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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

B9

DATE: Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

FEB 13 2012

RE: Petitioner: [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:

SELF-REPRESENTED

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: she had a qualifying relationship with a United States citizen; she is eligible for immediate relative classification based on a qualifying relationship; she had been subjected to battery or extreme cruelty perpetrated by the United States citizen; or she is a person of good moral character. On appeal, the petitioner submits a Form I-290B, Notice of Appeal or Motion, and documentation relating to her divorce proceedings with the claimed abusive United States citizen.

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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

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(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Facts and Procedural History

The petitioner is a native of Venezuela and a citizen of Spain. She entered the United States on or about May 29, 2001 as a nonimmigrant visitor. On February 21, 2008, she married E-P-¹ the claimed abusive United States citizen. On November 5, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated that she resided with E-P- from January 29, 2008 until present. Upon review of the insufficient evidence in the record, the director issued a request for evidence (RFE). The director noted in his decision that the petitioner failed to provide a response to the RFE on the specific issues of her qualifying relationship with E-P-, her eligibility for immediate relative classification based on a qualifying relationship, her claim that she had been subjected to battery or extreme cruelty perpetrated by the United States citizen; or her good moral character. Thus, the director

¹ Name withheld to protect the individual's identity.

determined that the record did not include sufficient evidence establishing her eligibility on those issues. On appeal, the petitioner timely submits a Form I-290B, documentation regarding the divorce proceedings terminating her marriage with E-P-, and information from [REDACTED] of Central Florida regarding its support group programs and information for the petitioner to pursue an injunction.

Qualifying Relationship

The director determined that the petitioner had not established a qualifying relationship with the claimed abusive spouse because the petitioner did not provide evidence of the termination of her marriage to her first husband. The petitioner does not address this issue on appeal and the record includes no evidence that her marriage to her first husband was terminated prior to her marriage to E-P-, the claimed abusive spouse. We concur with the director's determination on this issue. The petitioner has not established a qualifying relationship with E-P-, the claimed abusive United States citizen.

Immigrant Classification

The record also fails to establish that the petitioner was eligible for immediate relative classification based on her relationship with E-P-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. Because the petitioner has not established that her marriage to E-P-, the claimed abusive spouse, was legally valid, she is also ineligible for immediate relative classification based on this marriage.

Battery and/or Extreme Cruelty

The petitioner initially failed to provide any information or evidence relating to her claim that she was subjected to battery or extreme cruelty perpetrated by E-P-. The petitioner also failed to provide evidence in response to the director's specific RFE on this issue. Thus, the director properly determined that the petitioner had not established this essential element for eligibility pursuant to the petitioner's Form I-360.

On appeal, the petitioner apologizes for not previously providing the domestic violence paperwork. On the Form I-290B, the petitioner notes that her divorce from E-P- is not final and asserts that E-P- withdrew the Form I-130, Petition for Alien Relative, filed on her behalf because she fought back. She indicates that she tried to stay in the marriage but could not take the abuse.

The record on appeal includes the petitioner's June 17, 2010 petition for temporary injunction for protection against E-P-, which was granted for 15 days. In a statement in support of the temporary injunction, the petitioner declares that on June 10, 2010, E-P- was provoked by her talking with a friend and he began to push and hit her, pulled her hair, kicked her, asked her for money, and took the baby and left and since that time the couple had been arguing. The

petitioner also indicates that on June 16, 2010, E-P- called her co-worker's phone and accused the petitioner of having an affair and threatened that if she called the police, he would report her to immigration. The petitioner notes that E-P- abused her and insulted her. The record also includes a photocopy of a card of the Orange County Sheriff's Office noting an incident of "threats" on June 16, 2010 with an identifying case number but no information relating to the petitioner or E-P-. The record further includes information from the [REDACTED] of Central Florida referring the petitioner to a legal aid society on June 17, 2010. The petitioner also provides E-P-'s petition for a temporary injunction for protection filed against her on September 14, 2010 and E-P-'s October 1, 2010 voluntary dismissal of the action. The petitioner states in a letter that her only evidence of her residence with E-P- is a receipt because on September 13, 2010, the couple had another domestic dispute and she decided for the first time to defend herself and E-P- called the police, filed charges, and she was removed from the home. The petitioner also provides motions made regarding child support, custody and division of property. The petitioner further submits a copy of the December 16, 2010 United States Citizenship and Immigration Services' (USCIS) decision acknowledging E-P-'s November 2, 2010 request to withdraw the Form I-130 filed on behalf of the petitioner.

Upon review of the record on appeal, the petitioner has not established that she was subjected to battery or extreme cruelty as defined in the statute and regulation. The petitioner does not explain the circumstances and incidents of the alleged violence or aggression in detail in her personal statements in support of the June 17, 2010 temporary protective injunction. The record is simply deficient in this regard. Similarly, the petitioner does not provide the requisite detail necessary to establish that she was subjected to extreme cruelty as that term is defined in the statute and regulations. The petitioner indicates generally that the couple argued over a perceived affair and that E-P- threatened to report her to immigration authorities on one occasion. Such general information is insufficient to ascertain that E-P-'s actions constituted extreme cruelty. The petitioner's statements in support of the temporary protective injunction and the general information provided on appeal do not provide the requisite testimony or other evidence to conclude that E-P-'s behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over her. Her statements are insufficient in this regard.

The petitioner fails to provide specific testimony or describe specific instances of exploitation, forced social isolation, psychological abuse, or control perpetrated by E-P-. Upon review, the petitioner has not offered probative testimony establishing that E-P-'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 E-P-'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)).

The petitioner's testimony lacks the requisite probative detail demonstrating that E-P-'s conduct constituted battery or was a form of extreme cruelty under the statute and regulation. Based upon a review of the totality of the evidence in the record, the petitioner has not established that she was subjected to battery or conduct that constitutes extreme cruelty as defined in the statute and regulation. The record on appeal is insufficient to overcome the director's decision on this issue.

Good Moral Character

Based on the lack of information in the record, the director determined that the petitioner had not established that she is a person of good moral character. The petitioner initially did not submit any information regarding her good moral character. Similarly, the petitioner failed to provide a response to the director's RFE, requesting evidence of her good moral character. The petitioner also fails to supply a personal statement or a criminal background check prepared by the appropriate law enforcement agencies on appeal as required by the regulation at 8 C.F.R. § 204.2(c)(2)(v). Thus, the record on appeal does not include evidence sufficient to overcome the director's decision on this issue.

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.