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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 08 086 50902

Office: VERMONT SERVICE CENTER

Date:

AUG 03 2010

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:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 ex-husband subjected her to battery or extreme cruelty, and counsel filed a timely appeal on January 11, 2010. On appeal, counsel submits a brief.

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 Bolivia. She married T-D-,¹ a citizen of the United States, on April 7, 2007, and they divorced on October 9, 2009,² after the filing of this petition. The petitioner submitted the instant Form I-360 on January 28, 2008. The director issued a subsequent a request for additional evidence (RFE) to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to the RFE, the director denied the petition on December 7, 2009.

The sole issue before the AAO is whether the petitioner has established that she was subjected to battery and/or extreme cruelty by T-D- during their marriage. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

¹ Name withheld to protect individual's identity.

² The final order of divorce states that the petitioner and T-D- separated on or about August 16, 2007.

In her undated statement, the petitioner recounted that T-D- questioned her as to why her son never helped her vacuum or clean the house; that he did not want to give her son money; that he paid for meals when the family ate out in order to humiliate her, as he knew she did not have much money; and became upset when her daughter watched Spanish-language television. On one occasion, T-D- became angry when, after gathering together some old clothing for charity, he saw that the petitioner had given some of the shirts to her son. The petitioner stated that when T-D-'s children came for a three-week visit, T-D- told the petitioner that she and her children could not eat the food from the refrigerator or freezer, as it was for his children. The day after he told her that she and her children could not eat food from the refrigerator or freezer, T-D- told the petitioner that he wanted to divorce her. After telling the petitioner he wanted to end the marriage, T-D- told her that if she did not leave their house within 45 days, he would call the police. The petitioner stated that on a later occasion, T-D- offered her money in exchange for leaving the house and signing a document. She refused to sign the document or leave the house and, according to the petitioner, T-D- told her that if she wanted a war she would get one, and he left the house. The petitioner reported that T-D- took the satellite receivers and the remote controls for the televisions; told her she had to return the car he had given her; and canceled telephone, water, and electrical service to the house. Finally, the petitioner stated that T-D- spread rumors about her, and reported her immigration status to [REDACTED] office.

The petitioner also submitted a printout of an electronic mail message she sent [REDACTED] on August 18, 2007. In that correspondence, the petitioner told [REDACTED] that T-D- was angry that she and her children were watching Spanish-language programming on televisions in separate parts of the house; that T-D- told her that he was not going to invite her children out to eat again; that T-D- had told her he wanted a divorce and wanted her out of the house within 45 days; that T-D- had told her he wanted the car back; that T-D- had offered her \$27,000 in exchange for leaving the house and signing a document; that T-D- had become upset when she refused to sign the document; and that T-D- told her that if she wanted a war, she would get one.

In his December 10, 2007 letter, [REDACTED] stated that the petitioner should not be deported based upon the "scourged opinion" of T-D-. In his December 22, 2007 letter, [REDACTED] stated that the petitioner had been a victim of unfortunate circumstances. In his December 27, 2007 letter, [REDACTED] stated that, in his opinion, it was the desire of T-D- to control the petitioner, and then destroy her. In her January 3, 2008 letter, [REDACTED] stated that she was shocked when she learned of how T-D- was treating the petitioner's son.

In his December 26, 2007 statement, [REDACTED] stated that four months after their wedding, T-D- decided to terminate the marriage, and contacted [REDACTED] and Representative Joe [REDACTED] regarding the petitioner's immigration status. He stated further that T-D- had displayed a vindictive desire to inflict as much mental anguish on the petitioner as possible. He stated that T-D- had cut the utilities to the house; took back the car he had given her; sent verbally abusive electronic mail messages; sent letters in which he chastised her family over their inability to speak English fluently; spread rumors about the petitioner; and sent a letter to her daughter's employer regarding her immigration status.

In his December 30, 2007 letter, ██████████ the petitioner's son-in-law, stated that T-D- "turned into a different person" shortly after the wedding. ██████████ stated that T-D- disliked the petitioner's son, and felt the petitioner was being disrespectful by speaking to her children in the Spanish language inside the home. He stated the T-D- stole the car he had previously given her as a gift; canceled the utilities; and entered the house when no one was home to take random things such as cable boxes. In their December 30, 2007 letter, ██████████ the parents of the petitioner's son-in-law, stated that they were told that T-D- had treated the petitioner's son poorly.

