

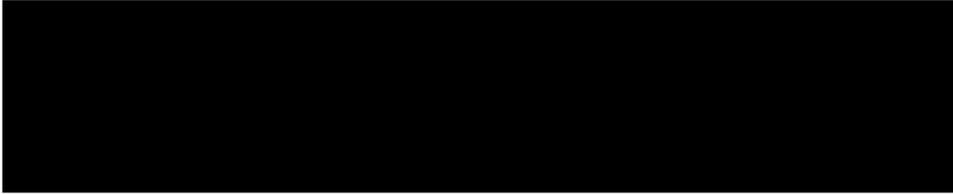
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

DATE: **JUN 17 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:

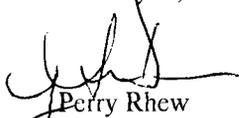


INSTRUCTIONS:

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 Administrative Appeals Office (AAO) summarily dismissed a subsequently filed appeal. The matter is again before the AAO on a motion to reopen and reconsider the previously submitted brief. The AAO reopens the matter on its own motion. The appeal will be dismissed. The petition remains 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 subjected to battery or extreme cruelty perpetrated by the United States citizen spouse.

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 Mexico. She entered the United States on or about February 1, 1992 as a B-2 visitor. On April 29, 1995, she married M-C-,¹ the claimed abusive United States citizen. On or about June 20, 1995, M-C- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On May 8, 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 had resided with M-C- from 1994 until October 1995 and again from November 1997 until March 1998. On June 18, 2009, 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 M-C-. Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, indicating that a supplemental brief and/or additional evidence would be submitted within 30 days. The record previously before the AAO did not

¹ Name withheld to protect the individual's identity.

include a supplemental brief or additional documentation when the appeal was adjudicated; thus, the appeal was summarily dismissed. On motion, counsel provides evidence that the supplemental brief and additional affidavits were timely submitted. The AAO reopens the matter on its own motion to consider all the evidence submitted.

Battery and Extreme Cruelty

In the petitioner's initial personal statement, she declared that M-C- and one of his friends drank together and once in October 1995 when both of them returned to the apartment after drinking, she refused to allow M-C-'s friend to stay over and M-C- was upset about this. The petitioner stated that a few weeks later, while she was away from the apartment, her sister came by and saw the door open and discovered that the petitioner had been robbed. The petitioner indicated that she was certain that M-C- and his friend were the perpetrators of the robbery. The petitioner stated that she was afraid and the next morning when M-C- and his friend came around she refused to let them in and M-C- called her derogatory names and kept kicking the door to try to get in. The petitioner noted that she called 9-1-1- but the police did not come to the apartment; however, when a patrol car happened to drive by, M-C- and his friend ran away. The petitioner indicated that she and her landlady filed a police report regarding the theft but she never received notice regarding a hearing about the case. The petitioner stated that "[e]ver since that night, [she has] been somewhat afraid of [her] husband." The petitioner noted that in January 1996 M-C- was arrested for violating his probation relating to a 1993 burglary conviction by committing a theft and two residential burglaries and on February 16, 1996 he was sentenced to serve five years in the Illinois Department of Corrections. The petitioner noted that she and her daughter visited M-C- while he was incarcerated and that she allowed him to return to live with her and her daughter when he was released in November 1997. The petitioner indicated that M-C- could not keep a job and kept asking her for money and when she told him he needed to work, he would call her derogatory names. The petitioner declared that in March 1998 he left the house and although he called her and sometimes would come to dinner, he did not return to live with them.

In a supplemental statement, the petitioner added that in addition to burglarizing her home which scared her, M-C- verbally abused her during the time the couple lived together and that this affected her self-esteem. She noted that he also asked for money to support his drinking and drug habits and when she stopped giving him money, he stole things. The petitioner indicated that although they have been separated for some time, she still feels anxious that he will show up at her doorstep.

The record included a police report of the theft occurring on November 18, 1995 at the petitioner's residence in which she declared that an offender took a VCR and that approximately three weeks prior, someone had also taken \$500 without her permission but she had not filed a police report at that time because of the language barrier.

In response to the director's RFE, the petitioner provided a second personal statement dated July 28, 2009. The petitioner added that about six months after their marriage, M-C- started to

change by staying out late. She also added that he allowed his brother and his brother's girlfriend to use their apartment when she was not there. She noted that he was fired from his job and when she found out and confronted him he responded by using bad words. The petitioner also declared that two weeks after she had picked M-C- up from his incarceration he stole from her and so she kicked him out of the house. The petitioner also provided a partial copy of a "Rights of Domestic Crime Victims" dated November 18, 1995, which had been given to her after she filed the theft complaint.

