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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**



B9

Date: JUN 02 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:

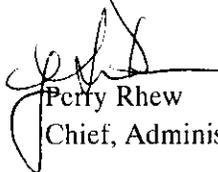


INSTRUCTIONS:

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 the \$630 fee. 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 Vermont Service Center director (“the 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 her United States citizen spouse.

The director denied the petition for failure to establish the requisite abuse. On appeal, the petitioner submits a statement and copies of documentation already in the record. On the Form I-290B, Notice of Appeal or Motion, the petitioner also checked the block on the appeal form that she would submit a brief and/or evidence to the AAO within 30 days. No further documents, however, have been received by the AAO to date. The record therefore is considered complete.

#### *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, 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 further 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 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 or the self-petitioner’s child, and must have taken place during the self-petitioner’s marriage to the abuser.

The evidentiary 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.

*Facts and Procedural History*

The petitioner is a citizen of Brazil who last entered the United States as a B-2 visitor on [REDACTED] 2007. The petitioner had previously married a U.S. citizen in Georgia on [REDACTED], 2005.

The petitioner filed the instant Form I-360 self-petition on [REDACTED] 2007. The director subsequently issued requests for additional evidence (RFE) that the petitioner had a qualifying relationship with her husband, that her husband had subjected her to battery or extreme cruelty, that she was a person of good moral character, and that she had entered into the marriage in good faith. The petitioner submitted additional evidence. The director denied the petition for failure to establish the requisite abuse.

On appeal, the petitioner states that she has been mentally and financially abused by her U.S. citizen husband. The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The relevant evidence submitted below and on appeal does not overcome the director's grounds for denial.

*Battery or Extreme Cruelty*

In her [REDACTED] 2006 statement submitted at the time of filing, the petitioner stated that: after she and her husband were married, her husband never applied for her permanent residence; after approximately one year of marriage, she decided to return to Brazil because she was out of status and her husband had not petitioned for her; her husband promised that he would petition for her

while she was in Brazil and meet her there so that they could return together to the United States; she came to realize that he would never petition for her and after almost two years, she decided to return to the United States alone; and, upon her return to the United States, she was unable to find her husband.

In her [REDACTED] 2009 statement submitted in response to the RFE, the petitioner reiterated the information from her initial affidavit and also stated that she was unable to locate her husband, she did not know if she was married or single, and she had sought help from a psychologist.

In her [REDACTED] 2009 statement submitted on appeal, the petitioner reiterates the information from her previous statements and also states that: she has been extremely and cruelly abused for more than four years of marriage to her U.S. citizen husband; after a few months of marriage, she discovered that her husband had been continuously lying to her, as he had no house or job; she was forced to use her own money for their primary needs; he wanted her to work illegally in order to support him; he used abusive language to her, complaining that foreigners like her came to the United States to steal their jobs; when she asked him why he was not working, he threatened to call "immigration" on her; after she returned to Brazil, his lies continued and she wanted a divorce, but he refused to sign the divorce papers; she suffered a nervous breakdown and visited a psychologist and psychotherapist; her physician recommended that she return to the United States to rejoin her husband; her husband had abandoned her and she had been under family psychotherapy treatment since July 7, 2009; and her husband drained all her money and forced her to borrow from family members.

In her [REDACTED] 2009 evaluation submitted in response to the RFE, [REDACTED] stated, in part, that the petitioner presented herself for therapy due to her depression and loneliness resulting from the abandonment by her husband. [REDACTED] reiterated the information from the petitioner's statements and diagnosed the petitioner with a single chronic episode of major depression, and anxiety disorder, as a result of the relationship with her husband, who had taken advantage of her financially and ultimately abandoned her. [REDACTED] concluded that the petitioner now appeared to understand that she needed to move on with her life without her husband and was trying to do so.

The petitioner also resubmitted statements from [REDACTED] and [REDACTED] stating that the petitioner's husband abandoned her and refused to petition for her.

The AAO acknowledges [REDACTED] September 1, 2009 evaluation. [REDACTED] did not provide details of the counseling session/s with the petitioner, such as the number of sessions, dates, and the length of such sessions. While [REDACTED] diagnosed the petitioner with a single chronic episode of major depression, and anxiety disorder, as a result of the relationship with her husband, she did not recommend any treatment or ongoing counseling for the petitioner.

While we do not question the expertise of [REDACTED] her testimony fails to establish that the behavior of the petitioner's spouse was comparable to the behavior described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has the petitioner established that her spouse's behavior was part of an overall pattern of violence or coercion.

We find no error in the director's assessment of the relevant evidence. Although the petitioner indicated that her husband spoke abusively to her and took advantage of her, she has not provided the probative details to reach a conclusion that she was the victim of battery or extreme cruelty perpetrated by her husband. The petitioner's statements and the statements submitted on her behalf do not recount any incidents of battery. Their statements also do not demonstrate that the petitioner's husband'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 has the petitioner established that her husband'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 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty 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 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.

#### *Conclusion*

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

**ORDER:** The appeal is dismissed.