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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B9



FILE:



Office: VERMONT SERVICE CENTER

Date:

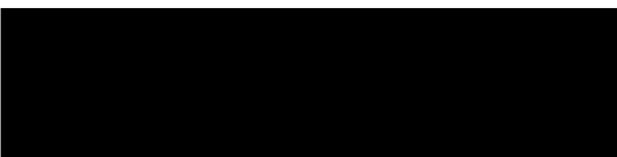
**FEB 18 2011**

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:



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 service center 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 citizen of the United States.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that her former husband subjected her to battery or extreme cruelty during their marriage. The petitioner, through counsel, filed a timely appeal. On appeal, counsel submits a brief reasserting the beneficiary's eligibility and a letter from the petitioner.

#### *Applicable Law*

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, 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).

Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, an individual who has divorced an abusive U.S. citizen remains eligible to self-petition under these provisions if he or she "demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. . . ."

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part, the following:

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 standard and 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.

*Pertinent Facts and Procedural History*

The petitioner, a citizen of the People's Republic of China, married R-S-<sup>1</sup> a citizen of the United States, on August 28, 2008. R-S- filed for divorce on December 8, 2008, and the divorce became final on June 12, 2009. The petitioner filed the instant Form I-360 on February 25, 2010. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel,

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<sup>1</sup> Name withheld to protect individual's identity.

filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on June 15, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition. Beyond the decision of the director, we find further that that petitioner failed to demonstrate the existence of a qualifying relationship with a United States citizen and that she is eligible for immigrant classification as an immediate relative on the basis of such a relationship.

#### *Battery or Extreme Cruelty*

In her December 2009 letter, the petitioner stated that after she married R-S- she discovered he was sexually impotent. The petitioner stated that due to his impotence, R-S- wanted to use a "sex toy." She explained that although she found such practice disgusting, she felt she had to comply with his wishes. The petitioner also stated that R-S- had a gambling problem, and that in order to support his habit he asked her for money on a daily basis, withdrew money from their joint banking account, and took money from her purse. The petitioner stated that when she refused to give R-S- gambling money, he threatened her immigration status, called her names, and prevented her from sleeping. The petitioner also described an incident when R-S- came home from a casino and, when she asked him where he had been, R-S- beat her. According to the petitioner, during their struggle one of her fingers was cut, and R-S- told her that if she sought medical help he would report her to immigration authorities.

In her April 25, 2010 declaration, the petitioner repeated her earlier assertions. The petitioner again recounted the incident during which her finger was cut. According to the petitioner, she was chopping vegetables when R-S- began an argument over money. She stated that R-S- began beating her, and that during the struggle she accidentally cut her finger.

In her July 1, 2010 statement submitted on appeal the petitioner added that R-S- used a "sex toy" with her against her will. She also repeated her assertions about the incident during which her finger was cut.

The petitioner also submitted letters from [REDACTED] and [REDACTED]. In her December 9, 2009 letter, [REDACTED] who is the petitioner's cousin, stated that after R-S- became unemployed he started gambling and abusing the petitioner. According to [REDACTED] R-S- physically and mentally tortured the petitioner. In her December 9, 2009 letter, [REDACTED] stated that the petitioner told her that R-S- was physically abusive, and beat her often. She also stated that the petitioner told her that R-S- was addicted to gambling and often stole money from her.

The petitioner also submitted a letter from [REDACTED] a clinical psychotherapist who interviewed the petitioner on December 18, 2009. In his December 30, 2009 letter, [REDACTED] recounted the petitioner's description of R-S-'s gambling, demands for money, name-calling, use of "sex toys," threats to her immigration status, and the incident where she accidentally cut her finger,

although Dr. [REDACTED] does not state that the petitioner said R-S- beat her during this incident. [REDACTED] diagnosed the petitioner with depression, posttraumatic stress disorder, and dependent personality disorder.

Finally, the petitioner submitted pictures of what appear to be a fingertip.

