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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

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DATE: JUL 12 2011

Office: VERMONT SERVICE CENTER FILE: 

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:

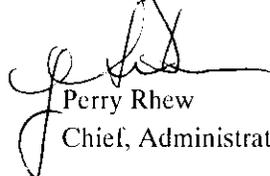


INSTRUCTIONS:

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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 determined that the petitioner had not established that she had been battered or subjected to extreme cruelty perpetrated by her United States citizen spouse. On appeal, counsel submits a statement and a psychological evaluation.

Applicable Law and Regulations

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].

The eligibility requirements are 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.

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.

* * *

(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 native and citizen of Vietnam. She entered the United States on January 10, 2005 on a K-1 visa. She married H-T-¹ the claimed abusive United States citizen on January 13, 2005. On December 21, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner noted on the Form I-360 that she resided with H-T- from January 10, 2005 until September 2007. On February 12, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by H-T-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a statement, and a psychological evaluation in support of the appeal.

Battery or Extreme Cruelty

¹ Name withheld to protect the individual's identity.

The petitioner initially did not provide a personal statement. In response to the director's RFE, the petitioner declared her "husband changed over night" and "[h]e would lose his temper and become angry easily." The petitioner reported: "[h]e would often leave home and come back drunk" and "[a]t first he would just insult [her], but little by little He [sic] became more and more violent[,] he would yell at [her] and hit [her]." The petitioner added that H-T- would always threaten to call immigration and have her deported. The petitioner indicated that she was resigned to live in this condition until her husband left her for an American woman. The petitioner reported that she then moved to Florida where she had a friend.

The petitioner also provided a March 29, 2010 letter signed by [REDACTED] who noted that he had examined the petitioner on March 8, 2010 and on March 29, 2010. [REDACTED] indicated that the petitioner's husband abandoned her and the petitioner developed severe anxiety, anguish, poor sleep and appetite, and had flash backs, nightmares, crying spells, passive death wishes, and severe emotional blunting. [REDACTED] diagnosed the petitioner with major depression disorder, recurrent severe, as well as post traumatic stress disorder and he prescribed medication. [REDACTED] opined: "[the petitioner] is at great risk of major mental and emotional descompensation if she is not granted a permanent residence in U.S.A."

The director determined that the petitioner had not provided probative detail regarding the events leading up to and surrounding the claimed abuse. The director found [REDACTED] letter insufficient to establish battery or extreme cruelty as envisioned by Congress when enacting the Violence Against Women Act and questioned [REDACTED] qualifications to conduct a psychological assessment.

On appeal, counsel for the petitioner asserts that [REDACTED]'s specialty is psychiatry but also submits a psychological evaluation prepared by [REDACTED] a certified psychologist. Counsel contends that the petitioner's claim is not based just on abandonment but on battery and verbal abuse and that H-T-'s behavior rose to the level of extreme cruelty. Counsel avers that when considering the petitioner's Vietnamese upbringing and her lack of independence, H-T-'s behavior rises to the level of cruelty because of the petitioner's perception and fear of her spouse.

In the psychological evaluation dated September 2, 2010, [REDACTED] notes that he examined the petitioner on August 30, 2010 and that the petitioner was not currently medicated with psychotropic medication but had taken an antidepressant prescribed by her psychiatrist in the past. [REDACTED] also notes the petitioner's report that approximately a year after her marriage, her husband changed for the worse and would not allow her to do anything outside the home and the petitioner acquiesced based on traditional Asian culture. [REDACTED] further notes the petitioner's report that her husband started to drink and party with his friends and abandoned her as insignificant, and when she questioned him, he became irate, intimidating, and verbally abusive. [REDACTED] indicates the petitioner report that H-T- threatened her with deportation and during their confrontation, H-T- became physical. [REDACTED] diagnostic impression is that the petitioner suffers from: major depression, moderate, in remission; posttraumatic stress disorder; and generalized anxiety disorder. [REDACTED] does not connect the petitioner's mental state to any specific incident or event but implies that threatened or actual loss may be the basis of depression.

Upon review of the evidence in the record, the petitioner has not established that she has been subjected to battery or extreme cruelty. Although the petitioner referenced that “little by little He [sic] became more and more violent[,] he would yell at [her] and hit [her],” she does not provide probative detail of specific incidents of battery. Similarly, her references to generalized threats of calling immigration and verbal insults are insufficient to establish she was subjected to extreme cruelty as defined in the statute and regulation. Neither [redacted] nor [redacted] connects the petitioner’s mental health condition to battery or extreme cruelty perpetrated by H-T-. Rather both doctors appear to acknowledge the petitioner’s loss of her relationship as the cause of her depression. Moreover, the record does not include evidence of the professional experience, training, or credentials of either doctor; thus, their opinions lack further probative value.

The petitioner’s general reference to battery and verbal abuse is insufficient to establish that she was subjected to battery or extreme cruelty perpetrated by H-T-. The petitioner provides no probative testimony, either to United States Citizenship and Immigration Services (USCIS) or to [redacted] that establishes H-T-’s actions were comparable to the types of 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. Nor does the petitioner establish that H-T-’s behavior was part of an overall pattern of violence or coercion. 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)).

Based upon a review of the totality of the evidence in the record, the petitioner has not established that she was subjected to battery or conduct that constitutes extreme cruelty perpetrated by her spouse. Counsel’s contention that cultural differences between Western and Asian cultures caused H-T-’s behavior to rise to the level of extreme cruelty is not persuasive. The petitioner’s testimony and the testimony of others on her behalf do not provide a credible detailed account of specific incidents or events that constitute battery or extreme cruelty as defined in the statute and regulation.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reason. 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.