

(b)(6)

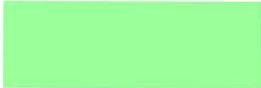
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

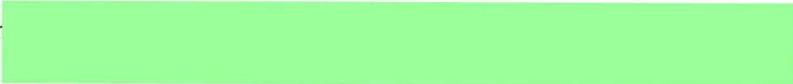


U.S. Citizenship
and Immigration
Services



Date: **SEP 12 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)

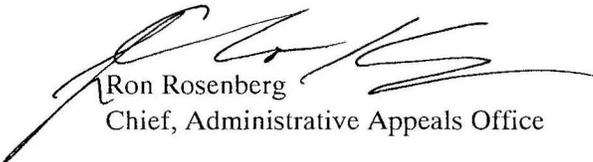
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

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 for failure to establish that the petitioner’s spouse subjected her to battery or extreme cruelty during their marriage. On appeal, the petitioner submits a supplemental personal statement.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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 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)(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:

(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 the Philippines who entered the United States on May 10, 2002 as a B-2 temporary visitor. She married D-L-¹, a U.S. citizen, on January 1, 2012 in Nevada. The petitioner filed the instant Form I-360 self-petition on May 14, 2012, and she and D-L- were later divorced on October 24, 2012.² The director subsequently issued Requests for Evidence (RFEs) of, among other things, the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has overcome the director's ground for denial as follows.

Battery or Extreme Cruelty

The preponderance of the relevant evidence submitted below and on appeal demonstrates that D-L- subjected the petitioner to battery or extreme cruelty during their marriage. The petitioner submitted initially a police report, medical records, a complaint for divorce (complaint), and photographs referenced in the complaint. The complaint, filed by the petitioner through counsel on March 13, 2012,

¹ Name withheld to protect the individual's identity.

² The petitioner submitted a copy of her divorce complaint for the record and public records for the County, Nevada district court, family division show that a decree of divorce was issued on October 24, 2012.

states that: D-L- “did commit domestic violence” against the petitioner on February 20, 2012; Las Vegas police were called to the scene but no arrests were made; and photographs showing her injuries were attached thereto. The photographs show what appears to be a substantial contusion on the petitioner’s left hip area.

The medical records include a letter from [REDACTED] M.D., Dr. [REDACTED] treatment notes dated February 21 and 27, 2012, a prescription for two medications issued the same date and multiple radiology reports relating to a February 22, 2012 examination. In his letter, Dr. [REDACTED] stated that the petitioner was evaluated on February 21, 2012 for physical and psychological trauma resulting from an assault propagated on her by D-L-. Dr. [REDACTED] observed the following physical trauma: bilateral shoulder contusion; abdominal epigastric trauma; lower back injury; left hip contusion/bruising; left hand puncture wound with secondary infection; left ankle sprain; and vaginal bleeding. He also noted psychological trauma and prescribed medication for pain and anxiety related to the assault. Dr. [REDACTED] reported that the petitioner expressed fear of returning to the home she shared with D-L-, and recommended that she reside apart from him.

Dr. [REDACTED] treatment notes, dated February 21, 2012, are six pages in length and contain extensive probative details of both the incident leading to the petitioner’s injuries, as she reported to Dr. [REDACTED] and Dr. [REDACTED] clinical observations on that day. Dr. [REDACTED] wrote, in pertinent part, that D-L- and the petitioner were arguing about her wedding ring when D-L- assaulted her, tore a document and tried to remove the ring from her finger by force. When the petitioner resisted, D-L- pushed her, she fell to the floor and hit her lower back and left hip area, which is tender and bruised. Dr. [REDACTED] continued that D-L- pushed the petitioner in the epigastric area which caused her to lose her breath and feel nauseated, grabbed her by both shoulders, and pushed her shoulder against the floor while tearing the agreement from her hand. The petitioner reported severe pain in both shoulders and difficulty lifting her arms. Dr. [REDACTED] noted that D-L- tried to force the petitioner’s wedding ring off her finger, causing a puncture wound to her left hand, stepped on her right ankle causing difficulty walking, and put all his weight on her stomach which later resulted in vaginal bleeding apart from her regular menstruation. Dr. [REDACTED] reported that the petitioner’s blood pressure was elevated which was unusual for her, she felt violated and afraid that her husband would attack her again, and as she could not return home she was staying with a friend. In the clinical portion of his notes, Dr. [REDACTED] indicated that he conducted a physical examination and that the petitioner appeared apprehensive, depressed and upset due to the events of the past two days. Dr. [REDACTED] clinically noted the petitioner’s blood pressure readings and detailed her specific ranges of motion and measurements for each of her multiple injuries, including the left hand puncture wound which he measured at one-half by one-half centimeters. In his February 27, 2012 treatment notes, Dr. [REDACTED] observed that after five days the petitioner’s left hip bruising grew larger and more swollen, and he provided updated ranges of motion and measurements for the areas previously examined.

The police report indicates that on February 20, 2012, officers responded to a domestic disturbance call at the marital residence and the petitioner stated that she and D-L- were in an argument that turned physical when he pushed her with one hand on the chest. D-L- stated they were arguing about getting a divorce and nothing physical took place. The officers observed no signs of physical contact and stood by while the petitioner removed her belongs and “left to go back to her residence in California.”

