

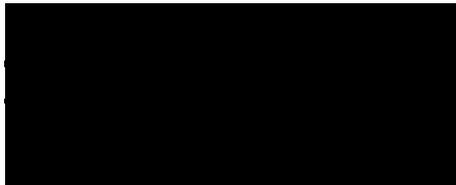
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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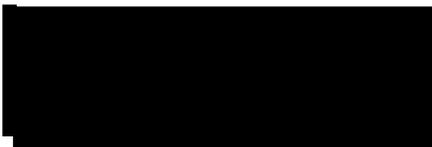
DATE: **JUN 22 2011**

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 subjected to battery or extreme cruelty perpetrated by the United States citizen spouse. On appeal, counsel submits a Form I-290B, Notice of Appeal or Motion, and additional documentation.

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 Cambodia. She entered the United States on July 30, 2001 on a B-2 visitor's visa with temporary authorization to remain in the United States until January 29, 2002. She married T-B-¹, the claimed abusive United States citizen on March 8, 2003. On or about June 10, 2003, T-B- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On December 16, 2005, the Form I-485 was denied. On September 15, 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 T-B- from March 2003 until November 12, 2004. On December 11, 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 T-B-. Counsel for the petitioner timely submits a Form I-290B, the petitioner's affidavit, and an October 15, 2010 psychiatric assessment on appeal.

¹ Name withheld to protect the individual's identity.

Battery and Extreme Cruelty

The petitioner initially did not submit a personal statement regarding abuse perpetrated by T-B-. The initial record included an October 3, 2007 psychological assessment prepared by [REDACTED]. [REDACTED] noted that she saw the petitioner on August 22, 2007 for a little over four hours during which time psychotherapy and psychological testing was conducted. [REDACTED] also noted that she had reviewed documents related to the petitioner's immigration, work, and family history. [REDACTED] indicated that the petitioner reported that T-B- would often threaten her, but that he did not hit her and that he would get mad at her, order her to go to work, and ask her for money and yell at her if she did not have any. [REDACTED] also indicated that the petitioner reported that T-B- left on November 12, 2004 to go to Thailand to visit but that he never returned and that she lost all contact with him in April 2005. [REDACTED] concluded that the petitioner was subjected to both verbal and demeaning behavior by T-B- and that the way he left her constitutes abuse.

The initial record also included a [REDACTED] letter signed by [REDACTED] who concurred with [REDACTED]'s assessment and recommended that the petitioner remain in the United States where she is receiving therapy to cope with her relationship and marriage to T-B-.

In response to the director's RFE, counsel for the petitioner provided an additional two letters signed by [REDACTED] dated [REDACTED]. In [REDACTED] letter she noted that the petitioner had been in therapy with her since [REDACTED]. In [REDACTED] letter she noted that she had last seen the petitioner on [REDACTED] and that the petitioner had made good progress.

The director determined that the information submitted did not establish that the petitioner had been subjected to battery or extreme cruelty for immigration purposes.

On appeal, counsel for the petitioner submits the petitioner's first personal statement dated October 6, 2010. The petitioner indicates that she felt sad when she lived with T-B-, that he always asked her for money, and that he got mad when she sent money to her children in Cambodia. The petitioner also states that he called her derogatory names and yelled at her when she sent money to her children. The petitioner notes that she told a Cambodian friend about T-B-'s behavior and T-B- yelled at her friend and never talked to her friend again and got mad at her for sharing the information with her friend. She states that eight to ten times T-B- made her feel upset when he was mad that she did not have money for him and that on several occasions she felt scared that he would slap her, but he never did. The petitioner also indicates that she borrowed money from a friend to give to T-B- and a short time later he left to go to Thailand. She indicates further that while he was in Thailand, she sent him an additional \$500 when he said he needed money for his ticket home, but he never returned. The petitioner indicates that she is still paying back the money she borrowed. The petitioner relates an incident when T-B- yelled at her when she took too long shopping.

Counsel provides an October 15, 2010 mental health evaluation prepared by [REDACTED] licensed marriage and family counselor. [REDACTED] indicates that the petitioner reports that T-B- abandoned her and went to Thailand and that although she told him she would pay for his ticket home and sent him money he stopped answering his phone and never returned. [REDACTED] also indicates that the petitioner reports that from the beginning of her marriage, she experienced emotional and verbal abuse in that T-B- would scream at her about money and if she did not give him any money he would get angry and she was scared that he would hit her because he would be so loud. [REDACTED] further indicates that the petitioner reports sexual abuse, in that even if she did not want to engage in sexual relations he would demand that she do so. [REDACTED] indicates that the petitioner reports that she was isolated because T-B- did not like her friends and would not let her see them and if he found out that she had spoken to her friends he would throw something against the wall, like a chair or a spoon or a fork and then would yell at her and call her names if she cried. [REDACTED] also notes that the petitioner reports being controlled over household finances because T-B- did not want her to send money to her children and would be angry if she did so. [REDACTED] states her belief, based on the data collected and the tools she utilized, that the petitioner "experienced extreme psychological abuse and extreme cruelty not only with the actual experiences with her husband in the year they were together, but also with the promises and abandonment that followed his abuse."

