



U.S. Citizenship
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Services

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[Redacted]

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **MAY 17 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:

[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 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 October 30, 2009, determining that the petitioner had not established that she had been battered or subjected to extreme cruelty perpetrated by her United States citizen spouse.

On appeal, counsel submits a brief and additional documentation.

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 further 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 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 Mexico who entered the United States in or about 1994. On August 17, 2002, the petitioner married [REDACTED]¹, a U.S. citizen, in Lake County, Illinois. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on April 29, 2008. The petitioner noted on the Form I-360 that she had resided with [REDACTED] from November 2001 to May 10, 2006. The couple has one child together, a child born on October 23, 2002.

Battery or Extreme Cruelty

In support of the Form I-360, the petitioner provided a personal statement dated April 16, 2008. The petitioner stated: that the problems started when [REDACTED]'s ex-wife found out that he lived nearby and had married; that his ex-wife threatened them and on one occasion the ex-wife broke the windows in the car the petitioner was driving with her baby; and that [REDACTED] did not do anything when his ex-wife or his parents offended her. The petitioner also reported: that she enjoyed going to parties and out dancing and that these activities were not a problem for [REDACTED]; that [REDACTED] did not go out to dance when she invited him but showed that he was a boring person without friends and was different than when she first met him; that at some point her activities began to bother him; that he took her out of school and bought her books for her education; that he started to be overbearing and jealous and reviewed the telephone log to

¹ Name withheld to protect individual's identity.

see who she had spoken to; that he thought she was cheating on him and examined her private parts to determine if she had been with someone else; and on some occasions pushed her against the wall causing her to hit her head. The petitioner indicated that “[a]fter everything that he did, he hugged [her] and tried to have sex with [her]” as if nothing had happened. The petitioner noted that she had been in a prior abusive relationship and did not want to experience that again.

The petitioner also indicated: that after she and [REDACTED] separated, he started seeing someone else; that after she had left, [REDACTED] brought the other woman into the house that the couple both owned; that [REDACTED] deceptively had her sign a quit claim deed although she believed it was only to get the house refinanced; that although she did not like it she would sometimes ask [REDACTED] and his girlfriend to watch [REDACTED] and her child; that [REDACTED]’s new girlfriend came to her house and threatened her and offended her children but told [REDACTED] that the petitioner had threatened her; and that one day [REDACTED] was taking care of their daughter but did not bring her back to the petitioner and told the petitioner that he was obtaining custody of the child. The petitioner also reported that [REDACTED] placed a restraining order against her. The record on appeal includes a copy of an Order of Protection for the child brought in [REDACTED]’s name against the petitioner that is dated July 10, 2006 with a hearing date of July 17, 2006. Although the petitioner references several court appearances in her statement and asserts that [REDACTED] always took advantage in each of the court sessions, there is no further documentation in the record regarding the results of the hearing in the record. The petitioner also indicates that at some point the court determined that she could visit the child under the supervision of her sister. The petitioner noted that she discovered that [REDACTED] and this same sister had a relationship. The petitioner further stated that not having custody of her daughter hurt her and that on one occasion [REDACTED] called the police and told them that the petitioner wanted to kill herself. The petitioner denied that she wanted to kill herself indicating that she was only emotionally distraught and that when the police arrived she had been crying.

The petitioner further indicated that at some point [REDACTED] let her take care of the child for one week but that he never picked up the child again. The petitioner reported that when she had her child again, the child “commented how her father and his girlfriend had sex right in front of her;” that the girlfriend made fun of the child and possibly hit the child, and that [REDACTED] treated his girlfriend’s child better than he treated his own child.

The petitioner also indicated that the worst part of the violence was psychological when [REDACTED] took their daughter but that were also hits and pushes. The petitioner noted that on one occasion when she came home from the gym, [REDACTED] pushed her against the wall, she hit her head, and she thought he was going to hit her but she dodged his fist. The petitioner noted that on another occasion, [REDACTED] pushed her when she was in the kitchen and she almost fell while holding the baby but that after some shouts [REDACTED] went away. The petitioner noted further that she did not think of calling the police and did not have the resources to call the police and that the majority of the time the problems were emotional. She indicated that she started to be afraid to out to dance or go to the gym because she was afraid of how [REDACTED] would react and that [REDACTED] was so overbearing that “it impeded [her] from being able to tell anybody what had happened.”

