

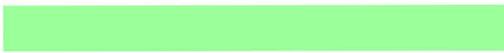


**U.S. Citizenship
and Immigration
Services**

(b)(6)

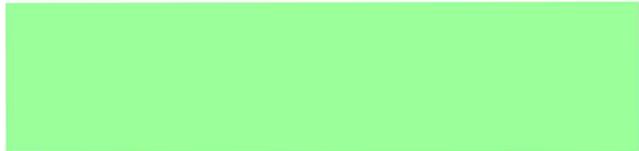


Date: **MAY 24 2013** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Self-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:

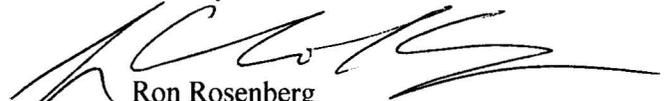


INSTRUCTIONS:

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 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 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 request 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting 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 and 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 denied the petition on the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief and copies of previously submitted evidence.

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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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.

* * *

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:

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.

* * *

Facts and Procedural History

The petitioner is a citizen of Colombia who entered the United States on January 31, 2009, with a fiancée visa. The petitioner married her U.S. citizen fiancé on March 21, 2009, in Tennessee. The petitioner claims to have divorced her ex-husband on January 27, 2010. The petitioner filed the instant Form I-360 on March 14, 2011. The director subsequently issued a request for additional evidence (RFE) of her ex-husband's battery or extreme cruelty and the petitioner's joint residence with her former husband. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite battery or extreme cruelty. On appeal, counsel submits a brief in which she asserts that the petitioner suffered abuse by her former husband.

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 fails to establish the petitioner's eligibility. On appeal, the petitioner has failed to establish that she was subjected to battery or extreme cruelty by her ex-husband during their marriage.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former husband did not subject her to battery or extreme cruelty and counsel's assertions on appeal fail to overcome this ground for denial. In her affidavit, the petitioner stated that her ex-husband told her he was the only one who could help her in this country because she was undocumented, and refused to file immigration documents on her behalf. The petitioner described how her former husband belittled her, called her names, and yelled at her. She stated that her former husband treated his children from his first marriage better than her and her daughter. The petitioner indicated that her ex-husband controlled their money and finances and threatened to call immigration. She stated that her former husband once pushed her, argued with her, slammed doors, threw things at the wall, and pressured her to have sex with him. The petitioner and her daughter also described how the petitioner's ex-husband would sometimes go into her daughter's room, stare at her inappropriately and make inappropriate comments to her daughter. The petitioner's description of battery lacks probative details, and the other behavior she describes does not meet the requirements for extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also submitted five statements from friends and family who indicated that the petitioner's ex-husband humiliated her and treated her badly, but who did not provide any probative descriptions of any particular incident of battery or extreme cruelty.

The petitioner submitted psychological evaluations of her and her daughter prepared by [REDACTED] a clinical psychologist. In the petitioner's evaluation, the psychologist indicated that the petitioner's ex-husband called her names and cursed at her, but made no mention of any incidents of battery. She reported that the petitioner was suffering from "notable stress over her current legal (immigration) situation and the aftermath of her marriage," and noted that she met the criteria for moderate depressive disorder. In the petitioner's daughter's evaluation, the psychologist indicated that the petitioner's daughter worried about the petitioner and her ex-husband's relationship and distrusted the petitioner's ex-husband. The psychologist's reports do not offer any probative descriptions of any particular incidents or acts comparable to those described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). There is no indication that the petitioner's former husband's non-physical behavior was accompanied by coercive actions, threats of harm, or was otherwise part of an overall pattern of violence.

In response to the RFE, the petitioner submitted three more statements from friends. [REDACTED] and [REDACTED] stated that the petitioner's former husband humiliated her and treated her badly. [REDACTED] also indicated that the petitioner's ex-husband shouted at her and pushed her, but neither of them provided any probative descriptions of abuse. The petitioner also provided a letter from [REDACTED] Ph.D., who indicated that the petitioner complained of

depressive symptoms and that her ex-husband was controlling and verbally abusive, but did not provide any details or other information.

The petitioner's statements and the other relevant evidence do not indicate that her former husband's behavior involved psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). When considered in the aggregate, the relevant evidence also fails to establish that the petitioner's husband subjected her to battery during their marriage. The petitioner recounted that on one occasion her former husband pushed her, but she failed to provide a probative description of this event or show that the incident resulted or threatened to result in physical or mental injury. *See* 8 C.F.R. § 204.2(c)(1)(vi). The petitioner also did not establish that any other acts were part of an overall pattern of violence. *Id.*

On appeal, counsel contends that the petitioner suffered from "economic and employment related abuse, . . . social isolation, possessiveness, and harassment . . . [and] immigration abuse." We do not discount the harm the petitioner's ex-husband caused her, but to qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act, the statute and regulation require that the cruelty be extreme. Counsel asserts that "psychological abuse shall be considered acts of violence for the purpose of establishing 'extreme cruelty'" and contends that the petitioner would have been eligible for a protective order in Tennessee based on her ex-husband's behavior. However, the acts described by the petitioner and her friends and relatives do not involve acts such as rape, molestation, incest, or forced prostitution, nor has she shown that the acts were part of an overall pattern of violence. *See* 8 C.F.R. § 204.2(c)(1)(vi). Furthermore, the standard that Tennessee uses for protective orders is not the same standard required to qualify for immigrant classification under section 204(a)(1)(A)(iii) of the Act. As the actions counsel cites to do not constitute extreme cruelty as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi), the petitioner has not established that her former husband subjected her or her child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship

Beyond the director's decision,¹ the petitioner has failed to demonstrate that she had a qualifying relationship with a U.S. citizen and that she is eligible for immigrant relative classification based on such a qualifying relationship. Counsel indicated that the petitioner was divorced on January 27, 2010. However, the petitioner did not provide sufficient evidence that her marriage was terminated within two years of her filing of the Form I-360. The petitioner submitted a copy of her husband's complaint for divorce and proposed order, but she did not submit a copy of any final order or judgment of divorce. Furthermore, as the petitioner has failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such

¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (cc) of the Act.

Conclusion

On appeal, the petitioner has not established that her former husband subjected her or her child to battery or extreme cruelty during their marriage. She also has not demonstrated the requisite qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification. 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). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied.

ORDER: The appeal is dismissed.