

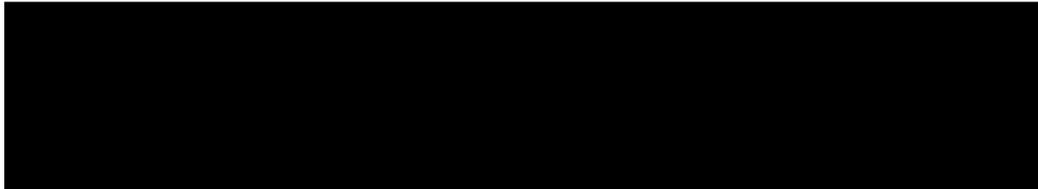
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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

B9



FILE:



Office: VERMONT SERVICE CENTER

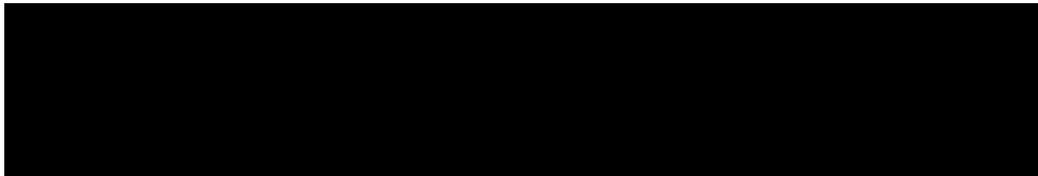
Date FEB 07 2011

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 Administrative Appeals Office (AAO) summarily dismissed the petitioner's subsequently filed appeal. The matter is again before the AAO on motion to reopen or reconsider. The motion will be granted. The previous decisions of the director and the AAO will be affirmed. The petition remains 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 her United States citizen spouse.

On January 5, 2010, the director denied the petition, determining that the petitioner had not established she had been subjected to battery or extreme cruelty perpetrated by her United States citizen spouse. Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, checking the box on the Form I-290B indicating that a brief and/or additional evidence would be submitted to the AAO within 30 days. In a statement on the Form I-290B, the petitioner repeated that he would submit a response within 30 days. On July 15, 2010, as no further evidence had been filed in the record before the AAO, the AAO summarily dismissed the appeal. On motion, counsel submits evidence that a brief had been timely submitted to the Vermont Service Center on March 6, 2010. The motion will be granted so that the AAO may consider the entirety of the record when adjudicating the matter.<sup>1</sup>

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:

---

<sup>1</sup> When a brief is not submitted at the time of filing the Form I-290B, Notice of Appeal, it must be submitted directly to the AAO, not the service center or field office that made the adverse decision. See 8 C.F.R. § 103.3(a)(2)(viii) and the *Instructions* to the Form I-290B at page 2.

(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.

(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 . . . .

\* \* \*

(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 record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico. She entered the United States on or about December 27, 1997 on a B-2 visa. On May 22, 2006 the petitioner married J-H-<sup>2</sup>, the claimed abusive spouse. The marriage was dissolved by court order on July 7, 2007. On October 9, 2007, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On October 24, 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 been subjected to battery or extreme cruelty perpetrated by J-H-. The petitioner timely submitted an appeal.

### *Abuse*

The petitioner initially provided a personal statement in support of the Form I-360. The petitioner stated that: after their first month of marriage J-H- began to withdraw emotional and sexually intimacy; she found a stash of hard-core pornography and when she confronted J-H- with her discovery, he told her that she was too ugly and fat and that he was not attracted to her anymore; he came home late and when asked about his activities, told the petitioner that he had been watching beautiful women; and he rejected her sexual advances, telling her that she was worthless to him. The petitioner noted her belief that J-H- was a sex addict and although he refused marriage counseling, he attended two meetings of Sex Addicts Anonymous. The petitioner noted further that he discontinued his meetings because he did not want to change.

The petitioner reported that she attended [REDACTED] a recovery program for those affected by someone else's sexual behavior and that she had been unable to provide verification of J-H-'s attendance at Sex Addicts Anonymous because of its confidentiality policy. The petitioner also provided an undated letter signed by a support group coordinator at Divorce Care, Community Baptist Church, indicating that she had attended divorce support groups since her divorce on July 7, 2007.