In response to the director’s request for further evidence (RFE) the petitioner provided a July 23, 2009

letter signed by a counselor/advocate for the Connection for Abused Women and Their Children (CAWC). The counselor/advocate indicated that the petitioner had attended five individual counseling sessions since October 19, 2007.

Based on the information in the record, the director denied the petition on October 30, 2009. The director determined: that the petitioner's statement lacked specific details of specific incidences that illustrated that she was the victim of battery or extreme cruelty perpetrated by her spouse; that the petitioner had not provided evidence supporting her statements that her child was abused by her spouse; that the petitioner had not provided police records; and that the petitioner stated that the majority of the time her problems were emotional. The director considered the petitioner's statement and the CAWC letter and concluded that the evidence was insufficient to establish that the petitioner had been the victim of battery or extreme cruelty perpetrated by her United States citizen spouse.

On appeal, counsel for the petitioner asserts: that the petitioner's relationship with [REDACTED] followed a cycle of violence represented by a violent episode followed by a contrite phrase from the batterer; that [REDACTED] attempted to isolate the petitioner from the outside world by taking her out of school, interrogating her when she returned from the gym or from visiting relatives; and that there also existed a lurking possibility that if the petitioner resisted [REDACTED] might resort to extreme violence. Counsel contends that the effects of [REDACTED]'s psychological abuse, including the unfounded protection order against her and removing their child from her custody, his coercive behavior, and the ensuing dynamics of power and control in the relationship should be viewed as a continuing pattern of violence. Counsel asserts that the petitioner's abusive marriage with the manipulative tactics employed by [REDACTED] is the type of abuse that Congress intended to cover when it enacted the abuse and extreme cruelty standards.

The AAO disagrees with counsel's assessment of the actions of [REDACTED] and the effect of such actions on the petitioner. The AAO concurs with the director's determination that the petitioner's statement provides a general and vague overview of a deteriorating marriage brought about by different personalities. The AAO notes that the petitioner disliked that [REDACTED] would not stand up for her when his parents or his new girlfriend offended her or her children; however, such lack of action is not a subjugation of the petitioner or a perpetration of extreme cruelty.

The AAO also does not find that the petitioner's spouse attempted to isolate her from the outside world. Counsel speculates that [REDACTED]'s suspicion of the petitioner's infidelity could possibly have escalated to extreme violence, but it did not. Rather, the petitioner, after determining that her husband's choice of a boring lifestyle was not something that she wished to continue, she left the home. The record does not include sufficient information or testimony to support counsel's assertion that the petitioner was isolated or subjected to extreme violence. In addition, the petitioner's statements regarding the "hits and pushes" are insufficient to establish that the petitioner was subject to battery. The petitioner fails to identify specifically the time frame, does not describe in detail the circumstances of the events and does not indicate that she required medical attention or police intervention. Similarly, the petitioner does not provide probative evidence that [REDACTED] coerced her into signing a quit claim deed to their house. Again the petitioner does not indicate that she was threatened or forced to sign the papers regarding their home or to obtain the loan.

The AAO observes that the petitioner and [REDACTED] have been in front of an independent court with the opportunity to detail the circumstances of abuse and that the court issued a protective order against the petitioner. As the record does not include all the documents related to the custody hearings, the AAO is unable to challenge or disagree with the court's assessment that the protective order against the petitioner was necessary.

Upon review of the totality of the record, the AAO finds that the petitioner has described the general circumstances of marital discord between two individuals especially as the choice of different lifestyles surfaces within the marriage. The AAO acknowledges the petitioner's statements that her husband became more controlling and less trusting, started to check her telephone use and inspected her private parts to assess whether she had been with someone else; however, as noted previously, the petitioner's affidavit contains generalized assertions. She does not identify specifically the time frame of any events and does not describe in detail the circumstances of the events. The claims made by the petitioner fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that [REDACTED]'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 record is simply insufficient in this regard.

The AAO acknowledges that the petitioner's marriage involved turmoil and emotional upset; however, the record includes only general information regarding threats and no probative evidence that the applicant actually feared for her life or physical injury. Nor did the petitioner demonstrate that [REDACTED]'s actions constituted psychological or sexual abuse or were otherwise 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.

The record does not demonstrate that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. The petitioner 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. 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.