In the RFE dated May 3, 2013, the director found that information in the police report “contradicts” Dr. [REDACTED] evaluation because the report dated February 20, 2012 stated there were no signs of physical contact and any injuries cited in the medical records dated February 21, 2012 must have “occurred after this incident and your spouse was not the cause.” In response, the petitioner submitted a personal statement in which she provided credible, extensive, and probative details of the abuse. The petitioner explained that D-L- is a heavy set diabetic who takes numerous daily medications. She recalled that something in him changed about three weeks before the assault as he became combative, appeared to hallucinate, and said he should go back to his psychologist because he could tell he was “getting worse.” The petitioner learned for the first time that D-L- had been prescribed depression and anxiety medications he had stopped taking. She explained that D-L- often wagged his finger in her face while yelling at her about things of which she had no knowledge and may have related to his prior spouse.

The petitioner recalled that on the afternoon of February 20, 2012, while she was in the kitchen cooking, D-L- awoke, aggressively approached her, waved his finger in her face and began yelling and cursing. When she tried to calm him, D-L- ordered her to pack her bags and get out of his house and he grabbed her left shoulder and yelled in her face. The petitioner recounted how when she went to another room and began packing her documents and photographs, D-L- followed and grabbed the papers from her. She explained that D-L- told her to give him her copy of their pre-nuptial agreement. While trying to take the agreement from the petitioner, D-L- grabbed her shoulder and tried to forcefully extract the wedding ring from her finger. The petitioner stated that when she resisted, D-L- pushed her so hard that she struck her left hip on the edge of a dresser, fell to the floor, and hit her lower back which later became bruised and swollen. She explained that while she was still on the floor, D-L-, who is nearly 130 pounds heavier than her, pushed her again and punched her chest, causing breathlessness and nausea. The petitioner recalled D-L- shook her, grabbed both her shoulders and pushed her shoulder against the floor to grab the agreement from her hand. She recounted how he was stepping on her ankle while trying to pry the ring off her finger and that he was so heavy and she begged him to stop. The petitioner explained that she ran to the corner of the room, attempted to dial 9-1-1 on her cellular telephone, but D-L- grabbed it from her. She managed to call a Filipina acquaintance and when D-L- left the room, the petitioner ran outside with her telephone, called the police and waited.

The petitioner stated that when police arrived, they asked her questions and she told them D-L- pushed her hard and punched her in the chest area. She explained that she had no visible bruises at the time as it takes time for bruises to appear. The petitioner recounted how she told police all she wanted was to retrieve her belongings and leave, but they replied that it was her right to stay. When she insisted, they accompanied her inside while she gathered her things. The petitioner stated that her acquaintance picked her up and offered shelter in her home. She recounted how she could not sleep as her body was aching and she was crying. The petitioner explained that she went the following day to see Dr. [REDACTED] on an emergency basis, recounted to him what had happened, Dr. [REDACTED] examined her, prescribed medication, and sent her for radiographs the next day. The petitioner stated that by February 23, 2012, the bruises on her hip had grown substantially. She explained that she had follow-up visits with Dr. [REDACTED] but when she later moved back to California, where she resided before her marriage and where her son resides, she could no longer afford to travel to Las Vegas to see Dr. [REDACTED]

In her statement, the petitioner provided credible probative details of D-L-'s battery consistent with Dr. [REDACTED] evaluation and his detailed treatment notes. The director nonetheless determined that the petitioner failed to establish that D-L- battered her or subjected her to extreme cruelty. The director found the petitioner incredible and determined that because police officers observed no signs of physical contact, the injuries the petitioner presented with to Dr. [REDACTED] the day following her assault must have occurred after the incident with D-L-.

On appeal, the petitioner submits a supplemental statement in which she provides credible, detailed and probative responses to the director's findings. The petitioner states that when the police arrived, she told them that she and D-L- had an argument that became physical when he pushed her on her chest and pushed her against the edge of the dresser cabinet. When the officer asked why they argued and why D-L- pushed her, she replied that he was forcing her to remove her wedding ring and was trying to pull it off her finger. She recounts how surprised she was when she received the police report and it did not mention the ring or other details she provided to the officer and she explains her multiple attempts to have the report amended. Addressing the comment in the police report that officers observed no signs of physical contact, the petitioner states that she told the officer her shoulder, lower back, and hips were hurt. She reiterates that she had no physical signs she could show them at that time as her physical pain was internal and the bruises did not fully form until the following afternoon after which she was examined by Dr. [REDACTED]. Addressing the director's finding that it is not credible that police would not have seen the puncture wound on her hand, the petitioner explains that the wound was small and not as significant to her at that time as the predominant pain she was experiencing was in her shoulder, lower back and hips. Dr. [REDACTED]'s detailed treatment notes clearly confirm that the puncture wound measured only half a centimeter. The petitioner's credible explanations, along with Dr. [REDACTED] detailed medical evaluation and treatment notes, sufficiently resolve the purported discrepancies raised by the director.

Upon a full review of the relevant credible evidence submitted below and on appeal, the petitioner has overcome the basis of the director's denial. The petitioner has submitted personal statements that describe in probative detail the battery and extreme cruelty she suffered by her former spouse. She has also submitted detailed medical records which conclude that the multiple injuries she sustained were due to her former spouse's abuse. The preponderance of the evidence demonstrates that the petitioner's former spouse subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

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 Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). On appeal, the petitioner has met this burden. She has overcome the director's ground for denial and established her eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The appeal will be sustained and the petition will be approved.

ORDER: The appeal is sustained.