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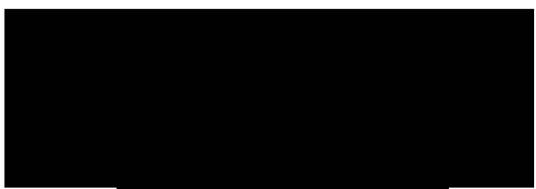
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
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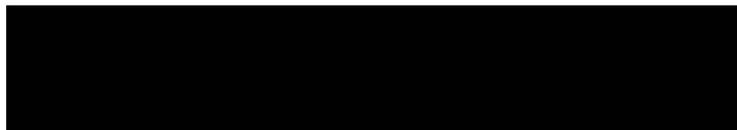
Office: VERMONT SERVICE CENTER

Date: **FEB 24 2010**

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Battered 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 Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. 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.

The director denied the petition on July 23, 2009, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty by her spouse.

On appeal, counsel submits a brief.

We concur with the director's determination that the petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by her spouse, G-L¹.

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 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 also explained 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

¹ Name withheld to protect individual's identity

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 explained 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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Peru who married G-L-, a United States citizen, on August 27, 2007. The petitioner stated on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that she resided with G-L- from August 2007 until May 2008. G-L- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on June 13, 2008 for abandonment of the petition. The director in this matter issued a request for further evidence (RFE) on April 22, 2009, informing the petitioner that the evidence submitted to show that she had been subjected to battery or extreme cruelty was deficient. The petitioner provided a response through counsel. Upon review of the evidence submitted, the director denied the petition on July 23, 2009 and counsel timely appealed.

On appeal, counsel asserts that the director erred in determining that the petitioner's initial affidavit and the affidavits submitted on her behalf did not claim or show that the petitioner had been

subjected to verbal abuse and extreme cruelty. Counsel asserts that the director did not properly consider the psychological evaluation of the petitioner which was submitted in response to the RFE and that the second evaluation submitted was not inconsistent with the evaluation initially submitted. Counsel contends that the petitioner's fifth amendment due process rights have been violated.

Battery or Extreme Cruelty

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

- The petitioner's May 31, 2008 statement submitted with the Form I-360;
- A June 3, 2008 letter written by [REDACTED];
- A May 28, 2008 affidavit signed by [REDACTED], the petitioner's uncle;
- A May 28, 2008 affidavit signed by [REDACTED], the petitioner's uncle;
- A May 28, 2008 affidavit signed by [REDACTED] and [REDACTED];
- A May 28, 2008 affidavit signed by [REDACTED], the petitioner's friend.

In the petitioner's initial statement, the petitioner indicated that she and G-L- were high school sweethearts and they married in August 2007. The petitioner noted that she and G-L- did not want his parents to know of the marriage so they kept it from them. The petitioner stated that after four months of marriage, G-L- started to work in the university café and things started changing. The petitioner stated further that: "[G-L-] started being indifferent with me and we started fighting constantly for reasons that were very small such as [the petitioner] not making dinner or [the petitioner] not being pretty enough"; "[G-L-] started coming home very late or just not coming home at all"; and "every time [she] had a crisis he would only yell at [her] and tell [her] [she] was a sick person who he was starting to feel disgusted about." The petitioner noted that she developed anorexia and began to see a psychiatrist. The petitioner also indicated that the fights started being worse and worse and that G-L- would slam doors on her or just throw stuff around the house. She noted that G-L- did not care about her medical condition and when she confronted him with a picture of him and another woman, he admitted having an affair and indicated that he wanted a divorce. The petitioner indicated that she felt her whole world had been crushed and this destroyed her emotionally.

In the June 3, 2008 letter written by [REDACTED], [REDACTED] noted that the petitioner had been under his care since February 1, 2008 for mental illness which included anxiety disorder and eating disorder. [REDACTED] noted that the petitioner was undergoing a severe stressor and a marital divorce which exacerbated the acute symptoms of her illness, as well as a second stressor triggering severe anxiety related to her fear of an upcoming immigration interview and the possibility of losing her social security benefits.

In the May 28, 2008 affidavit of [REDACTED] Mr. [REDACTED] noted that he and the petitioner are part of a close family and are together most days and that he noticed "G-L- coming home later and later and sometimes not at all" and that the petitioner finally told him that G-L- was seeing another woman.

indicated that the petitioner had sought counseling and had been diagnosed with anorexia and that the “mental cruelty that she has endured has played a part with her mind and body.” In the May 28, 2008 affidavit of , stated that the petitioner and G-L- lived in his house for a period of 10 months “where I witnessed their marriage and the problems they faced as a couple.” continued that he witnessed his niece’s fall into a depression that led her to become anorexic. In the May 28, 2008 affidavit of , certified that she was aware of the petitioner’s marriage to G-L- and that G-L- had abandoned the petitioner. In the May 28, 2008 affidavit of asserted that G-L- left the petitioner without any regard to the affect on the petitioner emotionally and psychologically.

