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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: JUL 05 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:

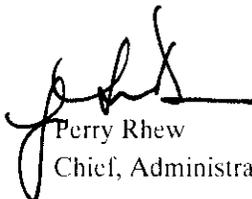
SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, (“the director”) 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 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 a United States citizen (USC) .

*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.

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(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.

\* \* \*

(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.

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(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.

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 citizen of [REDACTED] who entered the United States on January 9, 2005 on a B-2 visitor visa. She married R-M-<sup>1</sup> the claimed abusive USC, on June 8, 2006. On August 29, 2006, R-M- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The couple was interviewed by immigration officials in May 2007. The Form I-130 was withdrawn and the Form I-485 was subsequently denied on January 6, 2010. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on December 4, 2009. 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; or she had entered into the marriage in good faith. The petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a brief, and a supplemental letter written by [REDACTED], licensed clinical social worker. The petitioner asserts that the director ignored the evidence in the record and his determination is contrary to the weight of the evidence.

*Battery or Extreme Cruelty*

In the petitioner's initial statement she declared that the couple lived normally after marriage until the beginning of 2008 when R-M- started disappearing and later she discovered that he had a girlfriend. The petitioner stated that when she tried to talk with him about the affair he became furious and threatened and insulted her as well as stated that he would ruin her immigration case if she interfered with his privacy. The petitioner noted that R-M-'s adultery made her physically sick. The petitioner declared that R-M- disappeared completely in the beginning of 2009 and in November 2009 she moved from Florida to New York. The petitioner provided a letter signed by [REDACTED] who noted that he had diagnosed the petitioner with depression and prescribed medication. [REDACTED] does not reference or discuss the cause of the petitioner's depression. The initial record also included four letters from the petitioner's friends noting that the couple began having problems in 2008 and eventually separated.

In response to the director's RFE, the petitioner stated that R-M-: turned her into a servant and used her dependence on him for her documents; insulted her with rude words; called her names; and committed adultery knowing she could not divorce him because of her dependence on him for her documents. The petitioner provided a criminal history report showing R-M- had been arrested for robbery and driving on a suspended license in 1990. The petitioner also submitted additional letters from friends. Four of the individuals, [REDACTED] and [REDACTED], indicate the petitioner told them that R-M- called her names and made her cry. [REDACTED] note the petitioner's claim that R-M- verbally and physically abused her.

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<sup>1</sup> Name withheld to protect the individual's identity.

The record also included a June 2, 2011 psychologist's report prepared by [REDACTED]. [REDACTED] repeated the petitioner's claims that R-M- started disappearing from home in 2008 and he became furious and abusive when she tried to discuss his infidelity. [REDACTED] also referenced the petitioner's claim that on numerous occasions R-M- verbally and physically abused her. [REDACTED] noted that despite the two-year passage of time from the separation from her spouse, the petitioner exhibited symptoms of the "Post-Traumatic" and Major Depressive Disorder, recurrent, moderate. [REDACTED] attributed the petitioner's symptoms generally to a stressful period of family life.

The director set out the deficiencies in the record and we concur with the director's ultimate determination that the petitioner has not established that she was subjected to battery or extreme cruelty as that term is defined in the statute, regulation, and pertinent case law. While the director's reference to marital tensions and incompatibilities and a deteriorating marriage was unnecessary, the director properly found that the general information contained in the petitioner's statements and those of the declarants who offered testimony on her behalf was insufficient to establish that R-M-'s behavior constituted battery or extreme cruelty for immigration purposes. The director specifically observed that the evaluation of [REDACTED] did not describe particular instances of abuse but was based on the petitioner's general testimony.

On appeal, the petitioner asserts that the director failed to consider the conclusions of [REDACTED] and [REDACTED]. The petitioner also contends that R-M-'s twenty-year old criminal history predisposed R-M- to treat her as he did and to not demonstrate his domestic violence in public. The petitioner adds that R-M- only gave her pocket money and kept her under strict control and that his acts constitute battery and extreme cruelty. The petitioner provides a supplemental evaluation prepared by [REDACTED] dated August 2, 2011, wherein [REDACTED] provides the exact same information as set out in his June 2, 2011 report, adding only that the petitioner was seen by a psychiatrist, [REDACTED] on July 24, 2011 and that [REDACTED] confirmed the diagnosis of major depressive disorder, moderate and prescribed the petitioner medication.

