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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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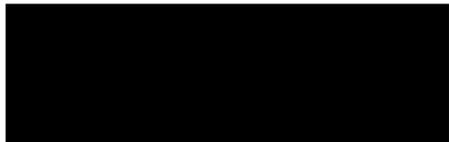


DATE: **APR 24 2012** Office: VERMONT SERVICE CENTER FILE:

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. 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 she had been subjected to battery or extreme cruelty perpetrated by the United States Citizen (USC) spouse. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a statement.

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 pursuant to Section 204(a)(1)(A)(iii) of the Act are further set out 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.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Facts and Procedural History

The petitioner is a native and citizen of Colombia. She entered the United States on or about September 21, 1998 with temporary authorization to remain in the United States until March 20, 1999. On November 12, 2006, she married S-L,¹ the claimed abusive USC spouse. On February 26, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE). Upon review of the totality of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established she had been subjected to battery or extreme cruelty by the USC spouse. On appeal, counsel for the petitioner asserts that the director failed to consider that the petitioner was subjected to "pushing" an act that constitutes battery and that the petitioner's depression is a consequence of the battery.

¹ Name withheld to protect the individual's identity.

Battery and/or Extreme Cruelty

The director considered the petitioner's testimony, the affidavits submitted on her behalf, and the June 9, 2011 psychological report prepared by [REDACTED]. The director noted the petitioner's statement that S-L- "pushed [her] around using vulgar language" but determined that the petitioner had not provided detailed instances and examples of the physical or emotional abuse she suffered. Based on the evidence in the record the director determined that the petitioner had not established that she had been subjected to battery during the marriage and that she had not established that she had been subjected to extreme cruelty as that term is set out in the statute and regulation. The director found that the petitioner may have been subjected to experiences of a "disintegrating relationship," but that the petitioner's testimony and the testimony of declarants on her behalf did not establish her eligibility for Form I-360 relief.

In the petitioner's initial January 24, 2010 personal statement, she indicated that S-L- sometimes did not show up at home and when she questioned him he would not give her an explanation. She noted that she confronted him many times and he only got really upset and started treating her bad and "pushed [her] around using vulgar language." The petitioner indicated that S-L- cancelled his cellular phone number in December 2008 and never came home again. The petitioner stated that sometime after that S-L- closed the bank account and the medical insurance coverage and she learned that he was living with his former girlfriend.

In statements signed by [REDACTED] and [REDACTED] they noted that S-L- had left the petitioner. [REDACTED] indicated that after S-L- left the petitioner she was very sad and isolated herself.

In response to the director's RFE, the petitioner stated that when the relationship took a turn for the worse S-L- "us[ed] abusive language, calling [her] names and often threatening [her] of hurting [her] physically luckily he never did." The petitioner noted that S-L-, instead of trying to work things out, abandoned her.

In a June 1, 2011 statement signed by [REDACTED] declared that the petitioner told her of her miserable life with S-L- but the petitioner had her swear not to tell anyone unless there was physical abuse involved, but that it never came to that point. In the petitioner's mother's statement, she declared that once when she visited the petitioner, the petitioner told her that S-L- called her demeaning names. In statements from the petitioner's nieces and nephew, each declarant stated that the petitioner told them that S-L- "verbally abused her after their separation" and that he manipulated her by dictating the clothes she wore, by calling her names, and by not coming home. The petitioner's nieces and nephew indicated they later learned that S-L- limited the petitioner's phone calls and did not want her to spend time with her family.

The petitioner also provided a June 9, 2011 letter written by [REDACTED] who noted the petitioner's report of symptoms of depression and that she identified her previous marriage as the cause of her symptoms including that her husband criticized the way she dressed, her intelligence, and forced her to be distant from her family and friends. [REDACTED] noted the

petitioner denied being subjected to physical abuse. [REDACTED] also reported the petitioner's history of hypothyroidism that can cause depression but noted that the hypothyroidism was being controlled with medication. [REDACTED] also found that at the time of the interview, the petitioner reported feeling sad but that this was apparently related to problems with her family members. [REDACTED] found that the petitioner presented with depressed mood and was treated with an antidepressant.

Upon review of the record and counsel's assertion on appeal, the petitioner has not established that she was subjected to battery. Although the petitioner indicated that on one occasion she was pushed, she subsequently stated that she was not subjected to physical abuse. She confirmed to her friend and to her psychiatrist that she was not subjected to physical abuse. The petitioner's statement does not provide probative detail regarding the circumstances of the particular incident of being "pushed" to ascertain the actuality of the incident. In light of the petitioner's subsequent report that she was not subjected to physical abuse, the petitioner's general reference to being pushed does not establish that she was subjected to battery. The petitioner's testimony is not probative and consistent on the issue of any alleged battery.

The petitioner has also failed to establish that she was subjected to extreme cruelty perpetrated by her spouse as defined in the statute, regulations, and case law. Upon review of the petitioner's statements, she has not provided probative testimony that she was subjected to actions or behavior by S-L- that are 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. 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 petitioner's statement to her psychiatrist that she was manipulated by S-L-, the petitioner did not describe instances of verbal abuse or manipulation in probative detail. The petitioner's testimony and the testimony of others on her behalf do not include detail of specific behavior by S-L- that was part of an overall pattern of violence or coercion. She does not describe specific acts or events that demonstrate she was subjected to intimidation, coercion, duress, or threats or acts of violence during the marriage. While the director's description of the petitioner's marriage as a "disintegrating relationship," was unnecessary, we find no error in his ultimate determination that the cumulative behavior of the petitioner's spouse did not constitute extreme cruelty.

Further, upon review of the statements of others offering testimony on the petitioner's behalf, there is no probative testimony describing specific incidents or events that constitute battery or extreme cruelty as that term is set out in the statute, regulation, or pertinent case law. The evaluation provided by [REDACTED] does not causally connect the petitioner's symptoms of depression to specific behavior of the petitioner's spouse. Moreover, [REDACTED] references the

petitioner's medical condition of hypothyroidism and her concern for family members as possible causes of her depression.

The petitioner's testimony and the testimony submitted on her behalf is insufficient to establish that her spouse's actions constituted battery or extreme cruelty during the marriage as those terms are defined in the statute, regulation, and case law. The petitioner has not provided testimonial or other evidence on appeal sufficient to overcome the director's decision.

Conclusion

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