In his December 27, 2007 letter, ██████████ stated that although things appeared to be going well between T-D- and the petitioner, one day T-D- abruptly announced that he wanted a divorce and took the petitioner's car; attempted to have her utilities turned off; and withdrew his sponsorship of the petitioner's immigration processing.

In their January 3, 2008 letter, ██████████ stated that T-D- stole the BMW he had bought for the petitioner; cut off water, electricity, and cable to the house; and left the petitioner with no financial support.

In her January 5, 2008 statement, ██████████ the petitioner's daughter, stated that T-D- postponed the couple's wedding because his children's mother was getting married the week before, and he worried that getting married so soon after his ex-wife's wedding would be stressful for his children. According to ██████████ this was an act of selfishness because T-D- did not consider how postponement of the wedding would affect the petitioner. ██████████ stated that the petitioner told her that T-D- complained to the petitioner about her son; told the petitioner and her son not to eat food from the refrigerator; told the petitioner that he wanted a divorce for no good reason; took the remote controls for every television in the house; took back the car he had bought for the petitioner; canceled the utilities to the house; spread rumors about the petitioner; and reported the immigration status of the petitioner to ██████████ and Representative ██████████ which led to the issuance of a Notice to Appear; and reported her daughter's immigration status to her employer.

In his January 5, 2008 letter, ██████████ stated that after T-D- moved out of the house, he cut off the petitioner financially. He stated that T-D- took back the car he had purchased for the petitioner; canceled the utilities; removed the cable boxes from the house; and wrote members of Congress about her immigration status.

In her January 5, 2008 letter, ██████████ stated that T-D- not only broke the petitioner's heart, but also cut water, power, and all basic services to the house and sent letters to her children's employers regarding their immigration status in an attempt to have them fired.

In her May 8, 2009 statement, ██████████ a friend of the petitioner, stated that the petitioner told her that because T-D- was hostile toward her son, she left her situation of financial security and comfort.

In his May 21, 2009 statement ██████████, a former neighbor of the couple, stated that the petitioner told him that T-D- took back the car he had bought for the petitioner, told the petitioner's employer that she was in the country illegally, which caused her to lose her job; and canceled the utilities. He also stated that he mowed and edged the lawn of the house in order to help out the petitioner, as he left her with no lawn care equipment. ██████████ also stated that the petitioner's oldest son had to move into the house with her in order to help her with expenses.

In her May 21, 2009 statement, ██████████ the Director of Admissions at the petitioner's son's high school, stated that the petitioner told her that T-D- left the marriage, took her car, and cut off electricity to the house.

In his June 28, 2009 letter, ██████████ stated that the petitioner told him that T-D- caused problems for the petitioner's son; that T-D- did not want to spend any money on her son; and told the petitioner that her son could not eat anything out of the freezer because it was for his children, who were visiting; took back the car he had bought her; canceled the utilities to the home; and reported her to immigration authorities.

In his June 29, 2009 letter, ██████████ stated that the petitioner told him that T-D- had asked her to leave their house; that T-D- wanted the car he had bought for her returned to him; that T-D- came to her place of employment and took the car from the parking lot; and that T-D- canceled the utilities to the house.

The record also contains copies of several letters that T-D- wrote to the petitioner. In those letters, T-D- stated, among other things, that he was divorcing the petitioner because she was ungrateful and did not respect him or his culture; that she did not keep the house clean; and demanded that she return the car.

In sum, the relevant evidence fails to establish that T-D- subjected the petitioner to battery or extreme cruelty during their marriage. First, the petitioner does not claim, and the evidence of record does not indicate, that T-D- ever battered her. Nor does the testimonial evidence submitted by the petitioner demonstrate that T-D-'s maltreatment of the petitioner constituted extreme cruelty. Although T-D-'s non-physical behavior as described by the petitioner and her affiants was unkind, the petitioner has failed to establish that his behavior was comparable to the types of 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. Nor has the petitioner established that T-D-'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.

On appeal, counsel claims that T-D- "consistently and repeatedly verbally abused [the] Petitioner and her son," yet the petitioner herself describes no specific incident of verbal abuse. Counsel further asserts that T-D- degraded and humiliated the petitioner in "a pattern of psychological and verbal abuse," but counsel fails to cite any relevant evidence demonstrating that the two examples of T-D-'s actions that she references constitute psychological and verbal abuse. As noted by the

Ninth Circuit Court of Appeals, “[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness.” See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner has failed to establish that T-D- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has failed to overcome the ground for denial, and has not established that T-D- subjected her to battery or extreme cruelty during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this 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 and the appeal will be dismissed.

ORDER: The appeal is dismissed.