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U.S. Citizenship
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FILE:

EAC 06 193 52012

Office: VERMONT SERVICE CENTER

Date: FEB 24 2009

IN RE:

Petitioner:

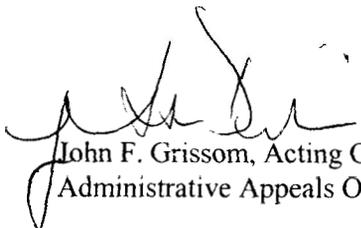
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 classification as an immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by her United States lawful permanent resident spouse.

The director denied the petition finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage. Specifically, the director found that the affidavits contained numerous inconsistencies and that the evaluation from [REDACTED], was not performed timely.

The petitioner submits a timely appeal, stating that she is a victim of domestic violence.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a lawful permanent resident of the United States is eligible to self-petition under these provisions if he or she is an alien:

(CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –

(aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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 corresponding regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section . . . 204(a)(1)(B)(ii) of the Act for his or her classification as . . . a preference immigrant if he or she:

* * *

(B) Is eligible for immigrant classification under section . . . 203(a)(2)(A) of the Act based on that relationship [to the U.S. lawful permanent resident].

* * *

(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 standard and 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Haiti who was admitted into the United States as a V-1 spouse of a lawful permanent resident alien (J-L-¹) on September 28, 2002. On May 27, 2004, the petitioner filed a Form I-485, Application to Register Permanent Resident or Adjust Status, which was denied on February 13, 2006, when the petitioner's spouse failed to appear for the interview.

The petitioner filed the instant Form I-360 on April 27, 2006. On December 26, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character and battery or extreme cruelty. The petitioner submitted a statement dated April 20, 2006 in response. On March 23, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite good moral character and battery or extreme cruelty. The petitioner, through counsel, timely responded to the NOID with additional evidence. On July 9, 2007, the director denied the petition, determining that, although the petitioner established that she is a person of good moral character, she failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage. Counsel timely appealed.

At the outset, the AAO does not agree that the petitioner has established that she is a person of good moral character. 8 C.F.R. § 204.2(c)(2), states, in pertinent part:

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The instant petition was filed on April 27, 2006. Thus, the petitioner is required to submit a police clearance or a state-issued criminal background check from each locality or state in the United States in which she has resided for six or more months during the 3-year period immediately preceding the filing of the petition, which in this case is: April 27, 2003 to April 27, 2006. The record contains an

¹ Name withheld to protect individual's identity.

incident report search, dated May 15, 2007, from the Sheriff of Broward County in Fort Lauderdale, Florida. The record, however, does not contain any local police clearance or a state-issued criminal background check from the appropriate authorities in Connecticut. The Form G-325A, Biographic Information, that was signed by the petitioner on May 25, 2004, reflects that on April 27, 2003, the petitioner was living at [REDACTED], Hartford, Connecticut and resided at that residence until December 2003, and that from January 2004 until she signed the form on May 25, 2004, she lived at [REDACTED], in Windsor, Connecticut. Thus, the petitioner should submit at least one local police clearance or a state-issued criminal background check from the appropriate authorities in Connecticut, as the petitioner lived for six or more months during the 3-year period immediately preceding the filing of the instant petition at [REDACTED] Hartford, Connecticut. Although the record is unclear, it is also possible that the petitioner lived at [REDACTED] in Windsor, Connecticut for six or more months during the 3-year period immediately preceding the filing of the instant petition. As the petitioner has failed to submit a police clearance or background check from each locality or state in the United States in which she has resided for six or more months during the 3-year period immediately preceding the filing of the instant petition, she has failed to establish her good moral character. We, therefore, withdraw the director's affirmative determination on this issue and find that the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iv) of the Act.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The record contains the following, relevant evidence:

- The petitioner's notarized statements dated April 20, 2006 and May 15, 2007;
- The April 26, 2007 evaluation from [REDACTED];
- The notarized statement, dated May 4, 2007, from [REDACTED];
- The statement, sworn on May 8, 2007, from [REDACTED]; and
- The 2006 Country Reports on Human Rights Practices for Haiti.

In her April 20, 2006 notarized statement, the petitioner states that after she and J-L- were married on August 8, 1997, her husband petitioned for her to live with him in the United States. The petitioner explains that the beginning of their marriage was good, until her husband started drinking and gambling on a regular basis and arguing with her, pushing her to the ground, and threatening to kill her. The petitioner states that, due to her husband's addiction to alcohol and gambling, she and her husband were evicted from several rental apartments, and that she was afraid to call the police on him because he threatened to have her deported. The petitioner further explains that he tried to cut off her relationship with her family and friends and that she "was left hungry some many times." The petitioner states that she fled to Florida to be reunited with her mother and her sister, and that she has been living apart from her husband since November 2004.

In her May 15, 2007 notarized statement, the petitioner states that she met J-L- in Haiti in 1996, that they married in 1997, and that in 2002, she moved to Connecticut to live with him permanently. The petitioner states that her husband was unprepared for her arrival to the United States and did not even have a room in his family's house in which they could stay together. The petitioner claims that her husband did not pay the rent and that, for the first two years after her arrival, they moved from place to place after being evicted. The petitioner also reports that her husband drank daily and was cruel and rude to her. She states that she did not tell anyone about what was happening to her because she was ashamed. The petitioner states that she wanted to leave her husband when he verbally abused her, but he threatened to kill her and, during one argument, threw a glass bottle at her head and missed. She states further that he threatened to have her deported, that he threatened to kill himself, and that, on one occasion, he chased a male guest around the house with a bat. She states that beginning in 2004, her husband threatened to kill her even when he was not intoxicated and forced her to have sex with him, and that finally, one day he came home from work claiming to have been injured and threatened to kill her, so she fled to Florida with the help of her sister, [REDACTED]. The petitioner claims that the last thing she heard from her husband was that he will shoot her if she tries to divorce him.