In response to the director’s RFE, the petitioner submitted a psychological evaluation report prepared by , based upon a four-hour interview with the petitioner on May 22, 2009. noted that the petitioner reported: “soon after [the petitioner and G-L-] were married she learned that [G-L-] never told his parents that they were married”; “[o]ne month into the marriage [G-L-] began to absent himself from the house during the weekdays under the pretext that he was spending time with his college friends”; that “soon after [G-L-] began to verbally abuse” the petitioner expressing his disdain and disapproval by calling her names; and that he threatened the petitioner with deportation and on one occasion when the petitioner feared for her safety and said she would call the police, G-L- told her the police would not do anything except send her back to Peru. also noted that the petitioner indicated that G-L- mocked the petitioner by offering her a sandwich and then saying he was sorry because she was fat and would not eat it and by telling the petitioner she should go to school and then saying he was sorry because she could not go to school because she was illegal. further indicated that the petitioner stated that she worked a 12-hour day and was paying for the bulk of the household expenses, and that G-L- took her money to eat at restaurants with friends and to buy drugs, expensive glasses, to get tattoos, and eventually to take his new lover out on the town. noted that G-L- left the household and eventually divorced the petitioner in March 2009.²

found that the petitioner’s “husband’s verbal abuse and abandonment resulted in [the petitioner’s] becoming progressively depressed.” opined: “[i]t is . . . within reasonable scientific certainty that this 19 year-old individual has endured substantial mental and emotional abuse characterized by insults, verbal threats, spousal rejection, exploitation and abandonment,” and that “[the petitioner] may endure additional harm if her application for residency is not accepted and she is deported due to lack of spousal support.” diagnostic impression was for major depressive disorder, moderate and with psychosocial stressors including fear that the request for residency is denied, fear of deportation, verbal abuse by a spouse, spousal betrayal, and spousal abandonment. did not prescribe any medical or psychological treatment.

² The AAO observes that the record on appeal does not include any further information regarding the termination of the petitioner’s marriage.

Upon review of the record, the director denied the petition on July 23, 2009. The director found that the petitioner, in her initial statement, had not claimed that she feared for her safety, received verbal abuse from her spouse, or that her spouse had threatened her in any way. The director noted that the affidavits provided in support of the petition did not indicate that the affiants had witnessed any abuse and further that [REDACTED] did not note in his letter that the petitioner feared for her safety, received verbal abuse from her spouse, or that her spouse threatened her in any way. The director found that the psychological evaluation prepared by [REDACTED] was based upon the petitioner's narration of events, events that had not been discussed in the petitioner's treatment with [REDACTED]. The director determined that the petitioner had not demonstrated a credible claim of abuse and thus had not demonstrated eligibility for this benefit.

On appeal, counsel for the petitioner claims that the petitioner's initial statement referenced verbal and psychological abuse occurring four months after the marriage which led to the petitioner's eating disorder. Counsel notes that the petitioner's uncle's affidavit confirms that the petitioner had been victimized by her husband's infidelity and mental cruelty and that the affidavit of the petitioner's friend confirms that the petitioner had been victimized by her spouse's psychological abuse. Counsel asserts that the letter submitted by [REDACTED] is not a psychological evaluation as is the evaluation prepared by [REDACTED]. Counsel contends that [REDACTED] evaluation is not inconsistent with [REDACTED] statement but rather establishes that the petitioner was victimized by the extreme cruelty of her former spouse which took the form of verbal abuse, threats to deport the petitioner, an extramarital affair, abandonment, economic exploitation, and humiliating insults, all of which exacerbated the petitioner's medical condition. Counsel also asserts that the petitioner has not been offered due process.

