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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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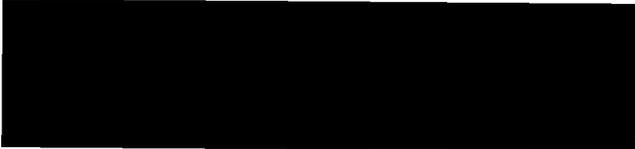
Date: **AUG 09 2010**

IN RE:



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:

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 husband subjected her to battery or extreme cruelty, and counsel filed a timely appeal. On appeal, counsel submits a memorandum of law and additional evidence.

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 Argentina. She married C-H-¹ a citizen of the United States, on August 7, 2006. The petitioner submitted the instant Form I-360 on July 14, 2008. The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, submitted timely responses. After considering the evidence of record, including counsel's responses to the director's requests for additional evidence, the director denied the petition on January 4, 2010.

The sole issue before the AAO is whether the petitioner has established that she was subjected to battery and/or extreme cruelty by C-H- 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.

In her July 20, 2009 statement, the petitioner stated that at their wedding reception, C-H- pushed her out of his way in the buffet line, telling her that she should always stand behind him, and that he should always be served first. Later, when she went to get dessert, he told her that she could not go herself, and that she needed to wait for him. He never went, and when she got up again to get dessert, C-H- pulled her back down, called her a name, and told her that she could not go unless he was with her.

Although the petitioner knew C-H- had an alcohol problem prior to the marriage, C-H- confessed after returning home from a three-month trip that he had developed an even larger problem with drugs and alcohol. Although he tried to stop drinking on his own, the petitioner reported that this period of "going cold turkey" was bad: she stated that C-H- screamed at nonexistent people in the closet; talked to himself; vomited after eating; agitated easily; shook constantly; had hallucinations; and called the petitioner names and told her he did not want her around. C-H- disappeared for a few days, and was brought home by the police, who had arrested him for drinking in public. According to the petitioner, the police officer told her that a car had run over C-H-'s foot. After he was brought home, C-H- resumed screaming at the nonexistent people in the closet; hallucinating; and shouting nonsensical things. Although the petitioner stated that she tried to calm him down, C-H- cursed at her and she quickly moved out of his way. The petitioner and the couple's roommate were able to get C-H- into a car, and they took him to a local emergency room. He was transferred to a psychiatric facility, and remained there for 15 days.

The petitioner stated that C-H- called her from the psychiatric facility and told her that it was her fault he was there. On one occasion when she went to visit him at the facility, she mentioned a friend who was having a baby shower. According to the petitioner, C-H- told her that she could not go to the shower, as it was her job to work, visit him, and go home. He also told her that if he found out she had gone anywhere else, he would tell the staff at the facility that she had been giving him drugs.

The petitioner reported that after he returned home from the psychiatric facility, she and C-H- "developed an uneasy relationship." According to the petitioner, C-H- would sleep long hours and although he sometimes behaved as though they were newlyweds, on other occasions he cursed at her for no reason. Several months later, while she was moving some things in a closet, the petitioner found several empty cans of malt alcohol. She and C-H- argued and, when the petitioner threatened to leave him, C-H- told her that if something happened to him, it would be her fault. The petitioner learned that C-H- had been dropped from the outpatient program he had been attending, and that he had stopped attending his Alcoholics Anonymous meetings. A few weeks later, C-H- disappeared for a week. The petitioner stated that when he returned, she was so happy to see him that she did not ask any questions and, in order to prevent him from leaving again, she agreed to let him drink alcohol in the home.

The petitioner stated that C-H- called her names; criticized her body and weight; criticized her clothing; told his friends that she had nothing to contribute to their conversations; and told her that her place was at his table, serving him. The petitioner also described an incident during which C-H- left water running in a bathroom and destroyed a wooden floor while intoxicated. The couple's roommate called the police, and told them she was afraid of C-H-. According to the petitioner, C-H- told her that his actions had been her fault, as she had bought him bad alcohol. He also told her that she had to stay

with him because, if not, he would divorce her, and she would not be able to remain in the United States. The petitioner said that she begged their roommate to send the police away and give her and C-H- at least one more night to work things out.

The petitioner stated that although C-H- entered another detoxification program, the program director told her just before he was to end the program her suspicion that C-H- was drinking again. The director asked C-H- to take a test, but he refused and, that night, the director called her to tell her that C-H- had disappeared. Two weeks later, the petitioner received a phone call from a hospital in California informing her that C-H- had been admitted for a psychiatric evaluation after trying to shoot himself. C-H- was placed on the phone and, although she could barely understand him, she understood him telling her that he loved her and that he no longer wished to put her through torture, and that he would call her after being released from the psychiatric facility to which he was being assigned. C-H- called the petitioner while staying at the psychiatric facility to ask for money, but she refused to send any. The petitioner stated that although she assumes C-H- is no longer at that facility, she does not know for certain, as she has not heard from him since that time.

