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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**

B9

FILE:

Office: VERMONT SERVICE CENTER

Date: FEB 09 2011

IN RE:

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,

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 her United States citizen spouse.

The director denied the petition for failure to establish the requisite battery or extreme cruelty. On appeal, the petitioner submits additional letters from herself, her son and three acquaintances.

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 Trinidad and Tobago who entered the United States as a nonimmigrant visitor in 2001. On November 21, 2005, she married a U.S. citizen in New York City. The petitioner's husband filed an alien relative immigrant petition on the petitioner's behalf, which was denied on March 17, 2008. The petitioner was placed into removal proceedings before the New York Immigration Court and her next hearing is scheduled for February 16, 2011. The petitioner filed the instant Form I-360 self-petition on December 19, 2008. The director subsequently issued a request for additional evidence [REDACTED] 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 [REDACTED] insufficient and denied the petition on that ground.

On appeal, the petitioner states that she did not know that she had "to go into the details of this relationship" and recall events she had repressed in order to establish her husband's abuse, which she describes as "emotional, financial, physiological and very degrading." 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 February 1, 2010 letters, the petitioner recounted that a year after their marriage, her husband's behavior began to change. The petitioner stated that her husband was cold and distant to her and her children and he expressed no concern for her well-being after she was injured in a car accident and her nephew was murdered in 2006. She recounted an incident where her husband made her wait outside for 20 minutes when she forgot her keys and another incident where he argued with her while her sister was visiting and prevented them from attending a party. She further stated that

her husband began to stay overnight away from their home several times a week, insulted her cooking and her job, called her derogatory names, overdrew their joint bank account, sold his wedding ring, stopped contributing financially to their household, kept waking her up until she gave him money on one occasion and that their joint income tax refund was withheld to pay her husband's outstanding tax loan. The petitioner also stated that she changed how she dressed and stopped going out with her cousins in order to please her husband.

The petitioner further reported that in May 2008, a man called and told her that he was her husband's boyfriend. When the petitioner confronted her husband, he became angry and started throwing things. The petitioner stated that she locked herself in the bathroom and that when her son threatened to call the police, her husband calmed down and left their home. The petitioner recounted that two days later, her husband told her that he was bisexual and that he wanted her to leave him alone. The petitioner explained that she was very stressed during the marriage, could not sleep, lost weight and now feels that she can never trust another man.

The petitioner also submitted affidavits and letters from her son, sister and her husband's friend. The petitioner's sister recounted her visit to the former couple when the petitioner's husband called the petitioner obscene names, argued with her all night and prevented them from attending a party. The petitioner's son confirmed that the petitioner's husband cursed the petitioner, overdrew their bank account, and did not financially contribute to the household. The petitioner's son stated that during the incident in May 2008, the petitioner's husband was throwing things around and pushed him when he tried to intervene. The petitioner's son confirmed that after he threatened to call the police, the petitioner's husband calmed down and left. Anthony Jones explained that he was a friend of the petitioner's husband and was shocked to hear that he was marrying the petitioner because [REDACTED] knew that he was bisexual. [REDACTED] also recounted receiving a telephone call from the petitioner in May 2008 when she asked if he knew of her husband's sexual orientation.

On appeal, the petitioner submits a third letter in which she reiterates her prior claims. She also states that her husband insulted the way she spoke, constantly nagged her about everything, would sometimes wave his walking stick menacingly, would prevent her sleeping by turning on the lights and playing loud music, and that when she confronted him about his sexual orientation, he told her he had married her "to prove that he was still a man." The petitioner also briefly states that her husband once pushed a lighted cigarette into her arm, but she does not describe this incident in probative detail. The petitioner further recounts that her husband once locked her in the bathroom and knocked down things in their apartment with his cane. This brief statement is inconsistent with the petitioner's prior accounts of the May 2008 incident where she stated that she locked herself in the bathroom and that after her son intervened, her husband calmed down and left their home.

In his letter on appeal, the petitioner's son's reference to this incident is also inconsistent with his earlier statements. He previously stated that the petitioner's husband pushed him and described the incident as intense and violent. On appeal, however, the petitioner's son states only that "[t]here was one incident where I had to push [the petitioner's husband] away, but it never escalated to anything as he quickly calmed down."

The remaining letters submitted on appeal further attest to the petitioner's husband's poor character and maltreatment of her, but they do not establish that he subjected her or any of her children to

battery or extreme cruelty. [REDACTED] confirms that he called the petitioner and told her he was her husband's boyfriend, that the petitioner's husband told him he married her "to prove that he was still a 'real man,'" and that he was present when the petitioner's husband sold his wedding ring. [REDACTED] also expresses regret at his participation in "bullying" the petitioner and "urging her husband to be unkind to her." [REDACTED] states that she was concerned when the former couple got married because she had heard rumors that the petitioner's husband was gay, but she states that the former couple was happy and got on well together when she visited them on two occasions. [REDACTED] the aunt of the petitioner's husband, states that he once spat on her when she discovered his "secret" and that he is "hostile . . . ungrateful and worthless."

The petitioner's statements and those of her relatives and acquaintances do not recount any specific incidents of battery in probative and consistent detail. Their statements also do 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 extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi). We do not discount the harm the petitioner's husband caused her. However, to qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the cruelty be extreme. As one court has explained, "[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 or any of her children 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.