On appeal, the petitioner provides a third statement. The petitioner declares that almost immediately after M-C- got out of prison things went downhill. The petitioner indicates that she bought M-C- clothes to help him get a job but he was unable to find work. She notes that one evening M-C- left the home quickly and she realized that he had taken a ring and some cash from her purse. The petitioner indicates that she confronted M-C- when he returned but he denied that he had taken anything from her but she realized she could not trust him and threw him out of the house. She declares that although the couple did not live together after this incident M-C- continued to harass her. She notes that he would appear and ask for money and in 2002 when she needed him to sign a notarized document, he told her that he wanted money for gas and food and told her they should go to a hotel. The petitioner indicates that as late as 2009, M-C- tried to find her. The petitioner adds an additional two incidents: (1) when she visited him in prison, she was told that M-C- was already visiting his wife and when she confronted him with what she had been told, he explained that he had a child with this woman; and (2) when M-C- was out of prison, he brought his daughter to the petitioner's house but his daughter did not get along with the petitioner's daughter. The petitioner reports that she no longer lives close to her previous residence to avoid the possibility of running into M-C- again.

The petitioner also provides a statement from her daughter who indicates that she does not recall any arguments between her mother and M-C- but notes that she did not get along with M-C-'s daughter and M-C- would yell at her. The petitioner's daughter also indicates that after M-C- got out of prison, he was more aggressive and would get mad over any little thing and would yell. The petitioner also submits a statement from her sister who declares that she was a witness to M-C- taking things from the house in 1995 and that he took the petitioner's ring and car. The record also includes a statement from a second sister who declares that the petitioner told her that M-C- had changed and went out with friends and paid little attention to her. The petitioner's second sister also notes that the petitioner was robbed and that M-C- tried to contact the petitioner a couple of times after the petitioner had thrown him out of the house.

Counsel asserts that a case of burglary or theft by a husband against his wife to support his drug habit is tantamount to harassment and intimidation to the wife. Counsel contends that M-C- harassed the petitioner by always asking her for money and getting angry when she refused and yelling and calling her names. Counsel avers that the totality of M-C-'s behavior shows that the petitioner suffered extreme mental cruelty through her marriage to him and that the quality of the petitioner's life began to deteriorate as soon as the abuse started. Counsel asserts that because of M-C-'s aggressive attempts to obtain money from the petitioner, she suffers from depression and

is afraid that he will find her and continue to harass her. Counsel claims that the derogatory name calling by M-C- affected the petitioner's self-esteem.

Upon review of the record, the petitioner has not described any particular incident that constitutes battery; rather her claim is based on extreme cruelty. However, the petitioner's claim that M-C- robbed her on more than one occasion and always needed money for his drug habits, and called her derogatory names when she refused to continue to provide him with money as described are not acts that constitute extreme cruelty under the statute and regulation. The petitioner's testimony fails to establish that M-C-'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 M-C-'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 the statements of individuals submitted on the petitioner's behalf, the declarants note their knowledge of M-C-'s alleged theft and requests for money and note the stress the petitioner felt at the breakdown of her marriage. Again, however, the actions of M-C- as described do not constitute extreme cruelty under the statute and regulation. The police report regarding the 1995 theft and the copy of a "Rights of Domestic Crime Victims" provided to the petitioner after she filed the theft complaint do not include probative details demonstrating that M-C-'s actions were aimed at controlling or coercing the petitioner or that his actions included violence.

The petitioner's statements and the statements of others on her behalf include little chronological timeline and demonstrate the intermittent contact between the petitioner and M-C-. There is no probative testimony that M-C-'s behavior escalated to a point of aggression or that his derogatory name calling and actions regarding money and stealing included actual threats, controlling actions, or other abusive behavior that was part of a cycle of psychological or sexual violence. Upon review of the totality of the evidence submitted the petitioner has not established that she was subjected to extreme cruelty as set out in the statute and regulation.

Counsel's assertions that M-C-'s thefts, his constant requests for money, and his name calling constitute extreme cruelty under the statute and regulation are not persuasive. Although the petitioner may have experienced distress at the breakdown of her marriage, when evaluating the record as a whole, the record lacks definitive descriptions of behavior on the part of M-C- that could be categorized as battery or extreme cruelty as defined in the statute and regulation. The petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by M-C-.

Conclusion

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