Upon review of the petitioner's statements, including the petitioner's statement on appeal, the petitioner has not provided a probative account of specific instances of battery or conduct constituting extreme cruelty as that term is defined in the statute, regulation, and case law. The petitioner does not describe any instances of physical abuse. The petitioner, while stating that R-M- knew not to demonstrate domestic violence in public, does not provide an account of any instance of domestic violence with specificity. The declarants who submit testimony on her behalf, although making a general reference to physical abuse, do not describe any instances of physical abuse. Thus, the record does not provide a probative account of battery perpetrated by the petitioner's USC spouse.

Regarding the issue of extreme cruelty, the petitioner states that her USC spouse called her derogatory names, threatened her, committed adultery, and kept her under strict control. She, however, does not provide descriptive and specific detail regarding the circumstances of any threats and she does not include particular detailed examples of name calling or of being kept under "strict control." The petitioner does not provide detail of specific threats or instances of abusive behavior comparable to the behavior described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which

includes forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Nor has the petitioner established that R-M-'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 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The record is simply deficient in this regard.

Regarding [REDACTED] November 19, 2009 letter, [REDACTED] does not reference the cause of the petitioner's depression; accordingly, his letter does not support a finding that the petitioner was subjected to any form of abuse. Upon review of [REDACTED] report, [REDACTED] does not provide specific examples of behavior perpetrated by R-M- that constitute battery or extreme cruelty as those terms are set out in the statute and regulation. As the director observed, [REDACTED] report included the same information regarding the petitioner's claims of abuse as the petitioner provided in her statements to USCIS, information that is insufficient to establish that the petitioner was subjected to battery or conduct constituting extreme cruelty by her USC spouse. Moreover, [REDACTED] states generally that the petitioner's depression is related to her stressful family situation; he does not provide the causal connection between the petitioner's depression and battery or extreme cruelty perpetrated by her USC spouse. As the record does not include the evaluation of [REDACTED] his claimed diagnosis cannot be considered.

Upon review of the totality of the evidence in the record, the petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by her USC spouse.

#### *Good Faith Entry into Marriage*

The director set out the deficiencies of the record regarding the petitioner's intent when entering into the marriage. The director considered the documentation submitted, including photographs, bank statements, utility bills, car insurance, and a 2006 Internal Revenue Service (IRS) Form 1040EZ. The director observed that the petitioner had not provided any information regarding her interactions with R-M- prior to or subsequent to the marriage, except as it related to the claimed abuse. Accordingly, the director determined the petitioner had not established that she had entered into the marriage in good faith.

On appeal, the petitioner does not add any information regarding her intent when entering into the marriage. She, again, references the documentation previously submitted and seems to assert that the director's observation that she was in a deteriorating marriage is evidence that she was in a good faith marriage.

The petitioner in this matter stated initially that she married R-M- because the couple was in love with each other and wanted to form a long-time family. She does not include any descriptive testimony regarding how the couple met, their courtship, their decision to marry, their wedding, their shared residences, or their shared experiences, except as it relates to her claim of abuse. The

petitioner has not provided this necessary detailed information. Similarly, the statements of her friends do not assist in establishing the petitioner's intent when entering into the marriage, as the statements do not convey the declarants' personal observations of the couple. The bank statements, utility bills, car insurance, rental receipts, and one IRS return are insufficient on their own to establish the petitioner's bona fide intent when entering into the marriage and in this matter are also insufficient when combined with the lack of probative testimony. The photographs of the couple on one or two occasions also fail to demonstrate the petitioner's intent when entering into the marriage. Considered in the aggregate, the relevant evidence does not establish the petitioner entered into marriage with her USC spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

The petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by the USC spouse, or that she entered into the marriage in good faith. 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.