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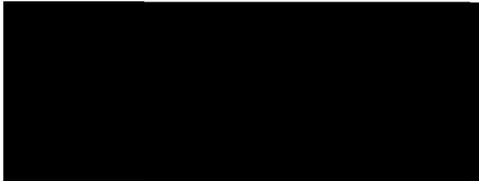
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

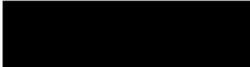


**U.S. Citizenship
and Immigration
Services**

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FILE:  Office: VERMONT SERVICE CENTER Date: NOV 08 2010

IN RE: Petitioner: 

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:

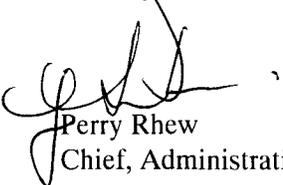


INSTRUCTIONS:

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 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 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 she was subjected to battery or extreme cruelty by her husband during their marriage, and that she is a person of good moral character.

On appeal, counsel submits a statement.

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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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.

* * *

(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ghana who was admitted to the United States on a B-2 nonimmigrant visitor on December 24, 2003. The petitioner married D-C-¹, a U.S. citizen, on July 12, 2004, in North Carolina. On January 7, 2005, D-C- 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 April 7, 2009, the director denied the I-130 petition and the petitioner's corresponding Form I-485, based on the denial of the I-130 petition.

The petitioner filed the instant Form I-360 on February 17, 2009. On February 25, 2009, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character and good-faith entry into the marriage. On June 18, 2009, the petitioner responded with additional evidence. On December 14, 2009, the director issued a second RFE of, *inter alia*, the requisite qualifying relationship, abuse, and good moral character. The director also requested information regarding the petitioner's children as possible derivatives on the petition, and the petitioner's current marital status. On January 7, 2010, the petitioner responded with additional evidence. On February 23, 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, and that she is a person of good moral character. On March 25, 2010, the petitioner, through counsel, timely appealed the denial of the instant I-360 petition.

On appeal, counsel asserts that the petition should be approved, as the documentary evidence, which includes a report from [REDACTED], clearly indicates that the petitioner was emotionally abused by her husband's conduct, and that her cultural practice precluded her from

¹ Name withheld to protect individual's identity.

reporting the abuse to the police. Counsel also asserts that the police report from New York is sufficient evidence of the petitioner's good moral character, as she "had lived in New York for a while."

Battery or Extreme Cruelty

Preliminarily, we note that the record does not contain the petitioner's personal statement or affidavit describing the alleged abuse by her U.S. citizen spouse. The only evidence in the record relating to the claimed abuse is a psychological evaluation from [REDACTED] LCSW, who states that he interviewed the petitioner on October 20, 2009, and she reported that D-C- took her money, insulted her, hit her, and forced her to have sexual relations. [REDACTED] also states that the petitioner was afraid to go to the police because in Africa "you don't bring the police into domestic situation." [REDACTED] states, "[The petitioner's] intrusive thoughts [of the abuse she suffered], yelling and tearfulness are consistent with Post Traumatic Stress Disorder [PTSD]."

As stated by the director in his February 23, 2010 decision, [REDACTED]'s evaluation alone is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage. The AAO acknowledges [REDACTED]'s conclusion that the petitioner suffers from PTSD. [REDACTED], however, does not specify the length of his interview with the petitioner. Moreover, he does not indicate that he himself treated or recommended any treatment for the petitioner.

While we do not question the expertise of [REDACTED], his evaluation fails to establish that the behavior of the petitioner's husband rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). While [REDACTED] provides a description of the petitioner's history, the information is not corroborated by any testimony from the petitioner herself. Additionally, [REDACTED]'s evaluation does not contain any probative details regarding the acts of alleged abuse, such as the approximate timeframes of the acts. These missing essential elements detract from the probative value of [REDACTED]'s evaluation. In sum, [REDACTED] does not provide substantive, probative information indicating that the petitioner was subjected to actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

In this case, we do not find the petitioner's evidence sufficient to meet her burden of proof. As discussed above, the petitioner has provided no personal testimony regarding the alleged abuse, and does not indicate why such testimony is unavailable. As described, the actions by the petitioner's husband 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 claims made by the petitioner fail to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty, that her husband'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.

Upon review of the record in its entirety, the record does not indicate that the petitioner's husband subjected her to battery. The relevant evidence also fails to demonstrate that the petitioner's husband

subjected her to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. In this case, the record contains a Good Conduct Certificate from The City of New York Police Department, processed on March 16, 2009, reflecting no criminal record for the petitioner.

As stated by the director, a review of the record reveals that during the three-year period immediately preceding the filing of her petition on February 17, 2009, the petitioner resided in North Carolina. In both of the director's RFEs, the director requested records from each place in which the petitioner resided for at least six months during the three-year period prior to filing the petition, and in the second RFE, dated December 14, 2009, the director specifically requested a criminal history clearance from the State of North Carolina. As discussed above, the director found that the petitioner failed to submit the requested evidence. On appeal, counsel notes that the petitioner did not provide a clearance from the State of North Carolina but that she did live in New York "for a while" and implies that the clearance from the City of New York should be sufficient.

A criminal history clearance from the State of North Carolina is required, as the evidence indicates that the petitioner lived in North Carolina for at least six months during the three-year period of time before she filed her petition. As the petitioner has not submitted the required clearance, or an affidavit attesting to her good moral character, she has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.