

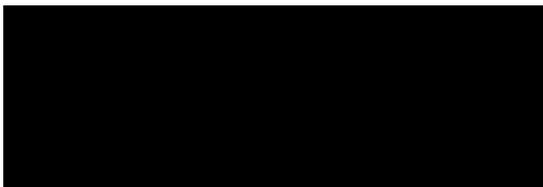
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



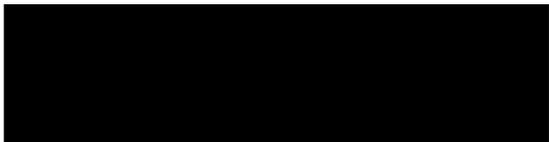
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Date: **APR 12 2011** Office: [Redacted] FILE: [Redacted]

IN RE: [Redacted]

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 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 [REDACTED] director (“the 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 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.

The director denied the petition for failure to establish the requisite battery or extreme cruelty. On appeal, counsel submits a brief and records from the State of [REDACTED] Department of Children and Families.

Applicable Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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 or the self-petitioner’s child, 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.

Facts and Procedural History

The petitioner is a citizen of [REDACTED] who entered the United States without inspection in 2000. The petitioner was placed into removal proceedings before the [REDACTED] Immigration Court, which are currently pending, as the petitioner was granted temporary protected status until July 22, 2011. On June 16, 2003, the petitioner married a U.S. citizen in [REDACTED]. The petitioner's husband filed an alien relative immigrant petition on the petitioner's behalf, which was approved on April 3, 2008. The petitioner filed the instant Form I-360 self-petition on April 9, 2010. The director subsequently issued a request for additional evidence (RFE) that the petitioner's husband subjected her or her children to battery or extreme cruelty during their marriage. The director found the petitioner's response to the RFE insufficient and denied the petition on that ground.

On appeal, counsel asserts that the petitioner submitted sufficient evidence, including a professional psychological evaluation, as evidence that the petitioner's husband subjected her to battery or extreme cruelty. Counsel also asserts that the petitioner is unable to obtain corroborating statements from any witness, including her neighbor, because they are afraid of her husband, and that the petitioner did not mention any sexual abuse in her first affidavit because she was embarrassed. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and on appeal does not overcome the director's ground for denial.

Battery or Extreme Cruelty

In her April 1, 2010 affidavit submitted at the time of filing, the petitioner stated that: in August 2007, she and her husband started arguing, he pushed her, she pushed back, and then he slapped her across the face for the first time; she did not call the police because she could not support her children without the help of her husband; her stepdaughter and her cousin's mother-in-law witnessed the incident; her husband apologized later that night, had not hit her since, but yelled at her all the

time, and she had high blood pressure as a result; her husband was short-tempered and also yelled at her stepson; her husband told her that she had a fat stomach or a big belly, and that her face was the ugliest he had ever seen; and that she could not leave her husband because of her children.

In her psychological evaluation, dated January 18, 2009, [REDACTED] stated that the petitioner suffered from Major Depressive Disorder as a direct result of the mistreatment and abuse from her husband.

In her August 10, 2010 affidavit submitted in response to the request for evidence (RFE), the petitioner reiterated the information from her first affidavit. The petitioner also stated that: she started sleeping on the couch because she was tired of her husband "jumping on [her] for sex"; her neighbors called "HRS" because of her husband's loud yelling, though she did not file a report when HRS arrived at her house; her husband used bad table manners, yelled at her in front of the children, and did not remember important occasions such as Christmas, birthdays, and their anniversary; and her husband violated her privacy by reading all of her personal documents.

The director determined that the petitioner had submitted insufficient evidence to meet the petitioner's burden of proof to establish the requisite battery or extreme cruelty. On appeal, counsel asserts that the petitioner is unable to obtain corroborating statements from any witness, including her neighbor, because they are afraid of her husband, and that the petitioner did not mention any sexual abuse in her first affidavit because she was embarrassed. Counsel submits an Abuse Investigative Report from the State of [REDACTED] Department of Children and Families, regarding the allegations made by the petitioner's neighbor on June 7, 2006, that the petitioner's husband was seen hitting his children with a belt.

At the outset, it is noted that the petitioner does not state in any of her own testimony that her husband ever hit their children. A review of the Investigative Summary of the Abuse Investigative Report finds that the investigation was closed on June 28, 2006, and that there were no indications of abuse and neglect, and there was no evidence to substantiate the allegations. The related Chronological Notes Report dated June 22, 2006, indicates that a therapist who had worked with the petitioner's family for over two years, due to a behavioral problem of the petitioner's stepson at school, found that the family had been responsive, involved and compliant with services, and that she had not seen any indications of abuse and neglect. In sum, the Abuse Investigative Report does not demonstrate that the petitioner's husband ever subjected the petitioner or any of her children to actual or threatened violence or other nonviolent actions that were part of an overall pattern of violence such that they would constitute battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi).

The AAO also acknowledges [REDACTED] psychological evaluation of the petitioner based on one interview with the petitioner on January 14, 2009. [REDACTED] does not specify the length of her assessment session with the petitioner. [REDACTED] reiterates the information from the petitioner's affidavits and adds that the petitioner continues to love her husband in spite of his insults. [REDACTED] diagnoses the petitioner with Major Depressive Disorder as a direct result of the mistreatment and abuse from her husband. [REDACTED], however, does not indicate that she treated or recommended any treatment for the petitioner.

While we do not question the expertise of [REDACTED] her testimony fails to establish that the behavior of the petitioner's husband was comparable to the behavior described in the regulation at 8

C.F.R. § 204.2(c)(1)(vi), which includes forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has the petitioner established that her husband's behavior was part of an overall pattern of violence or coercion.

We find no error in the director's assessment of the relevant evidence. Although the petitioner mentioned one incident of a slap in her face during a mutually combative situation over who would use an electric plug in the kitchen, as well as her husband "jumping on [her] for sex," she has not provided the probative details of these events to reach a conclusion that she was the victim of battery or extreme cruelty perpetrated by her spouse. In addition, the petitioner has failed to establish that her husband'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 her husband'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)). The relevant evidence in this case fails to demonstrate that, during their marriage, the petitioner's husband subjected her to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.