

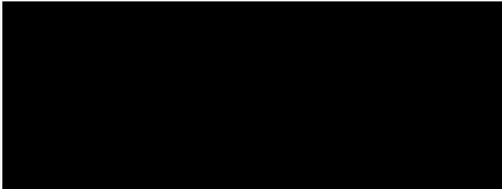
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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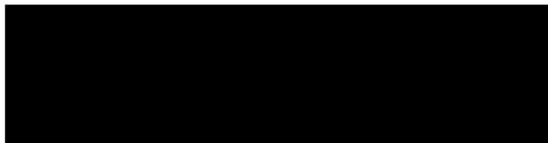
Office: VERMONT SERVICE CENTER

Date: **JAN 20 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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. 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 July 20, 2010, the director denied the petition, determining that the petitioner had not established: her eligibility for immigrant classification based on a qualifying relationship with her former husband; she had been subjected to battery or extreme cruelty perpetrated by her United States citizen spouse; and she is a person of good moral character.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a statement in support of the appeal.

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].

Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, an alien who has divorced an abusive United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person who was a bona fide spouse of a United States citizen within the past 2 years and who 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)(A)(iii)(II)(aa)(CC) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC). As noted above, the petitioner must also establish that he or she was eligible for immediate relative classification based on a qualifying relationship with the former spouse, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

The eligibility requirements are further explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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 file by a spouse must 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Jamaica. She entered the United States on or about April 25, 2007 as a B-2 visitor with authorization to remain in the United States for a temporary period not to exceed October 25, 2007. On November 28, 2007, the petitioner married W-H¹, the claimed abusive United States citizen. On October 27, 2008, a Final Judgment or Decree issued by the 18th Judicial Circuit, Du Page County, Illinois, dissolved the marriage. On October 27, 2009, the

¹ Name withheld to protect the individual's identity.

petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On the Form I-360, the petitioner indicated that she had resided with W-H- from November 27, 2007 to January 2008.

Immigrant Classification Eligibility

The record includes: a Verified Complaint or Petition filed on November 1, 2007, by W-H- to terminate his marriage to D-H-;² a copy of a Notice of Impending Discontinuance of the matter dated October 27, 2008, in [REDACTED] for failure to serve the defendant, D-H-; and a Discontinuance Order dated December 5, 2008, indicating that W-H- had failed to appear to show due diligence in serving the defendant. Although the petitioner apparently was never legally married to W-H- as W-H- had not obtained a divorce from D-H-, the petitioner declared in her July 2, 2009 affidavit that when she married W-H- in November 2007, she was unaware that his divorce from his previous spouse had not been finalized. The petitioner therefore believed that she had married a citizen of the United States when the marriage ceremony was performed. The petitioner in this matter also affirmatively terminated her marriage to W-H- by petitioning for the dissolution of her marriage to W-H- and obtaining a Final Judgment or Decree issued by the 18th Judicial Circuit, Du Page County, Illinois on October 27, 2008.

Counsel does not address this issue on appeal.

We do not dispute that the petitioner believed that she had married a United States citizen when the marriage ceremony was performed and a marriage certificate was issued; however, the petitioner's affirmative act in terminating the marriage prior to filing the Form I-360, also terminated her qualifying relationship with W-H-. An alien who has divorced a United States citizen may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien 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)(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 has not demonstrated that the dissolution of her marriage on October 27, 2008 at her instigation prior to filing the Form I-360 on October 27, 2009 was connected to the battery or extreme cruelty of her former spouse, the petitioner has not established eligibility for immediate relative classification based on a qualifying relationship with her former spouse.

Abuse

The petitioner does not claim that she was subjected to battery perpetrated by W-H-, rather she bases her claim on the alleged extreme cruelty perpetrated by W-H-. In the petitioner's July 2, 2009 affidavit, she declared that when she discovered that W-H-'s prior marriage had not been legally terminated and confronted W-H- with her discovery, he told her not to worry about it because the documents terminating his prior marriage would come soon enough. The petitioner also declared that in January 2008, W-H- told her he was taking a trip out of town for business and that although he initially called her every day, by mid March 2008, he stopped calling and

² Name withheld to protect the individual's identity.

she has been unable to contact him since that time. The record also includes affidavits signed by [REDACTED] who note that W-H- abandoned the petitioner.

The director determined that the bigamous relationship of W-H- and his subsequent abandonment of the petitioner were not acts that constituted extreme cruelty.

On appeal, counsel for the petitioner asserts that bigamy and abandonment are abusive acts and that W-H- had full control over the petitioner, that she was young, impressionable, and vulnerable and that W-H- used these weaknesses to his advantage to coerce the petitioner into becoming his mistress while she believed she was his lawful wedded spouse.

Upon review of the record, the petitioner's statements do not provide the detailed, probative evidence that establishes eligibility for this benefit. Contrary to counsel's assertion, the petitioner has not demonstrated that she was subjected to the control of W-H-. The behavior of the petitioner's former spouse as described does not constitute extreme cruelty. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient detail of specific events and incidents to result in a conclusion that the petitioner was subjected to such abuse. In this matter, the petitioner provided a general statement indicating that she had been abandoned by her former spouse and that he had not finalized his divorce to a previous spouse. The petitioner has failed to establish that her former spouse's actions rose to the level of the 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. The statements submitted on the petitioner's behalf also fail to include sufficient probative information regarding incidents of battery or extreme cruelty.

The claims made by the petitioner and the general statements submitted on her behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that W-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 record is simply insufficient in this regard. The record does not include probative evidence of specific and detailed incidents of abuse as defined in the statute and regulation. The petitioner's failure to provide such information requires the denial of the petition on this ground.

Good Moral Character

The director referenced the petitioner's local police clearance from the State of Georgia, where the petitioner currently resides and noted that the petitioner had not provided a local police clearance from the State of Illinois, a state in which she claimed to reside while married to W-H-. The director noted that the petitioner had not been apprised of the failure to provide the police clearance from the State of Illinois in the request for evidence (RFE) issued on February 23, 2010, but determined nevertheless that the record did not include sufficient evidence to establish that the petitioner is a person of good moral character. Neither counsel nor the petitioner addresses this

issue on appeal. As neither the petitioner nor her counsel addresses this issue on appeal after being put on notice in the director's July 20, 2010 decision of the insufficiency of the evidence on this issue, the record on appeal does not overcome the director's decision that the petitioner has not established that she is a person of good moral character.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as a separate and independent alternative basis for the decision. 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.