Counsel asserts that the psychological evaluations submitted show that the petitioner reported verbal abuse, which focused on the issue of money, and that the petitioner continued to feel sad and anxious regarding her abandonment. Counsel notes that the petitioner has now been able to recall and discuss incidents of abusive behavior including forced sexual intercourse and throwing things in anger. Counsel contends that when the abusive behavior is considered in the aggregate, the yelling, demands for money, name calling and threats constitute a pattern of behavior that meets the definition of extreme cruelty. Counsel also asserts that extreme cruelty should focus on the experience of the victim, not the specific conduct alleged. Counsel references the New Jersey statutory definition of extreme cruelty and the New Jersey Supreme Court's analysis of the definition in *Kinsella v. Kinsella*, 696 A 2d 556 (N.J. 1997) and suggests that this case is instructive in applying the concept of extreme cruelty in the immigration context.

Upon review, the petitioner's initial statements to mental health evaluators are limited to general descriptions of T-B-'s conduct that encompasses yelling, name calling, and abandonment. The petitioner does not describe events that escalate to violence and the petitioner's general descriptions of T-B-'s non-physical behavior does not include detailed information that his non-physical conduct was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over her. [REDACTED] the initial evaluator, concluded only that the petitioner's mental state was due to verbal and demeaning behavior by T-B- and abandonment. [REDACTED] concurred with this initial assessment. Again, these reports do not include descriptions of any particular incident in detail and do not provide sufficient probative detail of any of the surrounding circumstances regarding the petitioner's allegations. The petitioner does not provide a consistent chronological timeline of specific incidents or events that occurred in her 18-month relationship with T-B-. It is not possible to consider the incidents and events described in the aggregate as the petitioner's statement to USCIS and to the mental health evaluators do not provide a distinct and explicit description of

particular incidents and events. Rather the information provided is limited to an overview of information regarding name calling, demands for money, and eventual abandonment.

On appeal, the petitioner's statement to United States Citizenship and Immigration Services (USCIS) includes similar information as reported to [REDACTED] and apparently to [REDACTED]. She states that T-B- got mad over the issue of money, called her derogatory names, and disliked her sharing their marital difficulties with a friend. Although she states that she was scared on several occasions that T-B- might slap her, she does not provide detail of the surrounding circumstances and timing of the incidents sufficient to conclude that these occasions demonstrated an escalation in the United States citizen's behavior. The petitioner states that she borrowed money from a friend to give to T-B- and although she indicates that she felt she had no choice, she does not describe T-B-'s conduct that made her feel that way. Her report to [REDACTED] indicates that she affirmatively told T-B- she would send him money to return, an act that is not indicative that she was controlled by T-B-. Her statement to USCIS does not include information that she was forced to have sexual intercourse and that T-B- threw things in anger. Her statement reflects her sadness and embarrassment at borrowing money for T-B- and at his abandonment of the marriage. However, abandonment does not constitute extreme cruelty for immigration purposes.

[REDACTED] addition of incidents of forced sexual intercourse and of T-B- throwing a chair, a spoon, or a fork against the wall is not probative in this matter. [REDACTED] does not explain why or how these incidents were not reported to [REDACTED] the therapist who had an established relationship with the petitioner. These incidents are also not described in the petitioner's personal statement to USCIS.

We disagree with counsel's assertion that extreme cruelty should focus on the experience of the victim not the specific conduct alleged. It is necessary to evaluate the circumstances of specific events and incidents to determine whether the petitioner was the victim of extreme cruelty as set out in the statute and regulation and envisioned by Congress when enacting the Violence Against Women Act (VAWA). The reasoning of different courts in interpreting state statutes regarding extreme cruelty in divorce matters is not necessarily comparable to the concept of extreme cruelty in immigration matters and counsel has not provided any evidence that the New Jersey court's interpretation of its state statute's definition of extreme cruelty is equivalent to the definition of extreme cruelty as set out in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Upon review of the record, the interactions between the petitioner and T-B- as described are insufficient to establish that T-B-'s conduct constituted extreme cruelty as set out in the statute and regulation. In this matter, the petitioner's testimony and the mental health assessments fail to establish that the actions of T-B- 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 T-B-'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)).

When evaluating the record as a whole, the AAO finds the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty under the statute or regulation. The petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by T-B-.

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.