

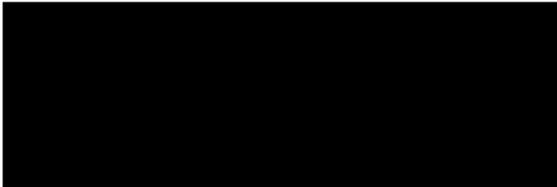
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



By

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JAN 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:

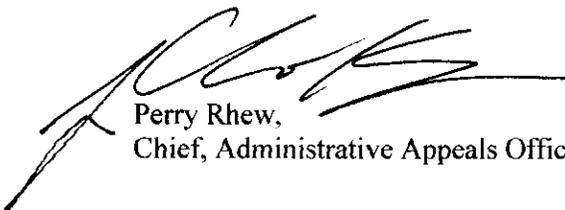


INSTRUCTIONS:

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 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 petitioner's eligibility.

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).

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 Suriname, married J-L,¹ a citizen of the United States, on September 6, 2006. She filed the instant Form I-360 on March 12, 2010. The director issued a subsequent request for additional evidence (RFE) to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to the RFE, the director denied the petition on August 30, 2010.

¹ Name withheld to protect individual's identity.

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, we find that the petitioner has failed to overcome the director's ground for denying this petition.

Battery or Extreme Cruelty

The sole issue on appeal is whether the petitioner has established that J-L- subjected her to battery or extreme cruelty during their marriage. As evidence that she was subjected to abuse perpetrated by J-L- during their marriage, the petitioner submits four personal statements, letters from her uncle and a friend, and a psychological evaluation.

In her Record of Sworn Statement, which she made before U.S. Citizenship and Immigration Services (USCIS) on June 4, 2009, the petitioner stated that she did not learn that J-L- smoked or that he had been sentenced to probation for fighting with a police officer, until after they married. She stated that J-L- called her in May 2008 to tell her that he had been arrested again, and called her again shortly thereafter to tell her he was leaving her. The petitioner stated that because she was not working at that time, she was unable to pay her rent and was forced to live with her cousin. The petitioner specifically stated that J-L- "never got a chance to abuse me."

In her March 9, 2010 statement, the petitioner reiterated her earlier assertions. However, although she had earlier stated that J-L- never abused her, she now stated that J-L- was verbally abusive, threatened her immigration status, and refused to attend her permanent residency interview. Her July 7, 2010 statement was nearly identical to the March 9, 2010 statement, except that in this statement she also asserted that J-L- subjected her to psychological abuse.

The petitioner also submitted a letter from Dr. [REDACTED], who interviewed the petitioner on March 3, 2010. According to Dr. [REDACTED] the petitioner told him during their interview that J-L- abused drugs; called her names; threatened her immigration status; stayed out late; and abandoned her. Dr. [REDACTED] also stated that the petitioner suffers from Major Depressive Disorder.

In his July 7, 2010 letter, [REDACTED], the petitioner's uncle, stated that the petitioner told him that J-L- abused drugs; argued with her; and abandoned her.

In his July 7, 2010 statement, [REDACTED] stated that he personally witnessed the couple arguing, and heard J-L- calling the petitioner names.

The AAO has reviewed the entire record and finds that when considered in the aggregate, the relevant evidence fails to establish that J-L- subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner does not claim, and the record does not establish, that J-L- battered her. Nor does the record demonstrate that J-L-'s behavior constituted extreme cruelty. The testimony of the petitioner and her affiants regarding J-L-'s maltreatment is generalized and lacks detailed, probative information regarding specific instances of alleged abuse.

Moreover, the petitioner's testimony regarding J-L-'s behavior is inconsistent. As previously noted, in her Record of Sworn Statement made before USCIS on June 4, 2009, the petitioner specifically stated that she had never been abused. However, in her March 9 and July 7, 2010 statements, she claimed to have been abused. The record lacks any explanation for this significant discrepancy, which greatly diminishes the probative value of the petitioner's testimony. Nor does Dr. [REDACTED] letter establish that the petitioner was subjected to extreme cruelty by J-L-. While we do not question Dr. [REDACTED] professional expertise, we note that his conclusions were based upon statements by the petitioner, and the inconsistency of her testimony diminishes the probative value of Dr. [REDACTED] statements regarding the abuse.

The record does not establish that J-L-'s behavior, as described by the petitioner and her affiants, was comparable to the types of acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Nor has the petitioner demonstrated that J-L-'s behavior was accompanied by other coercive actions or that his behavior was aimed at insuring dominance or control over her. 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)).

On appeal, counsel argues that the director misunderstood the facts of the case and did not consider the case in its totality. Counsel attempts to distinguish the petitioner's case from an unpublished decision in which the AAO summarily dismissed an appeal where the petitioner failed to specifically identify any erroneous conclusion of law or statement of fact made by the director. The unpublished decision provides no support for counsel's assertion that the director misunderstood the facts of this case and misinterpreted the law by failing to appropriately apply the facts. Upon review of the entire record, we find no error in the director's decision. The petitioner has failed to establish that she was subjected to battery or extreme cruelty by J-L- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has failed to establish that J-L- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.