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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: **FEB 21 2012** 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:

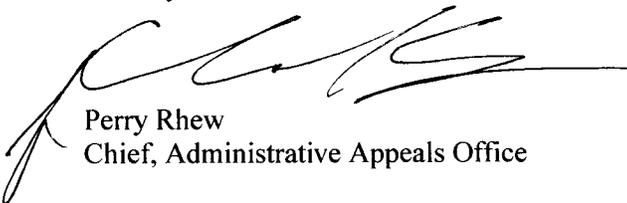


INSTRUCTIONS:

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.

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 (the director) denied the immigrant visa petition and affirmed his decision upon granting a subsequent motion to reopen and reconsider. 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 failed to establish that she jointly resided with her husband and that he subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits additional letters from the petitioner's mother and sister.

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:

- (v) *Residence* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
- (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.

* * *

- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

- (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 citizen of Trinidad and Tobago who last entered the United States on June 9, 2002. She married P-H-¹ a citizen of the United States, on January 1, 1995. The petitioner filed the instant Form I-360 on May 1, 2009. The director issued two subsequent requests for additional evidence (RFE) and the petitioner, through counsel, filed timely responses to both. After considering the evidence of record, including the petitioner's responses to his RFEs, the director denied the petition and affirmed his decision upon granting the petitioner's motion.

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

Joint Residence

In her June 30, 2010 letter, counsel claimed that no documentary evidence of the couple's allegedly joint residence is available because of the manner in which P-H- abandoned the joint residence and that the dates the couple resided together cannot be provided due to: (1) the petitioner's multiple disabilities, and (2) the petitioner's mother's memory problem. She makes similar assertions on appeal.

While documentary evidence of joint residence is not required, the relevant testimonial evidence does not establish that the petitioner resided with P-H-. The short letters from the petitioner's mother and sister are brief and lack detailed, probative information regarding the couple's allegedly joint residence.

When viewed in the aggregate, the relevant evidence fails to establish that the petitioner resided with P-H-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record contains a declaration from the petitioner dated January 23, 2009 stating that she is disabled and that her mother cares for her. However, she did not discuss the abuse to which she was allegedly subjected by P-H-. Although the assertions of counsel and the petitioner's mother imply she is incapable of providing testimony, the letters from her medical care providers do not establish such incapacity. The petitioner's mother and sister recalled incidents of abuse that the petitioner described to them, but they did not describe any specific incidents in probative detail.

When considered in the aggregate, the relevant evidence fails to establish that P-H- subjected the petitioner to battery or extreme cruelty during their marriage. Although the petitioner's mother alleges battery by P-H-, her testimony lacks detailed, probative information regarding specific instances of such physical abuse. Nor does the relevant evidence establish that P-H-'s behavior constituted extreme

¹ Name withheld to protect individual's identity.

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 petitioner's mother and sister alleged, in very general terms, that P-H- would not give the petitioner money; allowed a friend to use drugs in the home; tried to give their daughter to someone else; and placed her into an institution in another state. However, their brief assertions do not establish that his actions were comparable to any of the types of behaviors listed at 8 C.F.R. § 204.2(c)(1)(vi) as examples of extreme cruelty.

Considered in the aggregate, the relevant evidence fails to establish that P-H- subjected the petitioner to battery or extreme cruelty during their marriage 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.

The Petitioner's Medical Conditions

On appeal, counsel claims that detailed evidence is not available due to the petitioner's severe disability. While the record shows that the petitioner suffers from several debilitating conditions, the record does not establish that those conditions render her incapable of providing written or transcribed statements in these proceedings.

The record contains several letters from the petitioner's medical care providers regarding her conditions. In her December 12, 2008 letter, [REDACTED] stated that the petitioner "has several debilitating medical and psychiatric conditions including schizoaffective disorder, [REDACTED] spinocerebellar ataxia, and severe depression," and that the petitioner "has significant functional limitations, is wheelchair bound and needs help with the activities of daily living." In his January 30, 1996 letter, [REDACTED] stated that the petitioner had been diagnosed with paranoid schizophrenia, dissociative disorder, and atypical seizure disorder. The record also contains letters from [REDACTED] dated July 26 and October 29, 1996 and from [REDACTED] dated February 23, 2010 discussing the petitioner's medications.

None of the doctors' letters address the petitioner's ability to speak or write or otherwise establish her incapacity to provide testimony. The doctors' letters also do not indicate that any of the petitioner's conditions or symptoms were caused or exacerbated by her husband's battery or extreme cruelty.

Conclusion

The petitioner has failed to overcome the director's grounds for denial and has not established that she resided with P-H- or that he subjected her to battery or extreme cruelty during their marriage. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and this petition must remain denied.



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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). She has not met her burden and the appeal will be dismissed.

ORDER: The appeal is dismissed.