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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**

PUBLIC COPY



B9.

FILE:



Office: VERMONT SERVICE CENTER

Date:

MAR 21 2011

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 remains denied.

The petitioner seeks immigrant classification pursuant to 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 determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by a United States citizen. Counsel for the petitioner submits a brief, and additional evidence in support of the appeal.

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 Colombia. She entered the United States on May 7, 1986 without inspection. The legacy Immigration and Naturalization Service (INS) detained the petitioner upon entering and placed her in removal proceedings. On May 13, 1986, the petitioner was granted voluntary departure on or before August 13, 1986. The record does not include evidence that the petitioner complied with the voluntary departure order. On September 9, 1992, the petitioner married J-C¹, the claimed abusive United States citizen. On or about April 25, 1996, J-C- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The Form I-130 was approved on or about December 9, 1996. On July 7, 2008, J-C- petitioned to have the marriage dissolved. The record includes information regarding the divorce proceedings but does not include a Judgment of Divorce. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant on March 11, 2010. The petitioner indicated on the Form I-360 that she had resided with J-C- from September 1992 to 2003. On May 4, 2010, 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

¹ Name withheld to protect the individual's identity.

that she had been subjected to battery or extreme cruelty perpetrated by J-C-. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a brief, and additional evidence in support of the appeal.

Battery or Extreme Cruelty

The initial record did not include the petitioner's statement or other evidence demonstrating that the petitioner had been subjected to battery or extreme cruelty. In response to the director's RFE, the petitioner provided a July 12, 2010 statement. The petitioner indicated that at first the marriage was peaceful, "but as time went on [J-C-] started demanding to have sexual intercourse. [she] didn't allow him to do so, he abused [her] sexually and emotionally." The petitioner also noted that J-C- demanded her money, because she was working and he was not working. The petitioner indicated that at some point, J-C- found a job and did not want her to work and due to her fear of him, she did not work. The petitioner also indicated that at some point she realized J-C- was involved in another relationship, which caused him to become more violent. The petitioner also stated that when J-C- was drunk, he would throw everything in the house which left her in a "terrible trauma."

The petitioner also provided affidavits from two friends. In the July 11, 2010 statement of [REDACTED] [REDACTED] declared that she had known the petitioner since 1987 and that during the 13 years the petitioner spent with J-C-, the petitioner had been emotionally and psychologically affected. In the July 27, 2010 affidavit of [REDACTED] [REDACTED] declared that she had visited the petitioner and J-C-'s house many times and that J-C- was an alcoholic and was unfaithful to the petitioner.

The record also included a March 19, 2010 psychiatric evaluation prepared by [REDACTED] [REDACTED] indicated that the petitioner reported that she was in her "usual state of mind until 2002" at which time she discovered J-C- was having an affair with another woman. [REDACTED] [REDACTED] noted further that the petitioner reported that J-C- stopped fulfilling his responsibilities as a husband, she was struggling financially, had medical problems, and when J-C- removed her from his medical insurance she filed a court case.² [REDACTED] indicated that at that time, according to the petitioner, J-C- started to threaten her by saying he was going to report her to immigration and by threatening that he would beat her up if she did not give him a divorce. [REDACTED] [REDACTED] noted that the petitioner reported that in January 2010 when she accompanied J-C- to court for their divorce proceeding, she was detained and an electronic monitoring device was placed on her ankle. [REDACTED] [REDACTED] noted that the petitioner reported that she had seen a psychiatrist or psychologist in New York City in 2002 when she started having marital problems but that she was unable to recall the name of the doctor/counselor or the dates of the sessions. [REDACTED] [REDACTED] found that the petitioner presented with symptoms of depression, psychosis and extreme fear of having her life in danger, that she may have early onset of dementia – which may have contributed to her memory impairment, and that she is predisposed to accept the abuse she had been suffering after her separation because she had suffered abuse as a child. [REDACTED]

² The record includes a copy of an April 24, 2008, court order requiring J-C- to pay the petitioner \$150 weekly and to immediately include the petitioner on J-C-'s medical insurance.

noted the petitioner's report that she felt humiliated after her husband left her for another woman. [REDACTED] prescribed medication and scheduled follow-up sessions.

Based on the information in the record, the director denied the petition on August 31, 2010, determining that the record did not include sufficient evidence establishing that the petitioner's spouse's behavior constituted battery or extreme cruelty under the statute and regulations.

On appeal, counsel for the petitioner asserts that the petitioner provided testimony describing the abuse she suffered at the hands of J-C- ranging from forced sexual encounters to violent mood swings to threats, and that she further experienced degradation because of J-C-'s infidelity. Counsel references [REDACTED]'s report that the petitioner may suffer from some mental incapacity and asserts that the petitioner's husband likely took advantage of her situation to control and abuse her. Counsel asserts that the petitioner has provided sufficient evidence to establish that she was subjected to extreme cruelty and that she merits a favorable exercise of discretion.

