

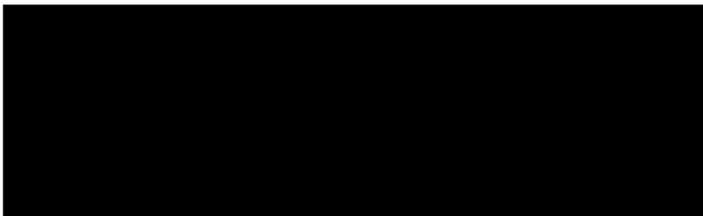
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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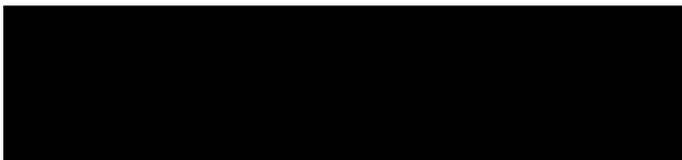
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DATE: **JUL 12 2011** Office: VERMONT SERVICE CENTER FILE: 

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.

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.

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 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

Facts and Procedural History

The petitioner is a native and citizen of India. She married B-L,¹ the claimed abusive United States citizen, in an Indian ceremony on March 22, 2001 in India. She entered the United States on January 3, 2003 on a K-3 visa. On March 20, 2007, United States Citizenship and Immigration Services (USCIS) revoked approval of the Form I-130, Petition for Alien Relative. On June 17, 2008, 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 B-L from January 3, 2003 until September 2005. On August 6, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the

¹ Name withheld to protect the individual's identity.

director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by B-L-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and a statement in support of the appeal.

Battery or Extreme Cruelty

The petitioner initially stated that by 2005, B-L- had become distant from her and because she could not conceive a child, he “became verbally abusive with [her]” and “demeaned and taunted [her] and called [her] a barren woman.” The petitioner also declared that he “was angry and profane” and he “became physically aggressive with [her].” The petitioner indicated that B-L- spent more and more time with his ex-wife and eventually he left the petitioner because she could not conceive a child. The petitioner reported that B-L-’s taunts and ridicule hurt her very badly and made her feel worthless and ashamed.

The initial record also included a May 5, 2008 report prepared by [REDACTED] based on a ninety-minute interview conducted on May 3, 2008. Dr. [REDACTED] indicated that the petitioner reported that when B-L- started to spend more time with his ex-wife, she confronted him and B-L- would shout and argue with her and tell her that because she was barren, the marriage would not work out. [REDACTED] also noted the petitioner’s report that when she tried to stop B-L- from leaving, he would push her. [REDACTED] diagnosed the petitioner with major depression disorder and noted the petitioner’s problems with her primary support group and financial status. [REDACTED] stated B-L-’s verbal abuse regarding the petitioner’s inability to conceive and his rejection caused the petitioner’s depression.

In response to the director’s RFE, the petitioner submitted copies of medical reports dated August 5, 2009 up to October 20, 2009. The medical reports showed that the petitioner was being treated for depression. The initial intake visit report, dated August 20, 2009, referenced domestic abuse, “yelling/screaming, demeaning and hitting.” A subsequent September 1, 2009 report noted the petitioner’s problems with relationships, problems related to social environment, and economic problems. The record also included receipts and warning labels for prescribed medication.

The director determined that the petitioner had not provided probative detail regarding her claims of verbal and physical abuse. The director also found that neither [REDACTED] psychological evaluation nor the medical reports and prescription drug information provided in response to the RFE, demonstrated a connection between the claimed actions of B-L- and the petitioner’s depression.

On appeal, counsel for the petitioner asserts that the director failed to consider that the petitioner was “battered” by B-L- and quotes the California Penal Code’s definition of battery. Counsel refers to [REDACTED]’ assessment in which he noted that the petitioner reported that she had been “pushed” while arguing with B-L- and the September 1, 2009 medical report that indicated the petitioner referenced “yelling/screaming, demeaning and hitting.” Counsel contends that the director ignored these material facts and failed to consider the depravity of B-L-’s ridicule in the

context of Indian culture. Counsel asserts that the petitioner's submissions were adequate to establish a prima facie case of "extreme cruelty" within the meaning of the statute.

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 B-L- "became physically aggressive with [her]" and told Dr. [REDACTED] that when she tried to stop B-L- from leaving he pushed her, she does not provide sufficient probative detail to establish that she was subjected to a specific incident of battery. The petitioner does not describe the surrounding circumstances of the alleged conduct to establish what actually occurred during the claimed arguments. Similarly, the petitioner's initial intake report, dated August 20, 2009, although referencing domestic abuse, "yelling/screaming, demeaning and hitting" does not provide detail regarding specific instances of battery. The petitioner's testimony provided to United States Citizenship and Immigration Services (USCIS) and to her doctors also lacks the requisite probative detail demonstrating that B-L-'s verbal insults constituted extreme cruelty under the statute and regulation. 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 such a conclusion. In this matter, the petitioner has failed to provide the necessary detail to establish that B-L-'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 B-L-'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)).

Upon review of [REDACTED] report, he did not causally connect any alleged incident of battery or extreme cruelty to the petitioner's depression, but rather indicated generally that problems with her primary support group, financial status, B-L-'s verbal abuse regarding her inability to conceive and his rejection caused the petitioner's depression. However, the record does not include sufficient information regarding B-L-'s verbal insults to establish that these insults included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. Likewise, although the petitioner's initial August 20, 2009 intake report references domestic abuse, including "yelling/screaming, demeaning and hitting," subsequent reports do not further elaborate on any particular incident or behavior exhibited by B-L- that constitutes battery or extreme cruelty under the statute or regulation.

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 the depravity of B-L-'s ridicule in the context of Indian culture amounts to 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.