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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

Date:

DEC 05 2013

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)

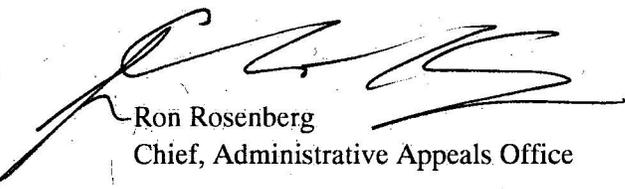
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 her U.S. citizen spouse.

The director denied the petition for failure to establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits a supporting brief.

*Relevant 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, 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 further 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 further explicated 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 or the self-petitioner's child, 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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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.

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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.

#### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Thailand who states that she entered the United States in May 2003 using a photograph substituted passport. The petitioner married her second husband, D-M-<sup>1</sup> a U.S. citizen, on December 24, 2005 in Nevada.

The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on January 19, 2012. The director subsequently issued two Requests for Evidence (RFEs) and a Notice of Intent to Deny, requesting evidence of the battery and extreme cruelty to which the petitioner claimed she was subjected, the petitioner's good moral character, and the petitioner's joint residence with her husband. The petitioner timely responded to the RFEs and the NOID. After considering those responses and other relevant evidence, the director denied the petition on April 10, 2013. The petitioner timely filed the instant appeal.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. On appeal, the petitioner has failed to overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

#### *Battery or Extreme Cruelty*

Counsel's claims on appeal fail to establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. In her January 14, 2012 affidavit, the petitioner stated that she met her husband, D-M-, in May 2004 while working at a spa in California. The petitioner stated that after her relationship with D-M- began, she became pregnant, and D-M- took her to a clinic for an abortion. The petitioner stated that eventually, D-M- asked her friend and her to leave the spa where they worked and "become independent." She explained that she "was basically a prostitute" and D-M- was her "manager," "pimp," and "confidante," who "controlled almost everything about [her] life." The petitioner stated that after their marriage in December 2005, her husband was unemployed and the petitioner continued to support herself and her husband through prostitution. She recounted that her life with him became more complicated and that she felt she could not do anything without D-M-. The petitioner stated that she and her husband moved to Virginia in 2007, with her husband traveling back and forth to California for his business. She indicated that they started a real estate business together in March 2008 and that she continued to work that year in a business she had started, selling cosmetics and secondhand jewelry. According to the petitioner, her husband later began an extramarital relationship, causing her to suffer physically and psychologically. She stated that they fought a lot, leading to a brief separation. The petitioner indicated that they continued to have disputes after they reconciled. The

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

petitioner briefly stated that in February 2010, D-M- hit her during a big fight about their failing real estate business, but she did not describe the altercation in detail. After this incident, the petitioner recounted that her husband moved out of their home and she has not lived with him since then.

In her second affidavit, dated February 4, 2013, submitted in response to the NOID, the petitioner stated that her husband was possessive, controlling and isolating. She recounted that, despite her joy at her unexpected pregnancy, her husband cried and convinced her to end the pregnancy, telling her they needed to have a better life before having a child. She explained that, sometime afterwards, when D-M- told her that she should work for him as a prostitute, she felt so bad about the abortion that she found very little meaning in life other than trying to help D-M-. The petitioner recounted that D-M- psychologically and physically isolated her, especially after the couple's move to Virginia. The petitioner also conveyed that she felt she had no choice but to do what her husband asked if she was ever to gain legal status in the United States.

The petitioner also submitted a statement from an acquaintance, [REDACTED] who stated that the petitioner told her that D-M- hit the petitioner, threatened her with a knife and choked her after a fight on an unspecified occasion. This account is inconsistent with the petitioner's January 2012 statement, in which she stated that D-M- hit her on one occasion, but made no reference to being choked or threatened with a knife during that incident. Another acquaintance, [REDACTED] indicated that the petitioner relayed to him about a fight between the petitioner and her husband on their wedding anniversary on Christmas Eve in 2007, where the latter verbally abused his wife. The petitioner, however, does not reference this altercation in any of her statements. Another affiant, [REDACTED] stated that the petitioner told her about the emotional and psychological abuse her husband inflicted and at least one incident of physical abuse in early 2010, but does not describe any particular incident in detail. Lastly, both Ms. [REDACTED] and another affiant, [REDACTED] conveyed their belief that D-M- was cruel and callous for withdrawing his immigration support for the petitioner and for abandoning her.

On appeal, counsel asserts that the evidence submitted below met the petitioner's burden of proof because the petitioner's husband subjected her to mental abuse and isolation and no other evidence, such as police reports or psychological evaluations, are available. The regulation does not require such traditional forms of documentary evidence to establish battery or extreme cruelty. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.2(c)(2)(i). Rather, "[o]ther forms of credible relevant evidence will also be considered." 8 C.F.R. § 204.2(c)(2)(iv).

In this case, the petitioner did not describe any incident of battery in probative detail and her brief reference to being hit by the petitioner once is inconsistent with Ms. [REDACTED] statement. Although the petitioner described her husband as controlling, possessive and isolating, she also did not discuss any specific incidents or actions of D-M- that constituted extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner did not state that her husband threatened, coerced or otherwise forced her into prostitution, or that he engaged in other acts of sexual, physical or psychological abuse against her. Her assertion in her second statement that she was even more isolated physically and psychologically after she and her spouse moved to Virginia in 2007, contradicts her earlier statement, in which she stated that D-M- was often away during this time after their move and that she was able to begin her own jewelry and cosmetics business independent of her husband in Virginia. The statements

of the petitioner's three friends also do not discuss any incidents of battery or extreme cruelty in probative detail. The petitioner submitted no new evidence of battery or extreme cruelty on appeal. The petitioner's affidavits and the statements of her friends fail to demonstrate that her husband subjected her to battery or extreme cruelty, as defined 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.

*Conclusion*

On appeal, the petitioner has failed to establish that her husband, D-M-, subjected her to battery or extreme cruelty. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.