Upon review of the record, the AAO concurs with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The AAO observes that the petitioner in this matter does not claim that she was subjected to battery. The petitioner's initial statement regarding the claimed "abuse" centered on the petitioner's spouse's attitude toward her medical condition of anorexia and her husband's unhappiness with being with her. Although the petitioner noted that she and her spouse fought over small things, that he yelled at her, and at some point slammed doors on her or would throw things around the house, the petitioner does not state that she feared for her safety, that she was threatened with deportation, or that she was verbally abused. The petitioner has described the general circumstances of marital discord between two individuals ending with one party leaving the other for someone else. The AAO sympathizes with the petitioner's apparent devastation that her marriage did not work out but there is nothing in the petitioner's statement that establishes that G-L- subjected the petitioner to psychological, sexual abuse or exploitation, or that his actions were part of an overall pattern of violence. The AAO observes that not all forms of marital discord rise to the level of battery or extreme cruelty as set forth in the regulation. Again, as the petitioner described G-L-'s actions, the actions 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 AAO disagrees with counsel's interpretation of the affidavits submitted on behalf of the

petitioner. The AAO does not find that the affiants confirm that the petitioner was the victim of abuse, rather the affidavits of [REDACTED] and [REDACTED] only indicate that the petitioner's mental state suffered due to the deterioration of her marriage including the infidelity and abandonment on the part of her husband. Neither infidelity nor abandonment constitutes extreme cruelty as set out at 8 C.F.R. § 204.2(c)(1)(vi).

The AAO shares the director's concern with regard to the escalation in the type of abuse described by the petitioner over the course of this proceeding. When she filed the petition, the petitioner's claim of abuse was focused on infidelity, abandonment, and the heartbreak of a disintegrating marriage. However, in response to the director's RFE, the petitioner's claim of abuse through her report to a psychologist had expanded to include name calling, threats of deportation, fear for her safety for an unknown reason, and misuse of the money she had earned. The AAO notes that the petitioner in her personal statement to United States Citizenship and Immigration Services (USCIS) and the information she apparently conveyed to [REDACTED] did not include the expanded description of abuse that is found in the petitioner's statements to [REDACTED], after the petitioner had been informed that her initial claim of abuse was deficient. The AAO rejects counsel's explanation that the letter submitted by [REDACTED] was not a psychological evaluation and thus did not adequately set forth the petitioner's circumstances and that the psychological evaluation prepared by [REDACTED] presents the more accurate description of the petitioner's circumstances. Counsel does not explain why the petitioner was not forthcoming to USCIS in her initial statement and, more importantly, does not explain why [REDACTED], who was the petitioner's psychiatrist for a four-month period, would not have relayed the same information in his letter that the petitioner provided to [REDACTED] who is a psychologist with whom the petitioner spoke for only one four-hour session. Rather, the AAO agrees with the director's conclusion that this escalation amounts to inconsistent testimony on the part of the petitioner, which undermines the credibility of her testimony. In addition to the escalation of the claimed abuse, the AAO notes further inconsistencies in the information provided by the petitioner in her initial statement and the information provided to [REDACTED]. For example, the petitioner indicated that both she and her husband decided not to inform his parents of their marriage and that it was four months after the marriage that "things started changing." In contrast, [REDACTED] reports that the petitioner indicated that soon after the couple were married, the petitioner learned that G-L- never told his parents they were married and that one month after their marriage G-L- started to absent himself from the marital home.

Moreover, although the AAO accepts [REDACTED] professional training and experience, the record is not sufficiently detailed to correlate the petitioner's emotional distress to acts that should be characterized as abuse by the petitioner's husband, as defined for the purposes of eligibility for this benefit. The AAO finds that [REDACTED] report does not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's depression. The AAO also notes that [REDACTED] diagnosis of depression lists a number of the petitioner's psychosocial stressors including: fear that her request for residency will be denied, fear that she will be deported, spousal betrayal, spousal abandonment, as well as verbal spousal abuse. There is insufficient consistent evidence connecting the petitioner's depression to the claimed verbal spousal abuse. The AAO further notes that [REDACTED] does

not recommend that the petitioner seek a medical examination and/or treatment.

The petitioner's initial statement and the statements and affidavits submitted on her behalf do not establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that G-L'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.

When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty. The AAO declines to accept generic information with little chronological timeline, and inherent inconsistencies to establish eligibility for this benefit. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide credible evidence that she has been subjected to battery or extreme cruelty perpetrated by her spouse in order to meet her burden of proof. In this matter, she has failed to do so.

Although counsel for the petitioner asserts that the petitioner's rights to due process were violated, she has not shown that any violation of the regulations resulted in "substantial prejudice" to the petitioner. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The petitioner has fallen far short of meeting this standard. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the petitioner's case. The petitioner's primary complaint is that the director denied the petition. As previously discussed, the petitioner has not met her burden of proof and the denial was the proper result. Accordingly, the petitioner's due process claim is without merit.

Upon review of the totality of the record, the AAO affirms the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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.

ORDER: The appeal is dismissed. The petition is denied.