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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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FILE:

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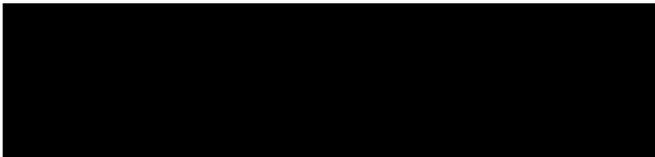
SEP 28 2010

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:

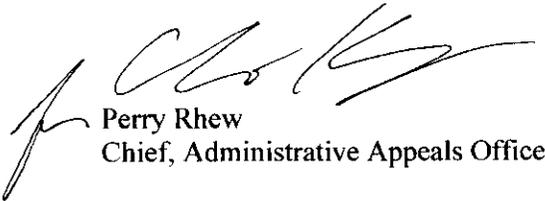


INSTRUCTIONS:

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 Saint Lucia. She married A-R-<sup>1</sup> a citizen of the United States, on February 21, 2006. The petitioner submitted the instant Form I-360 on August 19, 2008. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, submitted a timely response. After considering the evidence of record, including counsel's response to the director's request for additional evidence, the director denied the petition on March 9, 2010.

The sole issue before the AAO is whether the petitioner has established that she was subjected to battery and/or extreme cruelty by A-R- 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.

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<sup>1</sup> Name withheld to protect individual's identity.

At the time she filed the petition, the petitioner submitted testimonial evidence from both herself and her mother regarding the abuse to which she had allegedly been subjected. In her August 1, 2008 letter, the petitioner stated that A-R- refused to accompany her to her immigration interviews and hearings; left home for weeks at a time; accused her of becoming pregnant solely to collect child support and take money from him; was unsupportive during her pregnancy; abused marijuana; threatened to hit her; and cursed at her. In her August 1, 2008 letter, [REDACTED], the petitioner's mother, stated that the petitioner told her that A-R- was using her; that he would not help her pay bills; that he did not give the petitioner a baby shower; that he spent weeks at a time away from the house; and that he was unsupportive during the petitioner's pregnancy.

In his October 22, 2009 request for additional evidence, the director notified the petitioner that the behaviors described by the petitioner and her mother did not constitute battery or extreme cruelty. According to the director, marital tensions and incompatibilities such as apathy, infidelity, and substance abuse do not, alone, constitute extreme cruelty.

In response, the petitioner submitted additional testimonial evidence. In her January 15, 2010 letter, the petitioner repeated her earlier assertions and added that A-R- forced her to have sex several times, was verbally abusive, and isolated her. The petitioner also explained that she did not know that rape constituted physical abuse until she received counseling for domestic violence, but she did not describe any incident of rape or other sexual abuse in probative detail. She also submitted letters from [REDACTED]

In her January 6, 2010 letter, [REDACTED] stated that on one occasion in June 2008, she heard A-R- calling the petitioner names. [REDACTED] also stated that the petitioner never left the house or socialized, because A-R- would become angry and curse at her when she did so.

In her January 13, 2010 letter, [REDACTED] the petitioner's sister, stated that the petitioner told her that A-R- threatened to have the petitioner deported if she did not engage in sexual relations with him; refused to accompany her to immigration court; and abused drugs.

In her January 12, 2010 letter, [REDACTED] a case manager at [REDACTED] stated that the petitioner sought the assistance of [REDACTED] as a result of having been the victim of domestic violence, and that she had been receiving individual counseling services from the agency.

The AAO has reviewed the entire record and finds that, in sum, the relevant evidence fails to establish that A-R- subjected the petitioner to battery or extreme cruelty during their marriage. At the time the petition was filed, the petitioner's claim to have been abused consisted of A-R-'s failure to assist her immigration proceedings; leaving home for weeks at a time; accusing her of becoming pregnant solely to collect child support; being unsupportive during her pregnancy; abusing marijuana; threatening violence; and calling her names. However, when she responded to the director's request for additional evidence regarding the abuse, she added sexual abuse and social isolation to her claim. While relevant, the testimony of the petitioner's mother, sister, and [REDACTED] is of limited value, as

they contain few probative details regarding specific instances of abuse. [REDACTED] also fails to discuss the abuse the petitioner was subjected to and the content and duration of the counseling services the petitioner received from [REDACTED]

On appeal, counsel asserts that the director failed to recognize that the petitioner faced cultural norms against recognizing and discussing abuse as well as the fact that survivors of domestic violence often minimize certain forms of abuse that they suffered. Counsel submits an article entitled "Domestic Violence" printed from the website of the National Center for Victims of Crime. The article states, in pertinent part: "Domestic violence victims may minimize the seriousness of incidents in order to cope . . . . Victims, because they fear the perpetrator and may be ashamed of their situation, may be reluctant to disclose the abuse." The AAO acknowledges these phenomena in the field of domestic violence and their existence is not in dispute. The issue in this case is that a preponderance of the relevant evidence does not establish that the petitioner was sexually abused. The petitioner herself briefly stated that her husband "force[d] her to have sex with him several times," but she did not describe any incident of rape or other sexual abuse in probative detail. While the petitioner explained that she did not know that forced sex was a form of abuse until she received counseling at [REDACTED] [REDACTED] the letter from the petitioner's case manager at [REDACTED] provides no probative information or further insight into any abuse suffered by the petitioner. [REDACTED] simply states that the petitioner sought "assistance relating to her issues as a victim of domestic violence."

Nor does the record demonstrate that A-R-'s non-physical behavior constituted extreme cruelty. Although F-B-'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 A-R-'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 (9<sup>th</sup> 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 A-R- 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 A-R- subjected her to battery or extreme cruelty during their marriage, as required by section 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.