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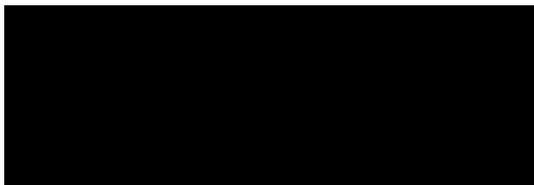
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

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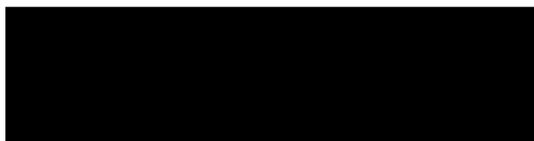
FILE:

JAN 24 2012

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 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 had entered into the marriage in good faith. On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief, and other documentation.

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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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

* * *

(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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's

spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Facts and Procedural History

The petitioner is a native and citizen of Cambodia. She entered the United States on April 12, 2003 as a nonimmigrant visitor with temporary authorization to remain in the United States until October 9, 2003. On June 17, 2005, she married D-S-,¹ the claimed abusive United States citizen. On July 24, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner omitted a response regarding her claimed joint residence with D-S- on the Form I-360. The record includes evidence that on November 3, 2009 the petitioner's marriage to D-S- was terminated. On February 9, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established a qualifying relationship with the claimed abuser, that she was eligible for immigrant classification based on the alleged qualifying relationship, that she had been subjected to battery or extreme cruelty, or that she had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, a brief and additional documentation.

Qualifying Relationship

The director determined that the petitioner had not established a qualifying relationship with the claimed abusive spouse, because the petitioner's marriage to her first husband had not been terminated prior to her marriage to D-S-. The director noted that the petitioner had submitted an extract of Civil Judgment [REDACTED] dated August 5, 2004 issued by a municipal court in Phnom Penh, Cambodia showing that her marriage to E-L-T-² her previous husband, had been dissolved. The director found that the petitioner had submitted the same extract of judgment in support of a Form I-485, Application to Register Permanent Residence or Adjust Status, and that the petitioner had been informed that Cambodian authorities reported that the divorce decree was fraudulent. The director determined that as the divorce decree terminating the petitioner's marriage to E-L-T- was fraudulent, the petitioner was still married to E-L-T- when she married D-S-; thus the petitioner's marriage to D-S- was invalid.

On appeal, counsel for the petitioner asserts that the petitioner had contacted an attorney in Cambodia to investigate her divorce from E-L-T- and to provide proper documentation for United States Citizenship and Immigration Services' (USCIS) review. Counsel later submitted a Judgment dissolving the petitioner's marriage to E-L-T- issued by the Los Angeles Superior

¹ Name withheld to protect the individual's identity.

² Name withheld to protect the individual's identity.

Court on October 18, 2010 advising the petitioner that she may not re-marry until December 3, 2010. Although the judgment states that the E-L-T- was served with process, the record does not reveal how, when, or where E-L-T- was so served.

Upon review, the record includes evidence that the President of the Phnom Penh Municipality Court on August 7, 2007 informed the Chief of Consular Section of the U.S. Embassy that upon review of the records and log books of his office, the extract of divorce decree [REDACTED] dated August 5, 2004 was fake. The petitioner's marriage to D-S- on June 17, 2005 was, therefore, not valid, as she was not free to conclude a valid marriage at that time. The divorce that the petitioner obtained from E-L-T- in the State of California stipulated that she should not remarry until December 3, 2009.³ Thus, the petitioner is unable to establish a qualifying relationship with a claimed abusive United States citizen spouse.

The petitioner has not established that her marriage to E-L-T- was terminated prior to her entry into marriage with D-S-; thus, the petitioner has not established a qualifying relationship with D-S-, 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 D-S-, 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 and D-S- were never legally married, she is also ineligible for immediate relative classification based on the invalid marriage.

Battery and/or Extreme Cruelty

In the petitioner's July 15, 2009 statement accompanying the Form I-360, the petitioner stated generally that after a couple of months of marriage, D-S-'s sexual demands became more violent when considering her upbringing and that if she refused his sexual demands he would become aggressive and violent. The petitioner indicated that after two years of abuse she ran away to live with a family friend. The petitioner noted that D-S- would stop by her new residence from time to time to ask that she return home and to demand sex. She noted that she became embarrassed of his actions in front of the family she was living with so she moved to a new location.

³ California Family Code, Division 6, Part 2 § 2201 states: (a) A subsequent marriage contracted by a person during the life of a former husband or wife of the person, with a person other than the former husband or wife, is illegal and void from the beginning, unless: (1) The former marriage has been dissolved or adjudged a nullity before the date of the subsequent marriage. In this matter, the petitioner's marriage to E-L-T- was not dissolved or adjudged a nullity before she married D-S-.

In response to the director's RFE, the petitioner provided a May 7, 2010 personal statement. The petitioner declared that during her marriage to D-S-, D-S- considered her his slave and also took her money to gamble at casinos. She indicated that she moved in with a family friend in September 2007 and that while living there, D-S- would stop by and once he told her that if she returned home he would finish the immigration papers and another time he threatened that if she did not return he would deport her. The petitioner noted that while she was living with her friend D-S- once he grabbed her arm to take her to his car but she refused and pulled her arm back. The petitioner stated that in May 2008, D-S- came by and wanted to have sex but she refused and he left and she never saw him again. The petitioner indicated that a couple of weeks later she moved to her new residence.

