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



U.S. Citizenship
and Immigration
Services

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FILE:



Office: VERMONT SERVICE CENTER Date:

NOV 16 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 petition will be denied.

The petitioner seeks immigrant classification pursuant to 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 her United States citizen spouse.

On May 21, 2010, the director denied the petition, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by her United States citizen spouse. Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion. Counsel asserts that the director failed to consider the complaint that the petitioner had filed with the police department and did not give any weight to the psychotherapist's evaluation that was submitted. Counsel does not submit other evidence or argument in support of the appeal.

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 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 the Dominican Republic. She claims she entered the United States in or about October 1995 as a B-2 visitor. On June 18, 1996, the petitioner married F-M-¹, the claimed abusive United States citizen. The petitioner claims that she resided with F-M- from June 1996 to March 2002. The petitioner initially filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on October 2, 2002 which was denied. The petitioner subsequently filed a second Form I-360 on April 10, 2006, and a third Form I-360 on March 12, 2007. Both of these petitions were also denied. The instant Form I-360, was filed on July 20, 2009.

Abuse

The record in this matter includes the petitioner's personal statement dated September 30, 2002 and the petitioner's personal statement dated December 6, 2007. In the petitioner's September 30, 2002 personal statement the petitioner generally referenced her husband's behavior. She noted: that he pushed her and humiliated her in public by cursing her in Spanish; that her husband did not want her

¹ Name withheld to protect the individual's identity.

to have any friends and did not want her to leave the household; and that whenever he was mad he would throw things around the apartment and would break furniture. The petitioner indicated that she did not call the police because she did not want him arrested. The petitioner noted further: that her husband was aggressive and would force her to have sex even when she did not want to; that on July 19, 2002 her husband threatened to kill her while he was intoxicated; and that after this incident she told him to leave the apartment. In the petitioner's December 6, 2007 personal statement, she declared that "about three years later" her husband started going out with new friends; that he would disappear for hours; that he would come home drunk; that in January 2001 when she asked him about his whereabouts, he became very angry and started yelling and cursing her out; and that after that they argued about anything. The petitioner also declared: that when her husband would come home after staying out, he would smell of alcohol; and that he also had a problem with drugs. The petitioner indicated that one day she could no longer tolerate her situation so she went to the police and they told her to get a court order of protection.

The record also includes a July 26, 2001 incident information slip and police report that lists the charges as aggravated harassment on July 19, 2001 and shows that the victim refused to sign the complaint. There is no narrative describing the claimed incident. The record further includes a Temporary Order of Protection to protect the petitioner from F-M- from October 9, 2002 to January 3, 2003. The Temporary Order of Protection does not include a narrative describing the events or incidents the court considered when issuing the Temporary Order. The record also includes a January 3, 2003 Order of Dismissal, dismissing the Temporary Order because neither the petitioner nor F-M- appeared.

Counsel for the petitioner provides two affidavits signed by [REDACTED] and [REDACTED] on October 24, 2006. Both affiants indicate that they were not present when F-N- mistreated the petitioner. [REDACTED] indicates that she knew that the couple started having problems on or about 2002 and that when she spoke to the petitioner she learned that F-M- was very offensive and the petitioner was afraid that he would get violent. [REDACTED] indicates that she knew the petitioner suffered a lot with verbal abuse and threats although she does not indicate how she obtained this information.

Counsel also submits an October 8, 2002 Summary Assessment prepared by [REDACTED] [REDACTED] clinical social worker, that lists the petitioner's initial visit as on August 21, 2002. [REDACTED] indicates that the petitioner reported: that her husband criticized her by calling her names; that he had an affair with another woman; that he shoved her and on one occasion she hurt her forehead during a quarrel; that she asked him to leave after that but he would come back and demand that she open the door; that his behavior provoked anxiety and the petitioner experienced chest pains for which she was hospitalized; and that although their separation took place a year and half ago, F-M- still came knocking at her door so the petitioner obtained an order of protection. [REDACTED] also indicates that the petitioner reported: that her husband drank and used a white powder; that he did not like being around her children; and that when F-M- was under the influence of alcohol, he would throw things around and kick anything in front of him. [REDACTED] determined that the petitioner had been the victim of spouse abuse and that she was generally

functioning well. In a follow up psychosocial assessment dated July 23, 2009 based on four 60 minute sessions in May, June, and July 2009, [REDACTED] added information reported by the petitioner including: that the last time F-M- left the house he demanded that the petitioner have anal sex but she refused and although he insisted he finally got out of bed and left; that after this incident he started calling and asking to come back and knocking on her door but she refused to let him in or to reunite; and that she obtained a Temporary Order of Protection valid from October 9, 2002 to January 3, 2003. [REDACTED] determined that the petitioner was a victim of domestic abuse, emotional, sexual and some physical abuse and that although she was generally functioning well, her symptoms caused her moderate impairment in her daily functioning routine.

Upon review of the record, the petitioner's statements do not provide the detailed, probative evidence that establishes eligibility for this benefit. The petitioner generally describes the difficulties the couple had regarding her spouse's drinking and substance abuse. She does not provide any details of the circumstances that led to her husband shoving her and does not provide further information regarding any injury suffered. The petitioner's brief and general statements do not provide the probative detail necessary to conclude that her spouse subjected her to battery. The petitioner's indication that her husband cursed at her and called her derogatory names is without the probative detail necessary to conclude that his actions constituted extreme cruelty. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient detail of specific events and incidents to result in a conclusion that the petitioner was subjected to such abuse. In this matter, the petitioner provides statements that indicate her spouse had an affair, that he abused alcohol and other drugs, and that his behavior was embarrassing and caused the couple to argue. However, as noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." The petitioner has failed to establish that her spouse's actions rose 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 statements submitted on the petitioner's behalf also fail to include sufficient probative information regarding incidents of battery or extreme cruelty. The affiants acknowledge that they did not witness any of the arguments that occurred and were only told by the petitioner of the marital difficulties she suffered.

Upon review of both the police report and the Temporary Restraining Order, neither document provides information regarding the specific incident(s) of aggravated harassment that occurred. These documents, thus, do not include the necessary probative evidence that would require a conclusion that the petitioner suffered battery or extreme cruelty as set out in the statute and regulation. These documents are not probative in establishing that the petitioner was subjected to battery or extreme cruelty.

Similarly, the psychosocial assessments prepared by [REDACTED] fail to provide the detailed

information necessary to conclude that the behavior of the petitioner's spouse constituted battery or extreme cruelty as set out in the statute or regulation. The summary assessments do not include a reasoned opinion based on facts and clinical observations of the petitioner's behavior and affect during the evaluation that support a conclusion that the petitioner presented with symptoms and characteristics of a battered spouse. Specifically [REDACTED] does not relate the petitioner's current behavior of functioning well with her conclusory opinion that the petitioner demonstrated the symptoms and characteristics of an individual who suffered domestic abuse. Moreover, [REDACTED] addition of the petitioner's claims, more than seven years after the petitioner separated from her husband, demonstrates an escalation of the nature of the alleged abuse and amounts to inconsistent testimony on the part of the petitioner.

It is the generality of the petitioner's statements and of those who submitted statements on her behalf and the lack of specific incidents of abuse described in detail that fail to establish that the petitioner was subjected to battery or extreme cruelty. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some 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.

The petition will be denied and the appeal dismissed for the above stated reason. As always, the burden of proof in visa petition proceedings 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.