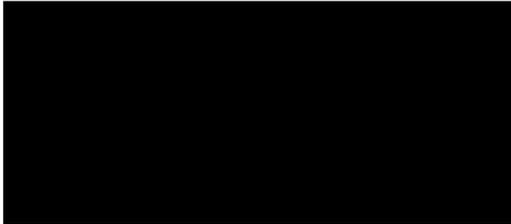


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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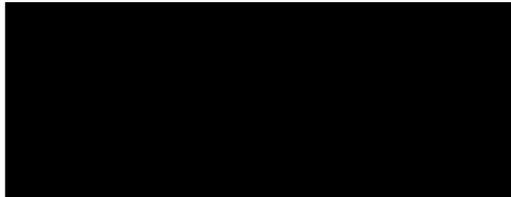
IN RE:

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 \$630. 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 petition remains denied.

The petitioner seeks immigrant classification under 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 a United States citizen.

The director determined that the petitioner had not established that she had jointly resided with a United States citizen, or that she had been subjected to battery or extreme cruelty perpetrated by a United States citizen. On appeal, counsel submits a brief and additional documentation.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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 set forth 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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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.

Facts and Procedural History

The petitioner is a native and citizen of Mexico. She entered the United States in or about March 1995 without inspection. She married I-F-, the claimed abusive United States citizen, on June 29, 2006 in El Paso, Texas. On October 27, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On August 27, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had jointly resided with I-F-, and that she had been subjected to battery or extreme cruelty

perpetrated by I-F-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides a brief and documentation in support of the appeal.

Residence

The petitioner in this matter indicates on the Form I-360 that she jointly resided with I-F- from June 29, 2006 to April 2008 in El Paso, Texas. In the petitioner's initial statement dated September 16, 2008, the petitioner stated that I-F- would come and see her every two or three months and later that "the months were more separated." In the petitioner's sister's statement, translated on October 10, 2008, the petitioner's sister referenced I-F- not liking that the petitioner would be at her parent's house and not their house. The initial record also included wire transfer receipts showing I-F- had sent money to the petitioner intermittently between June 2006 and May 2007. The record further included bank statements addressed to both the petitioner and I-F- at various addresses in El Paso, Texas, utility bills addressed to I-F- at different addresses in El Paso, Texas, and a number of rental receipts with the petitioner's name and two with I-F-'s name.

In response to the director's RFE, the petitioner provided a November 20, 2009 statement in which she declared that I-F- was working in Colorado and living with his brother but he rented her an apartment and used to come and spend time with her and her daughter every three months. The remainder of the petitioner's statement related to her claims of abuse perpetrated by I-F-. The petitioner also provided statements from [REDACTED]

[REDACTED] stated that she had been invited over to "their" apartment on many occasions. As the director noted, [REDACTED] strikes the word "her" and replaces it with the word "their" when referring to the petitioner's apartment. [REDACTED] stated that she knew that the petitioner and I-F- "live together as husband and wife" because she saw the petitioner on a daily basis and had visited her home frequently. [REDACTED] also stated that she knew the petitioner and I-F- "live together as husband and wife." [REDACTED] also declared that the couple lived together and notes that they were residing at one of the addresses where I-F- received mail. [REDACTED] does not reference the petitioner's residence with I-F- in her statement.

Based on the above information, the director determined that the petitioner had not submitted sufficient evidence establishing that the couple had a joint residence.

On appeal, counsel for the petitioner asserts that the petitioner had stated that she and I-F- lived together the whole time of their marriage but he stayed in Colorado while he was working and with the petitioner when he was not. Counsel submits the petitioner's third personal statement in which the petitioner references I-F- refusing to leave his job in Colorado and that she used to live in I-F-'s house in El Paso, Texas. The record on appeal includes four additional statements from [REDACTED]. Each affiant notes that they observed I-F- in El Paso with the petitioner in an apartment.

Upon review of the record, the AAO concurs with the director's determination. The petitioner does not provide probative evidence of her claimed joint residence with I-F-. Although the petitioner has provided some documentation indicating that she received mail at various addresses and that I-F- received mail at various addresses, there is insufficient testimony or other evidence to support her

claim that the couple jointly resided at any of the addresses. The term "residence" means the place of general abode; the place of general abode of a person means his principal, actual dwelling place in fact, without regard to intent. Section 101(a)(33) of the Act. The petitioner testified that I-F- lived in Colorado where he worked and visited her and her daughter intermittently in El Paso. The record is thus insufficient to establish that I-F-'s primary place of abode was in El Paso with the petitioner. The petitioner's own statements in this matter establish that she did not jointly reside with I-F-.

The petitioner's friends' and family's brief references to I-F- visiting the petitioner in El Paso and seeing the couple together on various occasions is insufficient to establish that I-F- jointly resided with the petitioner in El Paso, Texas. The receipt of mail at various addresses is insufficient to establish that the couple jointly resided together. Neither the petitioner's testimony nor the affiants who submitted testimony on the petitioner's behalf, provides a detailed description of her alleged joint residence with I-F- in El Paso. Upon review of the totality of the record, the petitioner has not provided probative testimony that supports her claim that she jointly resided with I-F- during their marriage.

Abuse

The petitioner in her initial statement indicated that the couple's problems started in September 2007. The petitioner noted that the last time I-F- came to El Paso was in September and after that he stopped sending her money. She indicated that she asked for a divorce and he told her she had to pay back all the money he had previously sent her and later he would call just to insult her. The petitioner stated that I-F- demanded \$3,600 and threatened that he would call immigration if she did not give him the money. The petitioner indicated that the last time she saw him was in June 2008 when he called her house and told her to give him the money or he would call immigration, at which time her parents personally gave him \$1,000.

