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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.

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: AUG 16 2010

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: [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 Director, Vermont Service Center, denied the immigrant visa petition. 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 Immigration and Nationality Act (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 because the petitioner did not establish that her husband subjected her battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a personal statement and additional evidence, including: documents related to her studies of English literature and related subjects; documents related to her work with the organization AARP; a letter dated February 8, 2010 from Pastor , a statement dated November 9, 2009 from Mr. , and an incomplete "Membership Certificate" for the limited liability company, .

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.

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.
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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 case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Brasil who was admitted to United States on August 11, 2005, as a B-2 nonimmigrant. On August 15, 2006, the petitioner married S-D-[1], a U.S. citizen, in Orlando, Florida. On November 2, 2006, S-D- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On June 12, 2007, the director denied the I-130 petition based on the withdrawal by S-D-, finding that he had entered into a fraudulent marriage with the petitioner to circumvent the immigration laws. The director also denied the petitioner's corresponding Form I-485, based on the denial of the I-130 petition, and also found the petitioner inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, as a person who has attempted or conspired to attain an immigration benefit through fraud. On June 18, 2007, the petitioner was served with a Notice to Appear for removal proceedings charging her under section 237(a)(1)(A) of the Act as an alien who seeks to procure, or has sought to procure, or who has procured a visa, other documentation, or admission into the United

[1] Name withheld to protect individual's identity.

States, or other benefit provided by the Act, by fraud or by willfully misrepresenting a material fact, under section 212 (a)(6)(C)(i) of the Act, and section 237(a)(1)(B) of the Act as an alien who remained in the United States for a time longer than permitted. The petitioner remains in proceedings before the Orlando, Florida Immigration Court.

The petitioner, through counsel, filed the instant Form I-360 on May 19, 2008. On August 27, 2009, the director issued a Request for Evidence (RFE) of, *inter alia,* the requisite battery or extreme cruelty. On November 27, 2009, the petitioner, through counsel, responded with additional evidence. On January 14, 2010, the director denied the instant I-360 petition because the petitioner did not establish that her husband subjected her to battery or extreme cruelty during their marriage. On February 16, 2010, the petitioner timely appealed the denial of the instant I-360 petition.

On appeal, the petitioner counsel asserts, in part, that her husband abused her, and that she is "struggling to recover entirely and turn that page of [her] life."

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that her husband subjected her to battery or extreme cruelty during their marriage:

- The petitioner's undated statement, submitted at the time of filing, her undated statement submitted in response to the director's RFE, and her statement dated January 20, 2010, submitted on appeal;
- An affidavit dated April 28, 2008, from Mr.
- An undated statement from Mr.
- Two statements dated November 12, 2009 and February 8, 2010, respectively, from and
- Two statements, both dated November 9, 2009, from Mr.

In her undated statement submitted at the time of filing, the petitioner states, in part, that shortly after moving in together, S-D-'s attitude changed and he started bossing her around and became abusive. The petitioner states that S-D- complained about her not doing the house chores, and that he spent more time with his friends than with her. The petitioner also states that she felt raped by her husband because he did not ask how she felt and "forced [her] anyway." The petitioner states that the situation worsened when she discovered his drug problems and alcohol abuse, and that S-D- told her that he married her because he thought she would cure his porn and drug problems. The petitioner states that she felt isolated and hopeless and that she experienced nightmares. The petitioner states that S-D- humiliated her in front of their friends, that she had thoughts of suicide, and that she "could not divorce him as he had threatened [her] to turn [her] to the Immigration authorities." The petitioner states that she ran away due to her fear of him, and after spending two months in Los Angeles, she returned to give him another chance. The petitioner explains that presently she feels "a little relieved that he left the marital home," but that "he could harm [her] tomorrow."

