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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 06 2011** OFFICE: VERMONT SERVICE CENTER

FILE: [REDACTED]

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)

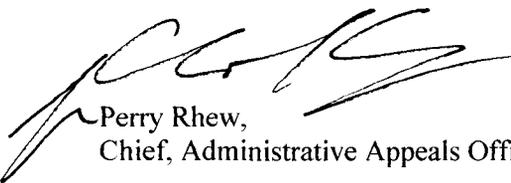
ON BEHALF OF PETITIONER:
[REDACTED]

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 Administrative Appeals Office (AAO) remanded a subsequent appeal to the director for entry of a new decision. The director has denied the petition and certified his decision to the AAO for review. The director's decision will be affirmed.

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.

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.

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.

Procedural History

The director denied the petition on May 29, 2008 on the basis of his determination that the petitioner had failed to demonstrate that her husband subjected her to battery or extreme cruelty during their marriage. The petitioner appealed the director's decision to the AAO and, in our April 27, 2009 decision, we agreed with the director's decision. Although we agreed with the director that the petition was not approvable, we nonetheless remanded the petition to the director on technical grounds for issuance of a notice of intent to deny (NOID) the petition in accordance with the regulation then in effect at 8 C.F.R. § 204.2(c)(3)(ii).¹

The director issued the requisite NOID on February 23, 2010, and previous counsel submitted additional testimonial evidence in response. The director found the petitioner's response insufficient and denied the petition on February 3, 2011 for failure to establish the requisite battery or extreme cruelty. The director notified the petitioner that his decision would be certified to the AAO for review and that she had 30 days during which to submit a brief or other written statement

¹ On April 17, 2007, U.S. Citizenship and Immigration Services (USCIS) promulgated a rule related to the issuance of requests for evidence and NOIDs. 72 Fed. Reg. 19100 (April 17, 2007). The rule became effective on June 18, 2007, after the filing of this petition on June 15, 2007.

to be considered during our review. In response, newly-retained counsel submits a brief and additional testimonial evidence.

The AAO reviews these matters on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review, we find that the petitioner has failed to establish that she was subjected to battery or extreme cruelty perpetrated by her husband during their marriage. In our April 27, 2009 decision, we agreed with the analysis of the director's earlier May 29, 2008 decision denying the petition. The contents of our prior decision, as well as the evidence of record upon which we based that decision, are part of the record and their contents will only be repeated as necessary.

Battery or Extreme Cruelty

In finding the testimonial evidence of record insufficient to support a finding that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage in our April 27, 2009 decision, we found the petitioner's testimony regarding the alleged abuse lacking in detailed, probative information regarding specific incidents of abuse.

The petitioner's February 25, 2011 affidavit submitted on certification does not cure that evidentiary deficiency. For example, although the petitioner makes statements regarding her husband's "overly aggressive response[s] for the most simple of matters," his "volcanic explosions," and his "spontaneous loss of self-control," she still does not describe specific instances during which such behavior occurred. Nor does she describe specific occasions on which the "pushes and shoves," "insults and humiliations," and "grabbing" took place. The other behaviors she describes, including his alcohol abuse and disappearances from the home for days at a time, are not comparable to the types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty.

Nor do the letters from [REDACTED] provide probative details regarding specific incidents of battery or extreme cruelty. The statement by [REDACTED] that she knows the petitioner was physically abused by her husband lacks any probative detail. Although her letter is longer [REDACTED] also fails to describe any specific incidents of abuse in probative detail. Instead, she states that the petitioner's husband was "verbally and physically abusive" with no elaboration. The other behaviors described by [REDACTED] de los Santos, such as his staying out late and failure to communicate with the petitioner, are not comparable to the types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty. Finally, we note that the letters from [REDACTED] were not accompanied by certifications that they are complete and accurate translations from the originals, and that the translator is competent to translate them to the English language from Spanish, as required by 8 C.F.R. § 103.2(b)(3), which detracts further from their probative value.

The March 24, 2010 and February 24, 2011 letters written jointly by [REDACTED] confirm that the petitioner was prescribed antidepressant medication for treatment of her mental health conditions in 2009, two years after she indicated she separated from her spouse. The letters do not establish that the petitioner was

subjected to battery or extreme cruelty during her marriage. In these letters [REDACTED] state that the petitioner's husband grabbed and put pressure on her neck on one occasion, and that he was physically and verbally abusive. However, they failed to describe the grabbing incident in any probative detail or discuss any other specific incidents of physical or verbal abuse. The other behaviors they discussed, such as his indifference and marital infidelity, are not comparable to the types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty.

Beyond the evidentiary deficiencies discussed above regarding each document submitted by the petitioner in response to the director's NOID and on certification, the testimonial evidence of record, when considered as a whole, fails to establish that the petitioner was subjected to battery or extreme cruelty because that testimony is inconsistent. When she filed the petition, the petitioner submitted a May 24, 2007 letter from [REDACTED] discussing the abuse to which the petitioner was allegedly subjected, which included indifference, verbal abuse, and marital infidelity. No allegations of physical abuse were made. However, the petitioner began alleging physical abuse with her February 27, 2008 affidavit, stating that her husband grabbed her neck and almost suffocated her. This inconsistency undermines the probative value of the petitioner's testimony regarding the alleged abuse. Nor has the petitioner resolved, or even addressed, the additional inconsistencies we identified in our April 27, 2009 decision.

Finally, we note counsel's submission of information from the website of the U.S. Department of Justice, Office on Violence Against Women, which he printed on March 1, 2011. This printout states that domestic violence can consist of physical, sexual, emotional, economic, or psychological abuse. It also states that domestic violence can happen to anyone, regardless of race, age, sexual orientation, religion, or gender. We do not dispute any of this information. However, as discussed above, the petitioner in this particular case has failed to demonstrate that her husband subjected her to battery or extreme cruelty during their marriage.

Upon review, we affirm the director's decision. The new evidence of record fails to overcome the previous decisions of the director and the AAO. The petitioner has failed to demonstrate that her husband subjected her to battery or extreme cruelty 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 her husband subjected her to battery or extreme cruelty during their marriage. Consequently, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and her 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 and we will affirm the director's decision denying the petition.

ORDER: The director's February 3, 2011 decision is affirmed. The petition remains denied.