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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: 
JUL 13 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:

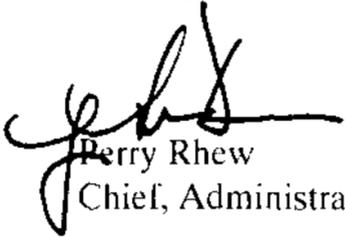


INSTRUCTIONS:

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 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 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 (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 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.

(ii) *Relationship.* A self-petition file by a spouse must 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.

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 the Philippines. She entered the United States on February 24, 2007 with a K-1 fiancé visa. She claims that she married D-S-,¹ on March 2, 2007. On October 6, 2007, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner stated on the Form I-360 that she resided with D-S- from February 24, 2007 until March 26, 2007. 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 a qualifying relationship with the claimed USC spouse, her eligibility for immigrant classification based on a qualifying relationship, or that she had been subjected to battery or extreme cruelty perpetrated by the claimed USC spouse. On

¹ Name withheld to protect the individual's identity.

appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a supplemental brief.

Qualifying Relationship

The record does not include a marriage certificate demonstrating the couple entered into a legal and valid marriage. The director specifically requested that the petitioner provide a marriage certificate from the civil authority where the marriage took place. The petitioner did not provide a copy of the marriage certificate in response to the director's RFE and the director determined that the petitioner had not established that she had entered into marriage with D-S-.

On appeal, counsel for the petitioner references the petitioner's entry into the United States on a K-1 fiancé visa and asserts that the couple married at City Hall in Norwalk, California. Counsel contends that the petitioner is unable to provide a copy of the marriage certificate because of D-S-'s controlling nature. Neither counsel nor the petitioner explains why the petitioner's marriage certificate could not be obtained from the recording office of the Norwalk City Hall in California. As the record lacks evidence that the petitioner entered into marriage with D-S-, the petitioner has not established a qualifying relationship with D-S-.

Eligibility for Immediate Relative Classification

The petitioner has also failed to demonstrate the requisite eligibility for immigrant classification as an immediate relative based on a qualifying relationship. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(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 U.S. citizen spouse. As discussed in the preceding section, the petitioner has failed to establish a qualifying relationship with D-S-. Accordingly, the petitioner has failed to demonstrate her eligibility for immigrant classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Battery and/or Extreme Cruelty

In the petitioner's only statement submitted in support of the petition, the petitioner claimed that she was a prisoner in her own home, that D-S- was controlling, and that D-S- did not allow her to talk on the phone, to invite friends over, or to visit friends. She stated that he told her he would not file immigration papers on her behalf because he wanted to "try [her] out" for two years before petitioning for her. The petitioner noted that on March 26, 2007, D-S-'s friend helped her leave the house and took her to another friend's house. The petitioner indicated that when D-S- found out where she was, he yelled at her and told her he was going to call immigration to have her deported. The record also includes a November 23, 2009 psychological evaluation prepared by [REDACTED] diagnosed the petitioner with depressive disorder, but does not causally connect the petitioner's mental condition with specific incidents of battery or extreme cruelty as that term is set out in the statute, regulation, or pertinent case law. The petitioner does not provide further testimony or information regarding her claim that she was subjected to abuse perpetrated by D-S- in response to the director's RFE or on appeal. The

petitioner does not claim and her counsel does not assert that she was subjected to battery. Rather her claim is based on extreme cruelty allegedly perpetrated by D-S-.

Upon review of the record and counsel's statement and assertion on appeal, the petitioner has not established that she was subjected to extreme cruelty perpetrated by D-S-. The petitioner has not provided probative testimony that she was subjected to actions or behavior by D-S- 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)).

The petitioner's testimony and the testimony of others on her behalf do not include detail of specific behavior by D-S- that was part of an overall pattern of violence or coercion. She does not describe specific acts or events in detail that demonstrate she was subjected to ongoing intimidation, coercion, duress, threats, or acts of violence while residing with D-S-.² The petitioner's testimony is general and equivocal. The petitioner's testimony and the testimony submitted on her behalf is insufficient to establish that D-S-'s actions constituted battery or extreme cruelty 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 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.

² As noted above, the record does not include a marriage certificate or other probative evidence establishing that the petitioner and D-S- entered into a valid marriage.