and friends, distrusting her, calling her a moron, and making her get a job, do not establish that her husband subjected her to psychological, sexual abuse or exploitation, or that his actions were part of an overall pattern of violence. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

In its March 24, 2009 decision, the AAO found the evidence submitted by the petitioner insufficient to establish the petitioner's good-faith entry into the marriage. The AAO found that the petitioner did not provide probative details of the courtship and interactions between herself and S-W- from the time they were introduced, met in person, and decided to marry. The AAO found further that the petitioner described her initial reluctance to marry S-W-, and, upon the persuasion of her relatives, ultimately decided to marry S-W-. The AAO found that the petitioner did not document her feelings or reasons for marrying S-W-, and did not provide evidence of the requisite intent that would establish her good-faith entry into the marriage.

On motion, counsel states that the petitioner submitted the following evidence of her good-faith entry into the marriage: a declaration; wedding photos; an income tax return; joint bank account statements; S-W-'s insurance policy listing the petitioner as the sole beneficiary; utility bills, phone bills, and a cable TV bill. Counsel also reiterates much of the petitioner's testimony from the petitioner's October 14, 2006 affidavit, asserting that the AAO failed to properly consider the evidence. Although counsel states further that the petitioner "was denied an opportunity to submit additional evidence and argument to establish the bona fides of her marriage," neither counsel nor the petitioner submits any additional evidence on motion.

The AAO acknowledges the documentation, listed above, which was submitted by the petitioner as evidence of her entry into the marriage in good faith. However, as stated by the AAO in its March 24, 2009 decision, the petitioner did not provide probative details of the courtship and interactions between herself and S-W- from the time they were introduced, met in person, and decided to marry; nor did the petitioner sufficiently document her feelings or reasons for marrying S-W-. It is also noted that in her July 20, 2007, statement, the petitioner's aunt, [REDACTED] also states the following regarding the in-person meeting between S-W- and the petitioner: "Their meeting is not that promising, as I can see in my niece eyes, due to [S-W-'s] personality maybe. . . . Anyway, I've tried to convince my niece to give him a chance as to whatever's [S-W-'s] proposals [sic]." Again, the petitioner's feelings or reasons for marrying S-W- have not been established. As stated by the AAO in its March 24, 2009

decision, the evidence indicates that the petitioner was reluctant to marry S-W-, but ultimately accepted S-W-'s proposal, upon her relatives' persuasion. Accordingly, the petitioner has not established that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Upon review of totality of the evidence, the petitioner has not demonstrated that she was battered or subjected to extreme cruelty by her spouse during their marriage and that she entered into their marriage in good faith. She 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 previous decision of the AAO, dated March 24, 2009, will be affirmed and the petition will be denied.

ORDER: The decision of the AAO, dated March 24, 2009, is affirmed. The petition is denied.