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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
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Services



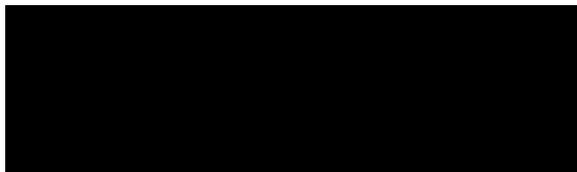
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DATE: **APR 12 2011** Office: VERMONT SERVICE CENTER File: 
EAC 10 040 50737

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain 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 a United States citizen.

The director denied the petition, after determining that the applicant had not established that: she resided with the claimed abusive spouse; that she had been subjected to battery or extreme cruelty by a United States citizen; she had entered into the marriage in good faith; or she had a qualifying relationship with a United States citizen.

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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Viet Nam. She entered the United States October 29, 2004 on a K-1 visa, as the fiancé¹ of C-N-,² the claimed abusive United States citizen. She married C-N- on December 26, 2004 in a ceremony in New York. On October 30, 2008 a divorce dissolving the marriage was rendered in the New York Supreme Court, New York County. On November 25, 2009, the petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On July 8, 2010, the director issued a request for evidence (RFE). On October 15, 2010, upon consideration of the totality of the record, the director denied the petition, determining that the petitioner had not established: she resided with the claimed abusive spouse; she had been subjected to battery or extreme cruelty by a United States citizen; she had entered into the marriage in good faith; or that she had a qualifying relationship with a United States citizen.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, that contains a brief statement. The record is considered complete.

Residence

The petitioner noted on the Form I-360 that she had resided with C-N- from October 29, 2004 to sometime in 2005. In the petitioner's May 27, 2009 personal statement, she indicated that she moved into C-N-'s residence when she came to the United States and that they lived together with his sister [REDACTED]. The petitioner noted that at some point C-N- moved to Tennessee for work. In response to the director's RFE, the petitioner provided a second personal statement dated September 22, 2010; she did not provide further testimony regarding her claimed joint

¹ The petitioner states that she married C-N- in a Vietnamese ceremony on February 8, 2004 in Viet Nam. The record does not include a copy of the Vietnamese marriage certificate.

² Name withheld to protect the individual's identity.

residence with C-N-. The record includes no further information regarding her claimed joint residence with C-N-. The petitioner's personal statements provide an overview of the alleged abuse and do not provide any probative evidence regarding the petitioner's alleged joint residence with C-N-.

Based on the above information, the director determined that the petitioner had not submitted sufficient evidence establishing that the couple had a joint residence. Counsel does not address this issue on appeal. Accordingly, the record does not establish that the petitioner jointly resided with C-N-.

Battery or Extreme Cruelty

The petitioner in her initial statement indicated that she began to suspect that C-N- might be involved in an extramarital affair. The petitioner noted that her former husband never physically abused her but he would slam doors and punch walls and throw the dinner bowl to express his anger at something. The petitioner stated that C-N- called her names. The petitioner indicated that her former husband moved to Tennessee to work and she felt that once he left New York, he changed. She later learned that his ex-girlfriend lived in Tennessee and that at some point he returned to Viet Nam and married another woman while still married to her.

The petitioner also provided an April 22, 2009 psychoemotional and marital dynamics assessment prepared by [REDACTED] licensed mental health counselor. [REDACTED] noted the petitioner's report of her former husband extramarital relations and noted that she described an atmosphere of relational tension, disengagement and neglect, name calling, yelling, slamming doors and making gestures that created an atmosphere of tension and discord. [REDACTED] found that the petitioner developed anxious-depressive symptomatology and that the marital demise occurred as a consequence of C-N-'s infidelity and abusive behavior.

In response to the director's RFE, the petitioner provided a second personal statement, in which she indicated that C-N- would repeatedly verbally abuse her in public and when he got angry, especially when he had been drinking, he would slam doors, punch holes in the walls, and throw objects around the house which scared her. She also mentioned that he husband had road rage and she was often scared when he was driving. She further described C-N-'s infidelity, his bigamous actions, and his abandonment of the marriage.

The record in response to the director's RFE also included two statements submitted by the petitioner's former husband's relatives, who declared that C-N- was promiscuous and had entered into a marriage in Viet Nam while still married to the petitioner.

The director determined, based on the information submitted, that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by C-N-.

On appeal, counsel for the petitioner asserts that the petitioner was subjected to humiliation, physical and emotional abuse, and her former husband's bigamous actions, which were documented in the petitioner's statements. Counsel references [REDACTED] evaluation wherein

he noted clinical indicators of abuse, neglect, infidelity and abandonment. Counsel contends that the director's decision is an abuse of discretion.

