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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



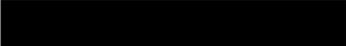
**U.S. Citizenship
and Immigration
Services**

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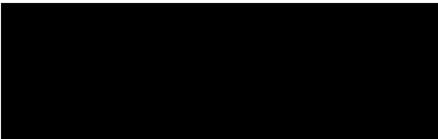
Date: **OCT 25 2011**

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)

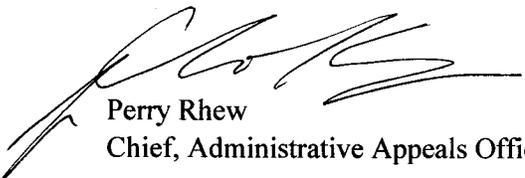
ON BEHALF OF PETITIONER:



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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

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 U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner’s former husband subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a supplemental brief and additional evidence.

Relevant 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, 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).

An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act further 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 further explicated 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 further explicated 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.

Pertinent Facts and Procedural History

The petitioner is a native and citizen of Kenya. She was admitted to the United States on February 22, 1998 as a B-2 visitor. On [REDACTED] 2004, the petitioner married R-M-¹, a United States citizen in Kansas City, Missouri. On August 30, 2004, the petitioner filed an application to adjust status (Form I-485) based on an underlying petition for alien relative (Form I-130) filed by R-M-. The petitioner's marriage to R-M- terminated in a divorce on November 4, 2009. U.S. Citizenship and Immigration Services (USCIS) denied the Form I-130 and the petitioner's corresponding Form I-485 on February 17, 2010.

On March 23, 2010, the petitioner filed the instant Form I-360. The director issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage, shared residence with her former husband, his battery or extreme cruelty, and his U.S. citizenship. The petitioner, through counsel, timely responded with additional evidence, which the director found insufficient to fully establish the petitioner's eligibility. The director denied the petition for failure to establish that the

¹ Name withheld to protect the individual's identity.

petitioner's former husband subjected the petitioner to battery or extreme cruelty during their marriage. Counsel filed a timely appeal. On appeal, counsel submits a supplemental brief, a letter from a psychologist and a psychological evaluation.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The sole issue on appeal is evidence that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage. The director made a specific finding in his December 30, 2010 decision that all other grounds of eligibility had been satisfied and we find no error in that determination. Counsel's claims and the evidence submitted on appeal have overcome the director's ground for denial and the appeal will be sustained for the following reasons.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal demonstrates that the petitioner was subjected to battery by her former husband. In the declaration submitted in response to the RFE, dated July 19, 2010, the petitioner recalled that in 2005 she and R-M- moved from Kansas to New Jersey because she could not find a position in Topeka and she had a position in New Jersey as a home health aide. She stated that at the end of 2006, she and R-M- learned that R-M-'s middle son, K-M-, was killed. She explained that after K-M-'s death, R-M- was in deep mourning, became withdrawn and began drinking alcohol. The petitioner stated that R-M- became angry with her, cursed her and blamed her for moving him away from his son. She recounted that near the end of November 2007, she was sleeping when R-M- raped her. She explained that during the rape she was in physical pain and she felt the emotional pain of losing trust in R-M-. She stated that she felt humiliated and she felt that her sense of dignity as a woman and R-M-'s wife was trampled on. The petitioner recounted that after the incident she locked herself in the bathroom and then went to her friend's house to stay for a couple of days. She stated that when she returned to her apartment in early December 2007, R-M- was not there and most of his clothes were gone. She recounted that she had the locks to their apartment changed, but still had a hard time sleeping because she was afraid someone would come in her bedroom and assault her. She stated that she is still afraid of men and has lost her sense of happiness. The petitioner's statement provides a detailed and credible account of the sexual violence she suffered during her marriage to R-M-.

On appeal, the petitioner submits a statement from [REDACTED] and [REDACTED] dated January 19, 2011. [REDACTED] and [REDACTED] state that on August 30, 2010 the petitioner was admitted into the International Institute's Violence Against Women Act (VAWA) program, which provides their clients "psychological counseling and support to help them overcome the mental and physical effects of domestic violence and abuse." [REDACTED] and [REDACTED] assert that the petitioner presented symptoms of recurrent nightmares, self-blaming, low sense of self, somatic symptoms, inability to concentrate and recurrent thoughts or memories of traumatic events as result of her abuse. [REDACTED] and [REDACTED] note that the petitioner has been in treatment to help alleviate these symptoms to improve her capacity to function. Appointment cards submitted by the petitioner reflect that she continues to seek therapy and has had weekly counseling sessions at the International Institute of New Jersey since September 2010.

The petitioner also submits on appeal a psychological evaluation from [REDACTED] a private psychotherapist who volunteers with [REDACTED]. In her evaluation, dated May 18, 2011, [REDACTED] describes in probative detail the petitioner's "distinct dissociative response" when discussing the rape and explains that she found the petitioner's presentation believable and compelling because "[h]er description of her experiences after she was raped by her husband was internally consistent and consistent with that provided in her affidavit." [REDACTED] further opines that the petitioner's "symptom descriptions are consistent with her reported experience. She displays typical post-traumatic symptoms." [REDACTED] concludes that the petitioner "describes and demonstrates psychological and physiological symptoms consistent with having experienced traumatic events" and she diagnoses the petitioner with Post Traumatic Stress Disorder. This detailed and probative psychological evaluation of the petitioner corroborates her claim of being subjected to sexual violence by her husband.

The AAO finds that upon a full review of all the relevant and credible evidence submitted below and on appeal, the petitioner has overcome the basis of the director's denial. The petitioner has submitted an affidavit that describes in probative detail the sexual violence she suffered by her former husband. The petitioner submitted evidence to show that she has received long-term counseling with the International Institute of New Jersey as a survivor of domestic violence. She has also submitted a detailed psychological evaluation, which concludes that she is suffering from Post Traumatic Stress Disorder due to having been raped by her former husband. This documentation demonstrates by a preponderance of the evidence that the petitioner's former husband subjected her to battery during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

The petitioner has also demonstrated a qualifying relationship with R-M- and her corresponding eligibility for immediate relative classification. The record shows that the petitioner and R-M- were divorced on November 4, 2009, within two years of when this petition was filed on March 23, 2010. The petitioner has now established the requisite battery or extreme cruelty and she has also demonstrated a connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has established a qualifying relationship with a U.S. citizen and her eligibility for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (II)(cc) of the Act.

Conclusion

On appeal, the petitioner has established her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has now been met. Accordingly, the appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.