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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



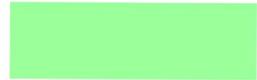
U.S. Citizenship
and Immigration
Services



Date: FEB 26 2015

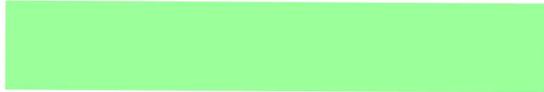
Office: VERMONT SERVICE CENTER

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,

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 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 former spouse.

The director denied the petition on the basis of her determination that the petitioner failed to establish that her ex-husband subjected her to battery or extreme cruelty during their marriage. On appeal, the petitioner submits a brief.

Applicable Law

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). 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:

(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, a citizen of Mexico, represents that she entered the United States in approximately 2000, without inspection, admission, or parole. The petitioner married J-Q-¹, a U.S. citizen, on [REDACTED] in Arizona. The couple divorced on [REDACTED], and the petitioner filed the instant Form I-360 self-petition on June 18, 2012. The director subsequently issued a request for evidence (RFE) of, among other things, J-Q-'s battery or extreme cruelty. 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 during the marriage. The petitioner timely appealed.

We review these proceedings *de novo*. A full review of the record establishes the petitioner's

¹ Name withheld to protect the individual's identity.

eligibility for the benefit sought. The appeal will be sustained for the following reasons.

Battery or Extreme Cruelty

The preponderance of the relevant evidence demonstrates that J-Q- subjected the petitioner to extreme cruelty during their marriage. In a personal affidavit dated March 19, 2012, the petitioner credibly recounted J-Q-'s escalating abuse after she and her four children moved in to his apartment in July of 2010. The petitioner indicated that J-Q- first accused her of looking at other men while they were out at a night club, and then began to constantly monitor the petitioner's gaze whenever they were together. The petitioner stated that she walked with her head down to avoid J-Q-'s accusations, and ultimately began wearing sunglasses while the couple shopped so that J-Q- could not see where she was looking. The petitioner described how J-Q- would insist that she walk directly by his side when they were together, and would only let go of her hand if he gave her specific instructions to do something.

The petitioner further recounted that J-Q- did not let her leave the apartment without him and that when J-Q- went to visit his parents in Puerto Rico in August of 2010, she stayed home and did whatever J-Q- requested, hoping that he would learn to trust her. The petitioner indicated that the situation did not improve, and a few weeks later she told J-Q- that the relationship was not functioning. J-Q- cried, and promised that he would change, and the petitioner stated that she believed him, and agreed to try to make the relationship work. However, J-Q- became more controlling, calling the petitioner several times a day and having neighbors and friends check on her while he was at work. The petitioner further stated that J-Q- insisted that she have dinner ready when he got home from work, and forced her to sit with him and watch television until 2:00 a.m., although she was often tired from caring for her four children all day.

The petitioner stated that J-Q- raped her on September 13, 2010. She provided credible and probative details about J-Q- forcing himself on her while she repeatedly told him no. The petitioner stated that the next day, when she confronted J-Q- about the rape, he apologized and made some modest improvements in his behavior after the two went to therapy. However, by the time of the couple's wedding on [REDACTED] J-Q- had become controlling again and denied ever raping her when the petitioner learned that she was pregnant. The petitioner stated that two days after discovering the pregnancy, she confronted J-Q- again and he told her that he would pay for the divorce, but asked her several times not to report the rape to the authorities. The petitioner indicated that she moved out on October 16, 2010, and that J-Q- filed an order of protection against her on October 28, 2010, falsely claiming that the petitioner was harassing and threatening him. The petitioner provided a copy of the protection order. While the protection order was in place, J-Q- contacted the petitioner and tried to get her to meet him, telling her that she should yell at him and hit him to get all of her anger out. The petitioner stated that after telling J-Q- that she planned on telling the judge what he did, J-Q- had the restraining order lifted the following day. The petitioner indicated that J-Q- was concerned that she would report the rape because he already had a record. The petitioner recounted that J-Q- repeatedly called her after the restraining order was lifted, telling her that he had not raped her, and trying to get her to agree. The petitioner indicated that she believed that he was recording the conversations. J-Q-

[REDACTED]

also called her on more than one occasion to ask whether or not she had reported the rape to the police.

In addition, the petitioner submitted a letter from [REDACTED] Center Against Domestic Abuse, dated May 9, 2011, confirming that she had received case management services, domestic violence education, and counseling since October 28, 2010. The petitioner also provided a psychological evaluation prepared by counselor [REDACTED] dated March 23, 2012, concluding that the petitioner suffers from posttraumatic stress disorder as a result of the abuse. The director denied the petition finding that the petitioner did not demonstrate that J-Q- battered her or subjected her to extreme cruelty during the period that the couple was married.

On appeal, the petitioner asserts that J-Q-'s pattern of abusive behavior continued throughout their marriage. She further states that J-Q- repeatedly tried to prevent her from reporting the rape after the two were married. *De novo* review of the evidence reveals that J-Q- subjected the petitioner to abusive behavior constituting extreme cruelty during the petitioner's marriage. Abusive actions that in and of themselves may not initially appear violent may, under certain circumstances, be part of an overall pattern of violence. 8 C.F.R. § 204.2(c)(1)(vi). Here, J-Q- engaged in a pattern of controlling behavior, constantly monitoring the petitioner, and not allowing her out of the house without him, which continued during their marriage. The petitioner credibly recounted that J-Q- raped her prior to their marriage, and repeatedly harassed her during their marriage about the rape, first denying that it occurred, then asking her not to report him to authorities, and finally endeavoring to obtain an admission from the petitioner he had not raped her. J-Q- also filed a restraining order against the petitioner, and attempted to get her to violate it by suggesting that she meet with him to get out her anger. When considered in the aggregate, the preponderance of the relevant evidence demonstrates that the petitioner's ex-husband subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has established that her former husband subjected her to extreme cruelty during their marriage and is consequently 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 been met.

ORDER: The appeal is sustained.