Upon review of the totality of the evidence in the record, we find no error in the director's assessment of the relevant evidence. The petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by C-N-. The petitioner initially provided a general statement indicating that C-N- moved to Tennessee, was unfaithful, called her names, and expressed his anger by slamming doors, hitting the wall, or throwing a dinner bowl. The petitioner does not provide specific instances of her former husband doing these things while expressing his anger towards her. She noted that she was never physically abused. Her main complaint in both her first and second affidavits is that her former husband was unfaithful, entered into a bigamous marriage, and abandoned his marriage to her. Although the petitioner also adds in her second statement that C-N- would repeatedly verbally abuse her in public, that he had road rage, and she was often scared, she does not provide specific detail of particular incidents of battery or instances of behavior that constitutes extreme cruelty under the statute and regulations. The petitioner's acts of infidelity, of bigamy, and of abandoning the marriage are not acts of extreme cruelty as contemplated by Congress when enacting the VAWA legislation.

Upon review of the two statements submitted on her behalf, both individuals, who continue to reside in Viet Nam, do not provide any testimony establishing that C-N- subjected the petitioner to battery or extreme cruelty or that they witnessed any behavior that constituted battery or extreme cruelty as set out in the statute and regulations.

evaluation is based upon a single interview of unspecified length with the petitioner and, as such, it fails to reflect the insight and elaboration commensurate with an established relationship with a mental health profession. We find that the absence of an established relationship between the petitioner and the evaluator renders information and findings speculative and diminishes the probative value of his evaluation. For example, does not provide specific examples of the alleged abuse or the particular acts that created the atmosphere of relational tension, disengagement and neglect. He does not provide sufficient information in his evaluation to ascertain that the name calling, yelling, slamming doors and making gestures were acts that constitute extreme cruelty as defined in the statute and regulation.

Based upon a review of the totality of the evidence in the record, the petitioner has not established that she was subjected to battery perpetrated by her former spouse. Neither has the petitioner provided probative evidence that she was subjected to other acts or conduct by her former husband that constitutes extreme cruelty as set forth in the statute and regulations. Upon review of the petitioner's testimony and the testimony of the individuals who submitted statements on her behalf, as well as evaluation, the record does not provide probative information that demonstrates that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that C-N-'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 her. The petitioner has failed to establish that C-N-'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 C-N-'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 evidence to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her former spouse.

Good Faith Entry Into Marriage

The petitioner provided an overview of her initial meeting and subsequent interactions with C-N- prior to her marriage. The record also lacks information regarding the couple's joint life for the time the petitioner claims the couple was married and residing together. The petitioner does not provide sufficient testimony of her interactions with C-N- subsequent to the marriage, except as it relates to the claimed abuse. The petitioner does not describe the couple's mutual interests, she does not describe the family circumstances in detail, and she does not provide any probative information for the record that assists in determining her intent when entering into the marriage.

The two statements from C-N-'s relatives do not provide testimony establishing that they witnessed the bona fides of the marriage. The photocopies of photographs do not include identifying information and are insufficient to establish the petitioner's intent when entering into the marriage. On appeal, counsel for the petitioner does not address this issue.

We find no error in the director's determination that the petitioner failed to provide sufficient evidence establishing her good faith in entering into this marriage. In this matter the petitioner has not set forth her intent in probative detail in her statement to U.S. Citizenship and Immigration Services (USCIS) and the record does not include sufficient evidence that the couple established a life together. Upon review, the record does not include sufficient relevant evidence establishing that the petitioner entered into marriage with C-N- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Qualifying Relationship

Beyond the director's decision, the petitioner has also failed to establish that she has a qualifying relationship with a United States citizen. The language of the statute clearly provides that to remain eligible for classification despite no longer being married to a United States citizen, an alien must have been the bona fide spouse of a United States citizen "within the past two years" and demonstrate a connection between the abuse and the legal termination of the marriage. 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As the petitioner's marriage was terminated on October 30, 2008 and she did not file the Form I-360 until November 25, 2009, the petitioner must demonstrate a connection between the abuse and the dissolution of the marriage. As the petitioner has not established that she was subjected to battery or extreme cruelty by the United States citizen spouse, the petitioner may not establish eligibility under this requirement. As the petitioner does not have a qualifying relationship with a United States

citizen, she is also precluded from establishing that she is eligible for immediate relative classification based on her relationship with C-N-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse.

Conclusion

The petition will be denied for the 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.

ORDER: The appeal is dismissed. The petition remains denied.