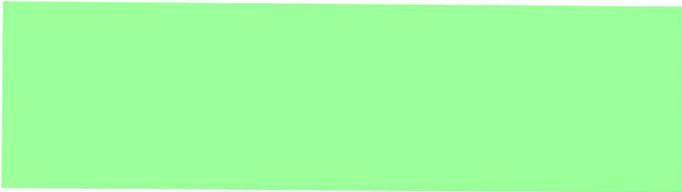


(b)(6)

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

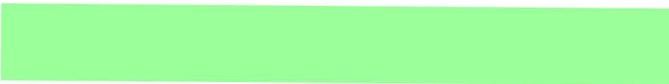


U.S. Citizenship
and Immigration
Services



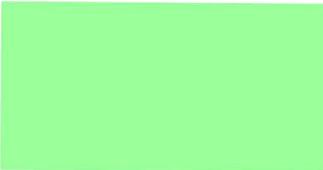
Date: **AUG 04 2014**

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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

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 was subjected to battery or extreme cruelty by her husband.

On appeal, counsel submits a brief statement.

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 Ecuador who entered the United States on September 17, 1999 as a nonimmigrant visitor. The petitioner married her U.S. citizen spouse in Florida on June 23, 2010. The petitioner filed the instant Form I-360 on October 1, 2012. The director subsequently issued a Request for Evidence (RFE) of, among other things, the petitioner's husband's battery or extreme cruelty. The petitioner, through counsel, responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Counsel's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

The petitioner initially failed to provide any evidence to demonstrate that her husband subjected her to battery or extreme cruelty. In response to the RFE, the petitioner submitted a statement in which she recounted that after the first year of marriage, her husband became less affectionate, called her names and threatened to harm her. She stated that she discovered that her husband was having an extramarital affair. The petitioner recounted that when she asked her husband to leave their home, he threatened to have her deported. She stated that in December 2011 she was hospitalized for two weeks because of

injuries from an automobile accident. The petitioner recounted that after her release from the hospital, her husband refused to care for her and she had to rely on a neighbor and her son from another relationship to help with her medical needs. The petitioner failed to provide a probative description of specific instances in which her husband threatened violence against her. The other behavior described in her affidavit, including her husband's name calling, extramarital affair and abandonment do not constitute constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

In response to the RFE, the petitioner submitted affidavits from her neighbor, [REDACTED], her friend, [REDACTED] and her father, [REDACTED]. Ms. [REDACTED] stated that she has witnessed the petitioner's husband's change in behavior. Mr. [REDACTED] stated that he is close to the couple and saw the "happy and sad moments" of their relationship. Mr. [REDACTED] stated that the petitioner's relationship with her husband deteriorated after his behavior changed. None of the affiants describe having personal knowledge of any instances of battery or extreme cruelty in the petitioner's marriage.

In response to the RFE, the petitioner also submitted a psychological evaluation from [REDACTED], a mental health counselor. Ms. [REDACTED] diagnosed the petitioner with adjustment disorder with depressed mood. Ms. [REDACTED] stated that during the petitioner's intake interview, the petitioner recounted that her husband was having an extramarital affair and after her automobile accident her husband slept in a separate room and refused to help her. The petitioner also reported that her husband forced her to have sexual relations with him, called her names and threatened violence. Ms. [REDACTED] failed to provide any probative information of the alleged sexual abuse and threats of violence against the petitioner. The petitioner also did not mention that her husband subjected her to sexual abuse in her affidavit.

On appeal, counsel asserts that the record establishes that the petitioner's husband subjected the petitioner to emotional, physical and sexual abuse and he abandoned the petitioner after she became disabled. A full review of the record shows no error in the director's decision. The petitioner in her affidavit failed to provide a probative description of any specific incidents of battery or extreme cruelty. The psychological evaluation also does not provide a probative description of the alleged abuse. The petitioner's neighbor, friend and father state that the petitioner's husband changed his behavior and the couple had "happy and sad moments," but none of them describe having any knowledge of the alleged abuse. Accordingly, the petitioner has not established that her 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.

Conclusion

On appeal, the petitioner has failed to establish that her husband 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 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.