The petitioner also provided a psychological evaluation report based on an evaluation completed on March 30, 2010, prepared by [REDACTED] licensed psychologist. [REDACTED] noted that the petitioner complained of extreme emotional symptoms and she stated that she had developed these symptoms as the result of being a victim of prolonged domestic violence. The petitioner reported to [REDACTED] that eight or ten months after marriage, she discovered that D-S- was gambling heavily and using his work earnings to make bets and when she tried to discuss his actions, D-S- became defensive and argumentative and started trying to take money from her. [REDACTED] noted the petitioner's report that soon thereafter D-S- became verbally and emotionally abusive towards her, calling her names and threatening her with deportation. The petitioner also reported that she was forced to have sex against her will. [REDACTED] noted the petitioner's report that she was eventually able to separate from D-S- in 2007. [REDACTED] concluded that the petitioner was suffering from post-traumatic stress disorder and emerging depression symptoms and that often these conditions are found in victims of abuse who have been discriminated against or mistreated severely in the past.

The director noted that the petitioner had provided inconsistent statements regarding her residences and when the couple separated. The director observed, for example, that the petitioner indicated that she moved to her current residence in May 2008, however, medical records for services rendered in December 2007 showed her address as the address of her current residence. The director found that the petitioner's initial testimony was vague and general and that her second statement and other information in the record did not provide a consistent account of her relationship with D-S-. The director acknowledged the psychological evaluation provided but found that as it was based on the petitioner's inconsistent testimony, it had no probative value. The director concluded that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by D-S-.

On appeal, counsel for the petitioner asserts that the director improperly disregarded the psychological evaluation, failed to understand that the petitioner estimated the dates she lived in various places in the past and used her current residence's address as a safe place to mail important documents, and failed to understand that the petitioner had no reason to collect evidence for a future VAWA claim when living with D-S-.

Upon review of the record, 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 to USCIS or to [REDACTED] on the date of her evaluation. 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 D-S- gambled, tried to use her money, and asked her for sex in return for supporting his immigration application on her behalf. Such general statements are insufficient to ascertain that D-S-'s actions constituted extreme cruelty. The petitioner's statements do not provide the requisite information to conclude that D-S-'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 simply insufficient in this regard.

Upon review of the psychological evaluation prepared by [REDACTED] findings were based upon a single interview of undetermined length with the petitioner and do not include substantive, probative information indicating that D-S-'s behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. Moreover, the petitioner's report to [REDACTED] includes discrepant testimony. For example, the petitioner indicated initially that after a couple of months of marriage, D-S- began to become aggressive and violent in his sexual demands but in her statement to [REDACTED] she indicates that it was eight or ten months after marriage that she discovered that D-S- gambled heavily and that it was after that that he became verbally and emotionally abusive, calling her names and threatening her with deportation. [REDACTED] does not identify when the alleged forced sexual intimacy began. He also does not offer a diagnosis that is causally connected to specific behavior on the part of D-S-, noting only generally that often symptoms such as the petitioner's symptoms have been found in victims of abuse. [REDACTED] fails to provide an evaluation that demonstrates that the petitioner's mental health condition results from specific forms of battery or extreme cruelty as that term is defined in the statute and regulation.

The petitioner fails to provide specific testimony of the forced sexual intimacy, verbal or emotional abuse allegedly suffered, and she does not describe specific instances of exploitation, forced social isolation, psychological abuse, or control perpetrated by D-S-. Upon review, the petitioner has not offered probative testimony establishing that D-S-'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 D-S-'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 and the testimony submitted on her behalf lacks the requisite probative detail demonstrating that D-S-'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.

Good Faith Entry Into Marriage

In the petitioner's initial personal statement, she stated generally that she met D-S- at a party in January 2004, they exchanged phone numbers, and dated the following year, and married on June 1, 2005.⁴ The petitioner provided photographs of the wedding ceremony as well as two bank statements for periods ending June 6, 2007 and July 6, 2007 and an IRS tax return transcript showing that the petitioner and D-S- filed a joint federal income tax return for 2006.

In the petitioner's second personal statement she again notes that she married D-S- on June 1, 2005 and that she moved in to live with him on that same day. ██████████ noted the petitioner's report that she met D-S- through a mutual friend, started dating, and eventually decided to marry. The petitioner stated to ██████████ that she comes from a traditional country and thus believed that she would spend the rest of her life with D-S- as her husband.

Based on the lack of information in the record, the director determined that the petitioner had not established that she had entered into the marriage in good faith.

On appeal, counsel for the petitioner asserts that USCIS improperly requested more information regarding the petitioner's good faith and failed to consider that the petitioner is a naïve and innocent woman from Cambodia who did not plan on collecting evidence for a later I-360 abused spouse petition.

The petitioner in this matter has provided no probative information in her testimony regarding her intent upon entering the marriage. She provides a brief statement regarding her introduction, courtship, and marriage. She does not accurately recall the date she married D-S- instead using the date the license was obtained rather than the date the couple solemnized the marriage. She does not provide a detailed account of the couple's courtship and fails to describe, in any meaningful detail, their decision to marry; their engagement; their wedding; or any of their shared experiences. Her testimony is insufficient to support and ascertain her actual intent when entering into the marriage.

As the director determined, the bank statements do not show the couple commingled assets or intended to establish a life together. The photographs while showing the couple spent time together do not establish the petitioner's intent when entering into the marriage. Similarly one tax return does not assist in establishing the petitioner's intent when entering into the marriage. Moreover, as observed above, the petitioner's own testimony does not provide sufficient detailed information to establish the petitioner's intent when entering into the marriage. Upon review of the totality of the record in this matter, the record does not include sufficient probative evidence establishing that the petitioner entered into marriage with D-S- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

⁴ The petitioner's marriage certificate indicates that the issue date of the marriage license is June 1, 2005 but that the marriage was solemnized on June 17, 2005.

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.