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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

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U.S. Citizenship
and Immigration
Services

B9

[REDACTED]

DATE: MAY 06 2011 OFFICE: VERMONT SERVICE CENTER FILE: A99 206 663
EAC 09 221 50675

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:

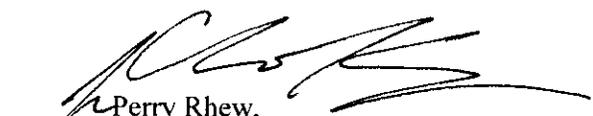
[REDACTED]

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 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 a United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits an appellate brief.

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, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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.

Pertinent Facts and Procedural History

The petitioner, a citizen of Mali, married D-J,¹ a citizen of the United States, on September 23, 2004. She filed the instant Form I-360 on August 7, 2009. The director issued a subsequent request for additional evidence to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including counsel's response to the request for additional evidence, the director denied the petition on June 25, 2010.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denying this petition.

¹ Name withheld to protect individual's identity.

Battery or Extreme Cruelty

In her July 23, 2010 self-affidavit submitted on appeal, the petitioner stated that D-J- believed he could "do anything he wanted" because: (1) he is a police officer; and (2) he knew that the petitioner's African culture taught her to accept mistreatment as a part of marriage. The petitioner stated that D-J- treated her so badly that she cannot look at other men. According to the petitioner, the control and verbal abuse to which she was subjected were worse than being hit. The petitioner also stated that D-J- cursed at her; made her feel worthless; insulted her culture; criticized her cooking; flaunted an extramarital affair; refused to have sexual relations with her; made her pay for everything; and, eventually, left her.

In her July 15, 2009 affidavit, [REDACTED] stated that D-J- was unsympathetic when the petitioner's mother died. She also stated that the petitioner told her that D-J- was uninterested in sexual relations; was unfaithful; called the petitioner names; and criticized her appearance.

In his June 24, 2009 affidavit, [REDACTED] stated that the petitioner told him that D-J- criticized her weight and skin tone; spent all their money; refused to engage in sexual relations; had an extramarital affair; and asked the petitioner for a divorce.

In her June 29, 2009 affidavit, [REDACTED] stated that she lived in an apartment located on the same floor as the petitioner and D-J-, and that she often heard D-J- yelling at the petitioner. Ms. [REDACTED] also stated that the petitioner told her that D-J- threatened her immigration status; once pushed her against a wall in their apartment; criticized her weight; ridiculed her age; threatened to divorce her; and was unfaithful. Ms. [REDACTED] also stated her belief that D-J- used the petitioner to pay his bills.

In her March 10, 2010 affidavit, [REDACTED] stated that the petitioner told her that D-J- refused to have sexual relations with her; did not want the petitioner to see his cellular telephone; had an extramarital affair; called her names; criticized her culture, appearance, and her cooking; tried to use her immigration status to control her; and used their income tax refund to start his own business from which he then excluded the petitioner.

In her March 1, 2010 affidavit, [REDACTED] stated that the petitioner told her that D-J- called her names; was unfaithful; refused to have sexual relations with her; criticized her cooking; and left the marriage. Ms. [REDACTED] also stated that the petitioner's home was burglarized the day before a hearing to be held regarding the couple's pending divorce, and that she fears for her physical safety.

The record also contains a psychological assessment and a letter from Dr. [REDACTED], a psychologist who interviewed the petitioner on August 14, 2009. In her September 1, 2009 assessment, Dr. [REDACTED] stated that the petitioner told her that D-J- avoided sexual relations; ridiculed her weight and skin tone; criticized her cooking; was unfaithful; pushed her; grabbed her arms; hit doors in a threatening manner; demanded a divorce; and "flew into a rage" when the petitioner refused to divorce him. Dr. [REDACTED] stated that, in her

opinion, the petitioner meets the diagnostic criteria for Adjustment Disorder with Depressed Mood and Partner Relational Problem. In her July 20, 2010 letter submitted on appeal, Dr. ██████████ stated that, in her opinion, D-J-'s behaviors had the effect of dominating, controlling, and inducing fear and subservience in the petitioner. She also stated that in her experience, African women are often afraid to report domestic violence to law enforcement authorities.

Considered in the aggregate, the relevant evidence fails to establish that D-J- subjected the petitioner to battery or extreme cruelty during their marriage. Although Ms. ██████████ stated that the petitioner told her that D-J- once pushed the petitioner against a wall, and Dr. ██████████ stated that the petitioner told her that D-J- pushed her, grabbed her arms, and hit doors in a threatening manner, the petitioner did not discuss any incident of physical abuse in probative detail. The record does not establish that the petitioner was subjected to battery perpetrated by D-J- during their marriage.

Nor does the relevant evidence establish that D-J-'s non-physical behavior constituted extreme cruelty. To qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the non-physical cruelty be extreme. 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)). The claims that D-J- cursed and insulted the petitioner, forced the petitioner to support the couple financially and that he tried to use her immigration status to control her lack sufficient probative detail to show that such actions constituted psychological abuse, included threatened violence, or were otherwise part of an overall pattern of violence. The descriptions of D-J-'s lack of physical intimacy with the petitioner, his extramarital affair, and his sexual encounter with another woman over the internet do not indicate that he sexually abused the petitioner. The remaining actions of D-J- described by the petitioner and her affiants are not comparable to the types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty.

The record contains both testimonial and documentary evidence discussing the reluctance of African women subjected to domestic violence to report such abuse to law enforcement authorities. We do not dispute the veracity of any of this evidence and we note that evidence from law enforcement agencies is not required to establish battery or extreme cruelty. However, the fact that women of the petitioner's culture may be reluctant to report domestic violence does not alleviate the petitioner's burden to demonstrate that her husband's behavior constituted battery or extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi). Nor do we dispute counsel's argument made on appeal that the behavior of D-J- should be considered in its totality. We have made that consideration and, as discussed, determined that it constituted neither battery nor extreme cruelty.

Counsel's claims and the relevant evidence fail to demonstrate that, during their marriage, D-J- subjected the petitioner 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

The petitioner has failed to establish that D-J- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this 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.

ORDER: The appeal is dismissed.