



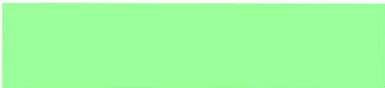
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: **APR 24 2014**

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 spouse subjected the petitioner to battery or extreme cruelty during their marriage.

On appeal, counsel submits a 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 . . . 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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Guyana who was admitted to the United States on August 26, 2009 as a nonimmigrant visitor. The petitioner married her second husband, T-D-¹, a U.S. citizen, in [REDACTED] Minnesota on December 16, 2009. Their marriage terminated in a divorce on September 8, 2011. The petitioner filed the instant Form I-360 on March 1, 2012. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

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. Counsel's claims on appeal do not overcome the director's grounds for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

De novo review of the evidence submitted below shows no error in the director's determination that the petitioner's former husband did not subject the petitioner to battery or extreme cruelty. In her initial

¹ Name withheld to protect the individual's identity.

affidavit, the petitioner stated that two months after their marriage, she and T-D- began having arguments after he resumed contact with his former spouse. She recounted that T-D- lied to her, went to bed without her, called her names and ignored her. The petitioner stated that during their arguments T-D- was aggressive. She stated that she was dependent on him financially and she did not have a driver's license. She recounted that she had to rely on her sister when T-D- and his former wife traveled to Canada and Guyana together. The petitioner stated that T-D- threatened to have her deported to Guyana. In her affidavit submitted in response to the RFE, the petitioner reiterated that T-D- traveled to Canada and Guyana with his former wife. The petitioner's statements do not indicate that her spouse ever battered her. Her brief descriptions of the non-physical abuse fails to contain probative, credible details to establish that she was subjected to extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

The petitioner submitted a psychological evaluation, dated January 13, 2012, from [REDACTED] Ph.D. Dr. [REDACTED] stated that the petitioner recounted during her interview that T-D- shouted at her, slammed doors, ignored her, threw her clothes on the floor, threatened to deport her, and traveled to Guyana and Canada with his former wife. Dr. [REDACTED] further stated that the petitioner was concerned that U.S. Citizenship and Immigration Services (USCIS) believed her marriage to be a sham. He opined that the petitioner "has been subjected to a pattern of psychological abuse." Dr. [REDACTED] diagnosed the petitioner with major depression, generalized anxiety disorder and panic disorder. Although the input of any mental health professional is respected and valuable, the petitioner's brief descriptions of the alleged abuse fail to provide any probative details to demonstrate that she was subjected to battery or extreme cruelty as that term is defined in the regulation.

In response to the RFE, the petitioner submitted an affidavit from her sister, [REDACTED]. Ms. [REDACTED] recounted that the petitioner moved in with her and was "very depressed" when T-D- traveled to Guyana with his former spouse. The incident described by Ms. [REDACTED] does not indicate that T-D- battered the petitioner or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined in the regulation.

The petitioner also submitted in response to the RFE, T-D-'s criminal records, including, a no contact order, a harassment restraining order, and court register of actions related to the violations of the restraining order. The no contact and restraining order were issued to protect a third-party individual, S-D-, from contact with T-D-. The criminal records are dated prior to the petitioner's entry into the United States and her marriage to T-D-. The director correctly stated that while these records establish T-D-'s criminal conduct in a prior relationship, they do not establish that the petitioner herself experienced battery or extreme cruelty.

In response to the RFE, the petitioner also submitted a letter from Dr. [REDACTED] dated April 19, 2013, in which he stated that the petitioner's history of witnessing domestic abuse by her father and then experiencing domestic violence by her first husband made her "highly vulnerable psychologically." He further explained that he felt that "[t]he abusive and deceptive behavior by [T-D-] appears to be particularly cruel in view of his position as a childhood acquaintance, former brother-in-law, and priest." We are not questioning the factors Dr. [REDACTED] considered in his diagnosis of the petitioner's mental health. However, the record still does not contain credible, probative details to establish that the petitioner was subjected to battery or extreme cruelty during her marriage to T-D-.

On appeal, counsel asserts that the petitioner was the victim of domestic assault and disorderly conduct under Minnesota law because she was terrified that T-D- would physically hurt her, and he yelled at her and “wagged his finger in her face.” Counsel states that the petitioner’s evidence shows that she suffered emotional abuse, isolation and economic abuse. Counsel further asserts that the director mischaracterized the abuse as “marital difficulties” that were not “beyond those encountered in many marriages.”

While the director’s description of the abuse as typical “marital difficulties” was unnecessary, we find no error in his ultimate determination that the behavior of the petitioner’s spouse did not constitute extreme cruelty. The petitioner only offers a two-sentence description of the incidents counsel claims would qualify as “domestic assault” and “disorderly conduct” if prosecuted under Minnesota law. The petitioner’s affidavit and her narrative in the psychological evaluation are vague and lack credible, probative details of the alleged abuse. Accordingly, the petitioner has not established that her former husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

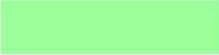
Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Beyond the decision of the director, the petitioner has also failed to demonstrate a qualifying relationship with T-D- because she failed to establish the requisite battery or extreme cruelty.² The record shows that the petitioner and T-D- were divorced on September 8, 2011 before this petition was filed on March 1, 2012. As the petitioner has failed to establish the requisite battery or extreme cruelty, she has thus failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen and her corresponding eligibility for immediate relative classification pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Conclusion

On appeal, the petitioner has failed to demonstrate: (1) the existence of a qualifying relationship with a U.S. citizen; (2) her eligibility for immigrant classification as an immediate relative on the basis of such a relationship; (3) and that her former husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

² A 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).



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In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.