Counsel also provides a December 30, 2010 synopsis of [REDACTED] contacts with the petitioner. In [REDACTED] report provided on appeal, [REDACTED] notes that he saw the petitioner five times between October 22 and December 10 of 2010. [REDACTED] indicates that the petitioner had problems with memory but that she reported that the marriage came to an end in 2001 when she discovered that her husband was having an affair and he left the household and assumed residence with his lover. [REDACTED] also notes that the petitioner reported that after her marriage in 1992 her husband relied on her to pay the household expenses as well as support his personal needs. [REDACTED] further notes that the petitioner reported that her husband was a marijuana user and cocaine addict and when she refused to provide him with money, he would frequently slap her and push her around and threaten her by throwing household items around. [REDACTED] also references the petitioner's report of marital rape. [REDACTED] opines that the petitioner endured substantial mental, emotional, and physical abuse, characterized by insults, humiliation, verbal threats, sexual assault and physical aggression, isolation, and spousal rejection, and that the severity of her condition would be exacerbated if she is required to leave the United States.

Upon review of the record, we find no error in the director's assessment of the relevant evidence. The petitioner's July 12, 2010 statement, as well as the information she provided to [REDACTED] and [REDACTED] is insufficient to establish that she was subjected to battery or extreme cruelty. Initially, we note that the petitioner indicated on her Form I-360 that the couple no longer resided together from some point in time in 2003 and indicates in her statement that the couple resided together until she found him with his mistress in their house. This differs from the petitioner's statements to [REDACTED] who indicates that the couple separated in 2001 and the petitioner's statements to [REDACTED] who indicates that the couple separated in 2002. Because the petitioner's testimony is critical in establishing extreme cruelty or battery, her statements must include sufficient detail of specific events and incidents to result in such a conclusion. In this matter, the petitioner's statements to USCIS and to [REDACTED] and [REDACTED] do not provide sufficient consistent and probative information regarding J-C-'s actions and behavior.

For example, the petitioner in her initial statement to USCIS indicated that J-C- abused her sexually and emotionally, demanded her money when she was working, and when he was drunk would throw things around. She does not provide a time period regarding any specific incident or event. She indicated generally to USCIS that J-C- became "more violent" after she realized he was being unfaithful. Other than her reference that J-C- would become "more violent" after she discovered his infidelity and that he would throw things when drunk, the petitioner does not provide further detailed information. She does not specifically mention that J-C- threatened her with physical violence or her illegal immigration status. On the other hand, she reported to [REDACTED] that she was in her "usual state of mind until 2002" at which time she discovered J-C- was having an affair with another woman. At this point, without further reference to a time period regarding her interactions with J-C-, after she discovered he had been unfaithful, she reported to [REDACTED] that her interactions with J-C- included: threats that he would report her to immigration; J-C-'s physical contact with his mistress in front of her; demands for money to help his mistress pay her rent; and threats to beat her up if she did not give him a divorce. Thus, the petitioner's statement to [REDACTED] which indicate that she was in her "usual state of mind until 2002" differ from her statements to USCIS that J-C- abused her sexually and emotionally and demanded her money prior to her discovery of his infidelity.

The petitioner is consistent in both her report to USCIS and to [REDACTED] that the marriage broke down after her discovery that her husband was unfaithful. However, abandonment and infidelity are not behaviors that constitute battery or extreme cruelty under the statute and regulation. The AAO acknowledges that [REDACTED] indicated that the petitioner's past abuse as a child may have predisposed her to accept the abuse she had been suffering after the separation from her husband when he left her for another woman. However, [REDACTED] does not provide the necessary detail of the nature and type of abuse that the petitioner allegedly suffered after her separation. Other than the petitioner's statement to [REDACTED] that J-C- started to threaten her by saying he was going to report her to immigration and by threatening that he would beat her up if she did not give him a divorce, the record does not include probative evidence of battery or threats of battery. Regarding the petitioner's claims of being threatened by J-C-, the petitioner provides no circumstances of the alleged threats of physical violence and threats regarding her immigration status.

[REDACTED] evaluation does not provide the necessary foundation to support his opinion that the petitioner endured substantial mental, emotional and physical abuse, characterized by insults, humiliation, verbal threats, sexual assault, physical aggression, isolation and spousal rejection. [REDACTED] indicates that the petitioner reports that her husband was a cocaine and marijuana addict, information that differs from earlier statements that J-C- was an alcoholic. [REDACTED] indicates that the petitioner now states that J-C- slapped and pushed her around, information that had not been forthcoming in the petitioner's prior mental assessment or in her statement to USCIS. [REDACTED] evaluation includes the petitioner's apparent elaboration of the nature and type of abuse that occurred prior to 2002 and includes the petitioner's allegations that J-C- reported her to immigration. However, the record does not include sufficient probative testimony from the petitioner regarding the details and circumstances of any physical threats or J-C-'s threats to report the petitioner to immigration authorities.

Upon review of the petitioner's statements and the statements and evaluations submitted on her behalf, the evidence of record lacks the descriptive detail necessary to establish that J-C subjected the petitioner to battery or that his actions constituted extreme cruelty as defined in the statute and regulations. The petitioner has failed to establish that J-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 J-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)). In this matter, the petitioner has not provided sufficient probative evidence to establish that she was subjected to battery or extreme cruelty perpetrated by J-C.

Counsel's assertion that the petitioner merits a favorable exercise of discretion is not relevant to this matter, as the petitioner has filed a Form I-360 pursuant to section 204(a)(1)(A)(iii) of the Act. As stated earlier, the petitioner has not established that she was subjected to battery or extreme cruelty.

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.