In her July 17, 2009 statement, [REDACTED], who lived with the petitioner and C-H-, stated that C-H- abused and tormented the petitioner. According to Ms. [REDACTED] the petitioner's smile, which had once been a fixture, began slowly disappearing. Ms. [REDACTED] recounted the incident during which C-H- left water running in a bathroom and destroyed a wooden floor while intoxicated, and stated that she heard C-H- telling the petitioner it was her fault, because she had not left him enough money to buy better alcohol. She stated that she also heard C-H- tell the petitioner that if she did not fix things he would leave her, and heard him call her names.

In her June 18, 2009 statement, [REDACTED] recounted an incident that occurred after she and her husband invited the petitioner and C-H- for a barbeque. According to Ms. [REDACTED] C-H- became so intoxicated that they ended the barbeque early. She stated that C-H- was loud, did not let anyone else speak, and exhibited very poor manners. Ms. [REDACTED] stated that after this incident, she only spoke with the petitioner by phone, and that when they spoke she could hear sadness, anguish, depression, and nervousness.

The record also contains a letter from [REDACTED] a licensed clinical social worker who interviewed the petitioner on September 26, 2008. Ms. [REDACTED] stated that the petitioner told her things were "more or less good" between the couple from the time of their August 2006 wedding until March 2007. The petitioner told Ms. [REDACTED] that although C-H- promised to stop drinking, he did not. She told Ms. [REDACTED] that although C-H- was never physically abusive, he blackmailed her emotionally: when she told him that he would have to leave the house if he did not stop drinking, he told her that if anything happened to her, it would be her fault. Ms. [REDACTED] reported that the petitioner told her that C-H- would disappear for days at a time; threatened to kill himself and the petitioner; stole from the petitioner; called her names; refused to eat; and threw up on food she had prepared. According to Ms. [REDACTED] the petitioner "meets the criteria of being a victim of domestic violence as it relates to emotional abuse." In their July 1, 2009 letter, Ms. [REDACTED] and [REDACTED] a rehabilitation specialist, stated that the petitioner attended four sessions of therapy.

In his January 4, 2010 denial, the director found that the petitioner had failed to establish that she had been subjected to battery and/or extreme cruelty by C-H-. The director stated that although C-H-'s behavior caused trauma and emotional distress for the petitioner, it was the result of a drinking problem rather than any consistent attempt to control or dominate the petitioner.

On appeal, counsel contends that the petitioner was subjected to both battery and extreme cruelty. Although the petitioner told Ms. [REDACTED] that C-H- was never physically abusive, counsel looks to the petitioner's July 20, 2009 statement in which she stated that on their wedding day, C-H- first pushed her out of his way in the buffet line, and then pulled her down into a chair when she tried to get up before he was ready to also do so. According to counsel, these behaviors constituted battery under the laws of Nevada. She stated further that C-H- was guilty of false imprisonment, compelling another, and destruction of property. Counsel argues that the director's denial suggests that *mens rea* is required in petitions such as this, and that his decision advances a line of thinking that "is old and no longer favored." According to counsel, the director's language suggests that intoxication affords the excuse of a "time out" during which the offender is not responsible for his or her actions. Counsel contends that C-H-'s behavior constituted extreme cruelty as well, citing to *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2003).

The AAO has reviewed the entire record and finds that, in sum, the relevant evidence fails to establish that C-H- subjected the petitioner to battery or extreme cruelty during their marriage. The record does not support counsel's claim that the petitioner was battered by C-H-, as Ms. [REDACTED] specifically stated that the petitioner "reported that [C-H-] was never physically abusive" and that she "denied any physical abuse." Counsel's assertion of physical abuse conflicts with the testimonial evidence of record.

Nor does the record demonstrate that C-H-'s non-physical behavior constituted extreme cruelty. The AAO notes first inconsistencies between the petitioner's description of that non-physical behavior in her statement and in her interview with Ms. [REDACTED]. For example, although Ms. [REDACTED] stated that the petitioner told her that C-H- stole from her and threatened to kill her, the petitioner did not make those claims in her personal statement. Such inconsistency diminishes the probative value of her testimony. Although C-H-'s non-physical behavior as described by the petitioner may have been unkind and inconsiderate, and caused a great deal of emotional distress to the petitioner, she has failed to establish that his actions were 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 C-H-'s non-physical behavior was accompanied by any coercive actions or that his behavior was aimed at insuring dominance or control over the petitioner.

On appeal, counsel cites research showing a correlation between the use of alcohol and domestic violence. We do not question such a correlation. The fact that such a correlation exists, however, does not demonstrate that in this particular case, C-H-'s actions while intoxicated constituted battery or extreme cruelty. 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 at 840 (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

The petitioner has failed to overcome the ground for denial, and has not established that C-H subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. 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.