Considered in the aggregate, the relevant evidence fails to establish that R-S- subjected the petitioner to battery or extreme cruelty during their marriage. Although the petitioner claims to have been battered by R-S-, her testimony lacks probative, detailed information regarding specific instances of such battery. Moreover, her testimony regarding the incident where her finger was accidentally cut lacks consistency: in her first affidavit, the petitioner stated that her finger was cut during a physical struggle with R-S-, but [REDACTED] quoted the petitioner as saying that she accidentally cut her finger herself when she was chopping vegetables during an argument with R-S-. This inconsistency diminishes the probative value of her statements regarding the alleged battery. The two photocopies of pictures of a fingertip are out of focus, contain no identifying marks linking the pictured finger to the petitioner and show no visible injury. The statements of [REDACTED] and [REDACTED] also do not support the petitioner's claim of battery as they do not describe any particular incident of abuse in detail or otherwise explain the basis of their knowledge of the alleged abuse.

Nor does the record demonstrate that R-S-'s non-physical behavior constituted extreme cruelty. Again, the testimony of the petitioner and her affiants lacks detailed, probative information regarding specific instances of alleged abuse. While we do not question the professional expertise of [REDACTED] his letter largely repeats the petitioner's statements, and provides no further information regarding the alleged abuse. [REDACTED] also reports that the petitioner's depression and other psychological conditions stemmed largely from her shame regarding the failure of her marriage.

We do not discount the emotional harm the petitioner's former 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 non-physical cruelty be extreme. The Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, 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 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

Counsel's claims and the evidence submitted on appeal fail to establish the requisite battery or extreme cruelty. Although counsel claims on appeal that R-S- raped the petitioner, the petitioner herself does not claim that she was raped, but states that her husband used sex toys during their intimate relations, which she felt was disgusting. Nor do we find convincing counsel's argument on appeal that R-S- extorted money from the petitioner as, again, her generalized statements that he threatened her immigration status if she did not give him money lack detailed, probative information regarding specific occasions on which such incidents occurred. The petitioner's brief

description of one occasion when her former husband gambled away money her son had given her is insufficient to establish extortion or financial abuse.

Finally, counsel asserts on appeal that the petitioner's inconsistency regarding the incident during which her finger was cut was not caused by a lack of honesty or credibility. The petitioner also explains on appeal that she felt ashamed discussing the details of the domestic violence with [REDACTED] and that she used the word "argument" as including a physical fight. However, in her second affidavit submitted below, the petitioner did not state that she was ashamed to fully discuss the battery with [REDACTED]. Rather, she asserted that she "talked about the fighting" with [REDACTED] and "[t]he fighting include he beat me [sic]." The petitioner's explanation on appeal is thus inconsistent with her prior statement. Regardless of the inconsistencies, the petitioner's brief descriptions of this incident are insufficient to demonstrate that she was battered by her former husband, rather than accidentally injured during an altercation. *See Lopez-Birrueta v. Holder*, \_\_\_ F.3d \_\_\_, 2011 WL 489693, at \*4 (9<sup>th</sup> Cir. Feb. 14, 2011) (discussing how physical actions will be considered "battery" under the regulation 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 former 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.

#### *Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification*

Beyond the decision of the director, we find that the petitioner has failed to demonstrate the existence of a qualifying relationship with a United States citizen and her corresponding eligibility for immigrant relative classification as an immediate relative on the basis of such a relationship.

Although the petitioner filed this Form I-360 within two years of her divorce, she has not established that her former husband subjected her to battery or extreme cruelty. Consequently, she cannot demonstrate a connection between their divorce and such battery or extreme cruelty, as required to establish a qualifying relationship under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

#### *Conclusion*

The petitioner has failed to establish that R-S- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Beyond the decision of the director, she has also failed to demonstrate the existence of a qualifying relationship with a United States citizen and her corresponding eligibility for immigrant relative classification as an immediate relative on the basis of such a relationship. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

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 at 145 (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, with each considered as an independent and alternative basis for the decision. 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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.