

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

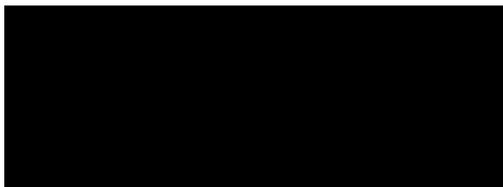
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9



FILE:



Office: VERMONT SERVICE CENTER

Date:

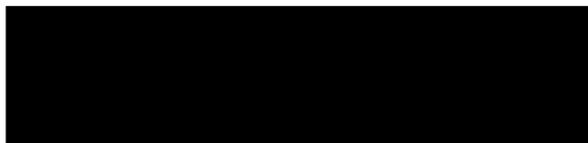
SEP 09 2010

IN RE:



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:

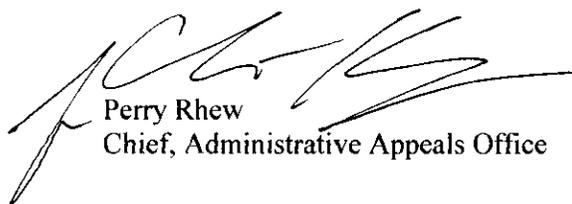


INSTRUCTIONS:

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 service center director 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 the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty, and counsel filed a timely appeal. On appeal, counsel submits a memorandum of law and additional evidence.

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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 petitioner is a citizen of Colombia. She married [REDACTED],¹ a citizen of the United States, on December 18, 2007. The petitioner submitted the instant Form I-360 on May 18, 2009. The director issued a subsequent request for additional evidence to which the petitioner, through previous counsel, submitted a timely response. After considering the evidence of record, including previous counsel's response to the director's request for additional evidence, the director denied the petition on April 28, 2010.

The sole issue before the AAO is whether the petitioner has established that she was subjected to battery and/or extreme cruelty by F-B- during their marriage. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

¹ Name withheld to protect individual's identity.

In her initial, May 2009 letter, the petitioner stated that although she and [REDACTED] had small arguments in the beginning, things changed in September 2008 after she became pregnant. The petitioner stated that although [REDACTED] wanted her to terminate the pregnancy, she refused because doing so would have violated her religious beliefs. She stated that they argued frequently over the matter, and that [REDACTED] ridiculed her religious beliefs regarding abortion, telling her that she was underdeveloped and ignorant. The petitioner also recounted that when she awoke to pain six weeks into her pregnancy and went to the emergency room, [REDACTED] refused to accompany her there because he had a biking competition that day. The petitioner learned that she had an ectopic pregnancy, and the fetus as well as a portion of one of her fallopian tubes was removed. According to the petitioner, [REDACTED] was only interested in the financial aspects of her condition, and when he spoke to her about it he behaved as though the entire matter had been her fault. The petitioner stated that she could not work for two weeks following her surgery, and during that time [REDACTED] called her useless and complained about the house being a mess. [REDACTED] also skipped a Thanksgiving celebration with the petitioner's family he had promised to attend; criticized the petitioner's driving; threatened her immigration status; and had an extramarital affair.

In her March 26, 2010 letter, which was submitted in response to the director's request for additional evidence, the petitioner repeated her earlier testimony and added that [REDACTED] called her additional names; threatened her if she did not undergo an abortion, and that although she finally left [REDACTED], the depressive state in which she found herself halted her ability to work. She stated further that although she tried to seek help at a victim support center, she could not continue with her therapy because talking about her experiences with [REDACTED] made her feel worse.

In her June 3, 2010 letter submitted on appeal, the petitioner repeats her earlier testimony and adds that [REDACTED] kidnapped her for a day in order to force her to have an abortion; and drove her to spend all of her money.

In her May 8, 2009 letter, [REDACTED], the petitioner's sister, stated that it broke her heart to see the petitioner crying over [REDACTED]'s treatment of her after she lost her baby. She also stated that [REDACTED] was both unfaithful and violent. In her May 12, 2009 letter, [REDACTED] stated that [REDACTED] was unfaithful. In her May 8, 2009 letter, [REDACTED] stated that [REDACTED] told her that he wanted the petitioner and her daughter to return to Colombia because he did not want to see them any more. Ms. [REDACTED] also stated that [REDACTED] humiliated the petitioner.

The petitioner also submitted evidence from the Trauma Resolution Center (TRC). The first set of documents, which was submitted in response to the director's January 6, 2010 request for additional evidence, states that the petitioner was referred to the TRC by counsel on February 24, 2010. On appeal, the petitioner submits a June 10, 2010 letter from the TRC which states that the petitioner suffers from significant Posttraumatic Stress Disorder (PTSD), severe depression, and clinical anxiety. The letter submitted on appeal also briefly states that during counseling sessions the petitioner has discussed "marital rapes, status abuse, emotional abuse, and kidnapping."

The record also contains two evaluations of the petitioner's mental health. In his April 22, 2009 letter, which was prepared on the basis of an interview that occurred earlier that same day, Dr. [REDACTED]

██████████ stated that the petitioner told him that ██████ pressured her to have an abortion; ridiculed her religious beliefs regarding abortion; treated her poorly after she received treatment for the ectopic pregnancy; called her names; stole money from her; threw food in her car during an argument; verbally and physically abused her; and had an extramarital affair. Dr. ██████ stated that, in his opinion, the petitioner suffers from depression and anxiety.

In his May 11, 2009 letter, which appears to have been prepared on the basis of a single interview, Dr. ██████ stated that the petitioner told him that ██████ demanded that the petitioner have an abortion; called her names; was unsupportive after she experienced an ectopic pregnancy; was controlling and demanding; had an extramarital affair; threw food at her; and threatened her immigration status. Dr. ██████ stated that the petitioner suffers from Post Traumatic Stress Disorder and Depressive Disorder.

Finally, the record contains medical records pertaining to the petitioner's ectopic pregnancy.

The AAO has reviewed the entire record and finds that, in sum, the relevant evidence fails to establish that ██████ subjected the petitioner to battery or extreme cruelty during their marriage. The record contains significant inconsistencies, both within the petitioner's testimony, and between that testimony and other testimonial evidence. In the statement she submitted at the time she filed the petition, the petitioner did not mention that ██████ raped her, or kidnapped her in order to force her to undergo an abortion. Nor did she mention either of those incidents to ██████ or ██████. It was not until she submitted her response to the director's request for additional evidence that she made those claims. These inconsistencies diminish the probative value of the petitioner's testimony. While the AAO does not question the professional expertise of ██████ or ██████ their letters primarily repeat information conveyed to them by the petitioner regarding ██████'s behavior during their marriage.

Nor does the record demonstrate that ██████'s non-physical behavior constituted extreme cruelty. Although ██████'s non-physical behavior as described by the petitioner may have been unkind and inconsiderate, and caused a great deal of emotional distress to the petitioner, she has failed to establish that his actions were comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Nor has the petitioner established that F-B-'s non-physical behavior was accompanied by any coercive actions or that his behavior was aimed at insuring dominance or control over the petitioner. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner has failed to establish that F-B- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has failed to overcome the ground for denial, and has not established that ██████ subjected her to battery or extreme cruelty during their marriage, as required by section



Page 6

204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.