In her undated statement submitted in response to the director's RFE, the petitioner states, in part, that "around December 2006," S-D-'s cell phone played a suggestive love song from another women, and that S-D- "had no reservations to show this off in front of his friends." The petitioner also states that S-D- once forced her to eat food she did not like – asparagus – "just to humiliate [her]." The petitioner states that S-D- wanted her to "roll with" lesbians, and she noticed S-D- "flirting with another guy." The petitioner states that S-D- blamed her when the puppy ran away, and that he called her fat, paunchy, and old. The petitioner states that, although she does not remember because she was drinking, S-D- told her that on Halloween of 2006, he took her home and raped her several times. The petitioner states that S-D- forced her to watch fights on TV and that "she had to drink to get in the mood." The petitioner states that S-D- did not help her when she had panic attacks. The petitioner explains that S-D- ruined her life and that she suffers from gastritis, constipation, and concentration problems.

In her January 20, 2010 statement submitted on appeal, the petitioner briefly recounts additional incidents where S-D- threatened her or forced her to engage in sexual activity against her wishes. The petitioner concludes that S-D- destroyed her emotionally, and that she is struggling to recover.

In his April 28, 2008 affidavit, Mr. [redacted] states, in part, that he met the petitioner in Los Angeles, and that she confided in him that her marriage was a total disappointment, and that he felt "perhaps it was abusive."

In his undated statement, Mr. [redacted] states, in part, that the petitioner "has suffered tremendously with her marriage" and that she suffered unspecified mental and physical abuse.

In his November 12, 2009 statement, Pastor [redacted] states, in part, that he has known the petitioner for about four months, and that "[s]he shared with [him] about her troubled marriage and consequently troubled life and mind." In his February 8, 2010 statement, Pastor [redacted] states, in part, that the petitioner shared with him about the abuse, humiliation, mental torture, physical abuse, and stress that she suffered from her husband.

In his November 9, 2009 statement submitted in response to the director's RFE, Mr. [redacted] states, in part, that he met the petitioner upon her arrival in Orlando, and that she met S-D- at a party. Mr. [redacted] also states that S-D- treated the petitioner rudely, like a maid. Mr. [redacted] also states that the petitioner told him that during Halloween of 2006, S-D- "left her alone, again, and raped her." Mr. [redacted] November 9, 2009 statement submitted on appeal is the same as his November 9, 2009 letter submitted in response to the director's RFE, except that he adds an extra paragraph.

In this case, we do not find the relevant evidence sufficient to meet the petitioner's burden of proof. On appeal, the petitioner briefly recounts additional incidents of alleged abuse, which she did not mention in any of her prior statements and she does not explain this discrepancy. The petitioner also fails to describe specific incidents of abuse in probative detail. In view of the foregoing, the actions by S-D- are not comparable to 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 petitioner has failed to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty, that S-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.

The statements submitted on the petitioner's behalf are general and vague and provide minimal information pertinent to the circumstances of the alleged abuse. For example, Mr. states that the petitioner confided in him that her marriage was a total disappointment, and that he felt "perhaps it was abusive." Likewise, Mr. states that the petitioner "has suffered tremendously with her marriage" and that she suffered mental and physical abuse. The letters from Pastor , about the petitioner's troubled marriage, also fail to establish that the petitioner's husband subjected her to battery and/or extreme cruelty. Pastor states that the petitioner shared with him about her troubled marriage, but he does not indicate that he ever witnessed the petitioner and her husband together. Nor does he provide any probative details regarding the petitioner's relationship with her husband and their interactions with each other. The statements from Mr. about S-D-'s treatment of the petitioner also fail to establish that the petitioner's husband subjected her to battery and/or extreme cruelty. As discussed above, Mr. November 9, 2009 statement submitted on appeal is the same as his November 9, 2009 letter submitted in response to the director's RFE, except that he adds an extra paragraph that contains similar language to the petitioner's statement on appeal. For example, Mr. states, "It is abuse" or a derivative thereof, five times. As the petitioner uses identical and/or similar language in her own statement, the AAO must question whether the statements expressed by Mr. are his own. As the authorship of his statement is unclear, the credibility of Mr. testimony is diminished.

Upon review of the record in its entirety, the preponderance of the relevant evidence does not establish that S-D- subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. She is consequently ineligible for immigrant classification pursuant to 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.