In the petitioner's mother's September 16, 2008 statement, she declared that I-F- bothered the petitioner verbally, yelled and insulted her, and threatened to call immigration if the petitioner did not give him \$3,600. In the petitioner's sister's October 10, 2008 statement, the petitioner's sister's indicated that I-F- did not like the petitioner to stay at their parent's house, that he stopped sending money for her rent, and demanded that the petitioner pay him \$3,600 or he would call immigration.

The initial record also included a police incident report indicating that the petitioner had reported her estranged husband outside a duplex on November 28, 2008 and a police incident report indicating that police officers had responded to the petitioner's location on December 1, 2008 and she reported that I-F- had been harassing her by leaving messages on her cell phone and the officers determined that no assault had occurred.

In response to the director's RFE, the petitioner provided a second personal statement. She declared that over time, I-F- became very possessive and did not want her to visit her mother. She stated that he mistrusted her and always called her derogatory names and in June 2008 he called her house and demanded money to not report her to immigration. The petitioner reported

that he continued to call her and he recently told her he was going to start the divorce process in Colorado. The statements of others made on the petitioner's behalf did not include any observations of battery or extreme cruelty perpetrated by I-F-.

Based on the above information, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by I-F-.

On appeal, counsel asserts that the petitioner has suffered threats of violence on her and her mother, forceful detentions, verbal abuse and extortion, and that these incidents demonstrate a clear pattern of violence and constitute extreme cruelty. Counsel contends that I-F-'s refusal to let the petitioner leave the house is the equivalent of forceful detention and that the petitioner understood I-F-'s threats to be threats of physical violence.

Counsel submits the petitioner's third personal statement in which the petitioner indicates that I-F- called her derogatory names, accused her of being unfaithful, and when she went to live with her mother, he called the house every day to insult her and her mother. The petitioner again reports that one day, I-F- called and told her if she did not give him money, he would report her to immigration and her parents gave him some money. The petitioner notes that I-F- called again and said that he was coming to El Paso at Thanksgiving and he wanted additional money and that he threatened to report her to immigration. The petitioner reports that she called the police and they picked I-F- up at the corner outside her house. The petitioner states that I-F- called her a few days later and told her that the police did not do anything to him and that he was still going to get his money and call immigration, the police, and the FBI, and he threatened both the petitioner and her mother. The petitioner adds that he also threatened that he would have the State take her daughter away because she could not support her.

In the petitioner's mother's statement on appeal, the petitioner's mother declares that I-F- mistreated the petitioner verbally, that when her daughter left him he started calling the house to demand money to repay him for supporting her, and on November 28, 2008 I-F- called demanding money and the petitioner called the police. The petitioner's mother also declares that in December 2008, I-F- again called and threatened her and her daughter and keeps asking for money that the petitioner supposedly owes him as well as demanding that she pay for the divorce. In the statements of [REDACTED] submitted on appeal, the affiants declare that I-F- did not want the petitioner to go out by herself or with her friends and was jealous and controlling.

The petitioner in this matter does not claim that she was subjected to battery; rather, she claims that she was subjected to extreme cruelty perpetrated by I-F-. The petitioner initially indicated that the couple's problems began in September 2007 when I-F- stopped sending her money and when she asked for a divorce he wanted her to repay the money he had previously sent her and in June 2008 threatened to call immigration if she did not give him the money he requested. In the petitioner's second statement she adds that I-F- was very possessive, mistrusted her, and called her derogatory names, as well as demanded that she repay him for the money he had sent her and threatened to call immigration if she did not. In the petitioner's third statement she reiterates that he insulted her and demanded money and declares that he threatened her and her mother as well

as threatened to have her daughter taken away. Contrary to counsel's assertion, the petitioner has not provided probative evidence that she was forcefully detained. When I-F- no longer sent her money to pay for rent, the petitioner moved to her mother's house. The petitioner was not forcefully detained. In addition, the petitioner has not provided detailed testimony describing the circumstances of her relationship with I-F- and their agreements or disagreements regarding the payment of rent and other expenses. There is insufficient information in the record to conclude that I-F-'s behavior included financial or economic coercion to a degree that constitutes extreme cruelty as set out in the statute and regulation. The AAO acknowledges the petitioner's claims that I-F- threatened to report her to immigration if she did not repay the money he had sent her; however, the record includes no probative testimony or evidence that I-F-'s threats were accompanied by violence or the threat of violence. Contrary to counsel's claim that the petitioner understood I-F-'s threats to be threats of physical harm, her testimony and the testimony of others on her behalf, do not provide the necessary descriptive detail of these particular incidents or events. There is insufficient evidence to conclude that I-F-'s alleged behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. Upon review of the police incident reports, including the petitioner's report to the police, the reports do not include sufficient information to conclude that I-F-'s behavior constituted extreme cruelty as defined in the statute and regulation.

Upon review of the petitioner's statements, the statements submitted on her behalf, as well as the police incident reports, the record does not include probative information that demonstrates that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that I-F-'s nonphysical 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 petitioner has failed to establish that I-F-'s actions were comparable to the types of 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. Nor has the petitioner established that I-F-'s behavior was part of an overall pattern of violence or coercion. 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)). In this matter, the record presented lacks sufficient probative information to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her spouse.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. 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. The petition remains denied.