

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

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date:
FEB 07 2011

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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center 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 a United States citizen.

The director denied the petition for failure to establish the requisite battery or extreme cruelty. On appeal, the petitioner submits a letter asserting that her husband subjected her to extreme cruelty during their marriage.

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 . . . 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 Colombia who entered the United States in 1999. On September 23, 2005, she married a U.S. citizen in Florida. The petitioner's husband filed an alien relative immigrant petition on the petitioner's behalf, which was denied on October 19, 2007. The petitioner filed the instant Form I-360 self-petition on July 22, 2008. The director subsequently issued a request for evidence (RFE) that the petitioner's husband had subjected her to battery or extreme cruelty. The director found the petitioner's response to the RFE insufficient and denied the petition on that ground.

On appeal, the petitioner asserts that her husband subjected her to repetitive and constant mental and psychological abuse. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The petitioner's brief assertions on appeal do not overcome the director's ground for denial of the petition and the appeal will be dismissed.

Battery or Extreme Cruelty

As evidence of her husband's abuse, the petitioner initially submitted a three-sentence letter from [REDACTED] dated June 18, 2008. [REDACTED] stated that the petitioner was a victim of unspecified domestic violence who had been attending therapy sessions since February 2008. [REDACTED] provided no information regarding the domestic violence to which the petitioner was subjected. In response to the director's RFE, the petitioner submitted a second letter from [REDACTED] dated November 30, 2009 in which she stated that the petitioner requested domestic violence related therapy because she reported symptoms "related to her verbal, physical, emotional and psychological abuse." [REDACTED] summarized the petitioner's reported symptoms, but again did not provide any further information regarding the abuse.

In her own letter submitted in response to the RFE, the petitioner stated that her husband “disrespected [her] with other women at work,” insulted her age and inability to bear children, and had an extramarital affair. In contrast to [REDACTED] assertion that the petitioner was subjected to physical abuse, the petitioner specifically stated that her husband never physically abused her, but would scream and insult her. The petitioner recounted that her husband eventually moved out of their home and she never heard from him again.

The petitioner also submitted affidavits from five friends. [REDACTED] stated that the petitioner said her husband was “always was in a bad mood” and “arguing for every thing.” [REDACTED] reported that she saw the petitioner become sad, worried, nervous and concerned due to unspecified “insults and abuses that she was receiving from her husband.” [REDACTED] stated that she witnessed “their relationship damage, of all psychological abuse” that the petitioner suffered because of her husband. [REDACTED] also reported witnessing “the damage on their relationship, of all psychological abuse” that the petitioner suffered. [REDACTED] also stated that the petitioner was “very hurt about all psycholog [sic] abuse” from her husband. However, none of the petitioner’s friends described any particular incident of such abuse.

The director determined that the relevant evidence failed to meet the petitioner’s burden of proof to establish the requisite battery or extreme cruelty. The director also noted the contradiction between [REDACTED] assertion that the petitioner was the victim of physical abuse and the petitioner’s own explanation that her husband never battered her. On appeal, the petitioner does not address this significant discrepancy, which detracts from the credibility of both her and [REDACTED] assertions regarding the abuse. Instead, the petitioner discusses non-physical forms of abuse in general. She asserts that her husband’s psychological abuse was constant and the director did not apply the regulatory definition of extreme cruelty to her case.

We find no error in the director’s assessment of the relevant evidence. The petitioner’s statements and those of her friends are general and do not recount any specific incidents of abuse in probative detail. Their statements also do not demonstrate that the petitioner’s husband ever subjected the petitioner to actual or threatened violence or other actions that were part of an overall pattern of violence such that they would constitute extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner’s brief assertion on appeal regarding her husband’s unspecified psychological abuse is also insufficient to demonstrate that he subjected her to extreme cruelty. The Ninth Circuit Court of Appeals has explained that “[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. Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.