

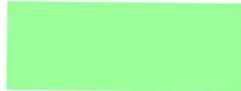
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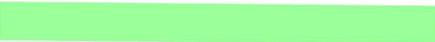
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

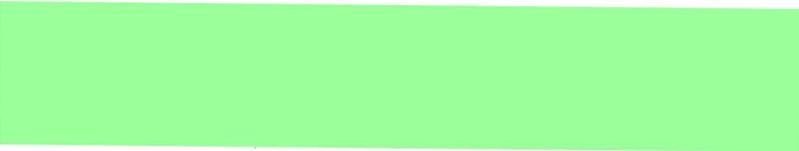
Date: **SEP 29 2014**

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:

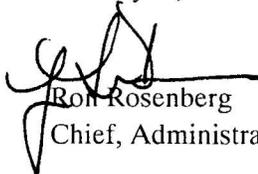


INSTRUCTIONS:

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.

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 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 on the basis of her determination that the petitioner failed to establish that she was subjected to battery or extreme cruelty by her husband.

On appeal, the petitioner submits a brief and additional evidence.

Applicable Law

Section 204(a)(1)(A)(iii)(I) of the Act provides, in pertinent part, 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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

(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 Mexico who entered the United States on March 1, 1997, without inspection, admission or parole. On July 19, 2003, the petitioner married a U.S. citizen in California. The petitioner and her husband divorced on November 14, 2012. The petitioner filed the instant Form I-360 self-petition on February 19, 2013. The director subsequently issued a Request for Evidence (RFE) of, among other things, the requisite abuse inflicted upon her by her husband during their marriage. The petitioner timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility and denied the petition accordingly.

The petitioner filed a timely appeal. On appeal, the petitioner submits several affidavits.

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 establishes the petitioner's eligibility for the following reasons.

Battery or Extreme Cruelty

The relevant evidence submitted below and on appeal demonstrates that the petitioner's husband subjected her and her daughter to battery and extreme cruelty. In her first affidavit, the petitioner stated that her husband attacked her verbally with bad words, slapped her and pulled her hair. She also indicated that her husband hit her, and although she called the police, she told them not to arrest him. The petitioner recounted that on one occasion, her husband grabbed her by the neck and started choking her. She again called the police who made her husband leave the premises, but did not arrest him. On another occasion, the petitioner and her husband argued while they were in the car, and her husband started driving recklessly and hit her in the face; the petitioner thought her husband was going to kill her.

The petitioner also submitted a psychological evaluation prepared by [REDACTED] a clinical psychologist. Dr. [REDACTED] indicated that the petitioner's husband's verbal abuse became physical, and that he slapped her, pulled her hair, and scratched her. Dr. [REDACTED] confirmed that the petitioner described to him the argument in the car where the petitioner's husband drove recklessly. Dr. [REDACTED] reported that the petitioner called the police three times, and that after her daughter confessed to her that her husband had been sexually abusing her since she was six years old, the petitioner filed a child abuse report that was later closed. He diagnosed her with mild levels of ongoing depression. The director determined that due to numerous inconsistencies in the record and the lack of independent corroborative evidence that should have been available, the petitioner failed to establish that her husband subjected her to battery or extreme cruelty.

On appeal, the petitioner submits another affidavit in which she attests that she tried to obtain copies of police reports, but was unable to do so. The petitioner also submits letters from each of her children. In her affidavit, the petitioner's daughter recounts that the petitioner and her husband argued, and that he threw objects and abused the petitioner. She also describes how the petitioner's husband sexually abused her beginning when she was eight years old, and how the abuse traumatized her. In his affidavit, the petitioner's eldest son states that he saw the petitioner's husband pull his mother's hair, slap her, and use foul language towards her. He also recalls the moment when the petitioner's daughter told them that the petitioner's husband had sexually abused her. The petitioner's youngest son recounts that he saw the petitioner's husband push his brother, and that there were broken doors, holes in walls, and bruises on his mother. He also specifically describes the day that the petitioner told her husband she didn't want to be with him anymore, and he grabbed her by the hair.

The petitioner also submits affidavits from two friends. [REDACTED] the petitioner's youngest son's grandmother, indicates that she heard the petitioner's husband abuse her verbally with bad words and that she always observed many broken objects in their home. [REDACTED] states that she saw bruises on the petitioner, and that on one occasion she saw the petitioner's husband push her and swear at her. She also indicates that the petitioner's husband threatened to report her to "immigration." These affidavits support the petitioner's claim that she and her daughter were subjected to battery and extreme cruelty by her husband.

Upon a full review of all the relevant and credible evidence submitted below and on appeal, the petitioner has overcome the basis of the director's denial. The petitioner has submitted affidavits that

describe in probative detail the battery and abuse that she and her daughter suffered. She has also submitted medical information which indicates that she is suffering from depression as a result of her husband's abuse. The record establishes that the petitioner's husband subjected her to physical harm and her daughter to sexual abuse over the course of their marriage. The preponderance of the evidence demonstrates that the petitioner's husband subjected her to battery and extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner's divorce from her husband prior to filing the Form I-360 is not disqualifying. The petitioner's marriage was dissolved on November 14, 2012; she filed the Form I-360 on February 19, 2013, less than four months later; and the petitioner has demonstrated a connection between the legal termination of her marriage and the battery and extreme cruelty to which she was subjected by her spouse. Accordingly, the petitioner has a qualifying relationship with a U.S. citizen spouse and is eligible for immediate relative classification based on that relationship. See section 204(a)(1)(A)(iii)(II)(aa), (cc).

Conclusion

On appeal, the petitioner has overcome the director's determination and established that her husband subjected her to battery or extreme cruelty during their marriage. Consequently, the petitioner is eligible 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 now been met.

ORDER: The appeal is sustained and the petition is approved.