In response to the director's RFE, the petitioner provided a second personal statement dated November 1, 2009. The petitioner stated that she was a victim of emotional abuse and that J-H- called her derogatory names and undermined her self worth. The petitioner added that she felt like she had to walk on eggshells when she was around J-H- to keep from upsetting him. The petitioner indicated that she suffered from depression and was under treatment for depression. The record included medical notes prepared by [REDACTED] dated March 16, 2009 indicating that on March 15, 2009, the petitioner complained of depression and insomnia and that her symptoms of depression had been going on and off for two years since the petitioner's divorce. In a report dated April 5, 2009, [REDACTED] noted that the petitioner's medication made her sleepy but did not fix the depression. In an October 31, 2009 report, [REDACTED] noted the petitioner's sister indicated that the petitioner's depression began with the divorce from her husband and that according to the petitioner and her sister, there was a lot of emotional abuse. The petitioner also provided medical reports showing that she had contacted a medical practice on November 2, 2009 and that it had been determined

---

<sup>2</sup> Name withheld to protect the individual's identity.

that she needed counseling for depression. A doctor's notes dated November 6, 2009 show that the petitioner reported that her chief complaint was depression due to an abusive former husband from whom she had been divorced for two years. Subsequent doctor's notes indicate that the petitioner was prescribed medication for depression.

Based on the information in the record, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty by J-H-. On appeal, counsel for the petitioner asserts that the petitioner's claim is based on extreme cruelty and her mental state was affected by the actions of her United States citizen husband. Counsel contends that the petitioner's medical records show that she suffers from mental and psychological injuries resulting from the actions of her United States citizen husband. Counsel submits the petitioner's previously submitted medical records.

The petitioner does not claim and the record includes no evidence that the petitioner was subjected to battery perpetrated by her former husband. Rather, the petitioner bases her claim on the alleged extreme cruelty perpetrated by J-H-. The petitioner's statements which reference her former spouse's name calling, rejection of physical intimacy, and negative attitude, do not provide the requisite information which establishes that his behavior constitutes extreme cruelty as defined by the statute and regulation. The petitioner does not provide testimonial or other evidence that her former spouse's behavior included actual threats, controlling actions, or other abusive behavior that was part of a cycle of psychological or sexual violence. The petitioner's former husband's sex addiction as described is not a behavior that constitutes extreme cruelty under the statute and regulation.

The petitioner's medical records do not include descriptions of specific incidents of abuse perpetrated by J-H-. The doctors diagnose the petitioner with depression but cite the cause of the depression as the petitioner's divorce two years prior to her seeking their medical treatment. Divorce does not constitute extreme cruelty as set out in the statute and regulation. Although the petitioner may have experienced pain at the break up of her marriage, the record does not include testimonial or other evidence that she was the victim of any act or threatened act of physical violence or extreme cruelty, that J-H-'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 the petitioner. The petitioner's statements and the medical records submitted fail to establish that her spouse'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 spouse'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 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

Upon review of the record, the petitioner has not established that she was subjected to battery or extreme cruelty as set forth in the statute and regulation. For this reason, the petition will not be approved.

### *Qualifying Relationship*

Beyond the decision of the director, the petitioner has not established that she was in a qualifying relationship when the petition was filed. The petitioner in this matter filed the Form I-360 subsequent to her July 7, 2007 divorce from the claimed abusive United States citizen. The language of the statute clearly indicates 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 in this matter has not established that she was subjected to battery or extreme cruelty perpetrated by her spouse and was divorced from her spouse prior to filing the Form I-360, the petitioner does not satisfy this requirement and thus is not eligible to file a Form I-360 petition based upon this marriage. A divorced self-petitioner may establish a qualifying relationship with her former spouse only if she demonstrates a connection between the legal termination of the marriage within the past two years and the battery or extreme cruelty of her former spouse. Similarly, the present record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with her former spouse, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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.