In her April 20, 2006 statement, the petitioner does not explicitly state or otherwise indicate that her husband subjected her to battery. Although she subsequently claims in her May 15, 2007 statement that her husband threw a glass bottle at her and missed, she did not mention that incident in her April 20, 2006 statement, which detracts from the probative value of her claim. Accordingly, we will only discuss the petitioner's claim of extreme cruelty. The petitioner's testimony does not indicate that her husband's behavior rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Although the petitioner claims that her husband threatened to kill her, the record contains numerous inconsistencies, including the petitioner's claim in her April 20, 2006 statement that she has been living apart from her husband since November 2004, which conflicts with her claim in her May 15, 2007 statement that she fled for her life in the beginning of 2004. In addition, the petitioner's claims in her statements that she lived with her husband at several addresses in the Hartford area and that for the first two years after her arrival, they moved from place to place after being evicted, conflict with the information that is reflected on her Form G-325A, Biographic Information, that she signed on May 25, 2004, reflecting that she lived at [REDACTED], Hartford, Connecticut from September 2002 until December 2003, and that from January 2004 until she signed the form on May 25, 2004, she lived at [REDACTED] in Windsor, Connecticut. The record contains no explanation for these inconsistencies. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988). A review of the record in its entirety finds that the petitioner's testimony fails to establish that the behavior of her husband rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The April 26, 2007 report from [REDACTED] also fails to establish that the petitioner's husband subjected her to extreme cruelty. Dr. [REDACTED] report is based on a psychological evaluation of unspecified length, more than two years after the petitioner separated from her husband. The petitioner's sister, [REDACTED] attended the evaluation and served as the petitioner's translator. In the "History" section of her report, [REDACTED] reiterates the information provided by the petitioner in her statements. Dr. [REDACTED] also reports that the petitioner's sister described herself as "her sister's confidant during her ordeal with her husband and that she witnessed her sister's psychological deterioration." This information conflicts with the petitioner's May 15, 2007 statement: "Since I was ashamed of what has [sic] happening in our marriage, I decided not to tell anybody about it." It is also noted that [REDACTED]'s finding in the "History" section of her report, that the petitioner feels safe with her family in South Florida, that she is just living her life, and that she is now seven months pregnant, conflicts with her finding in the "Observations/Symptoms" section of her report, that the petitioner remains terrified as the result of the extreme emotional and psychological abuse from her husband.

describes her clinical impressions of the petitioner as suffering from:

Major Depressive Disorder, Moderate, Without psychotic Features, Recurrent, DSM-IV: 296.23, and possibly Post Traumatic Stress Disorder which cannot be ruled out at this time. She was verbally degraded, sexually assaulted, pushed, had objects thrown at her head, and was chased with a base ball bat. She was told by [J-L-] that she would be killed and fed to dogs and is still being controlled with threats of death if she divorces her husband. She continues to believe his threats to kill her even though they have not lived together for the last two years.

Again, despite [REDACTED]'s reporting that the petitioner had objects thrown at her head, the petitioner describes an incident in her May 15, 2007 statement of her husband throwing a glass bottle at her and missing, and she did not mention that incident in her April 20, 2006 statement, which detracts from the probative value of her claim. In addition, the petitioner did not report in either of her statements that her husband chased her with a baseball bat. She claimed in her May 15, 2007 statement that her husband chased her house guest with a base ball bat, and she did not mention that incident in her April 20, 2006 statement, which, again, detracts from its probative value. Moreover, on February 13, 2006, the petitioner stated to an officer of U.S. Citizenship and Immigration Services that she had not spoken with her husband since December 2004 and that she did not plan to continue in the marriage with him, which does not support [REDACTED]'s impression that the petitioner "continues to believe his threats to kill her even though they have not lived together for the last two years."

[REDACTED] describes her diagnostic impressions of the petitioner as:

DSM-IV

Axis I: Major Depression Disorder, Recurrent, 296.32; Rule out Post Traumatic Stress Disorder, 308.9

Axis II: Deferred, 799.9

Axis III: Problem pregnancy, uncontrolled hypertension.

Axis IV: Extreme past trauma, ongoing fear of abuser, fear of deportation loss of medical care

Axis V: Current GAF: 55 Past Year 58

recommends that the petitioner “attend Women in Distress as a starting point to begin to deal with the prolonged effects of two years of extreme emotional and sexual abuse.” While we do not question the expertise of [REDACTED], the unexplained inconsistencies in the record, discussed above, detract from the probative value of her testimony.

The record also contains notarized statements from the petitioner’s friends, [REDACTED] and [REDACTED], and from the petitioner’s sister, [REDACTED]. Ms. [REDACTED] states that for the first six months after moving to the United States, the petitioner did not seem to have any problems, but then they began to drift apart, and their problems seemed much worse in 2004. Ms. [REDACTED] however, provides no specific details and does not describe any particular occasions where she observed the petitioner interacting with her husband. Ms. [REDACTED] states that in October 2004, the petitioner told her she could no longer live with her husband because of the abuse triggered by alcoholism. She states further that the petitioner decided to leave her husband and move to Florida in December 2004, a date which conflicts with the information provided by the petitioner in her statements. Ms. [REDACTED] also provides no specific details and does not describe any particular occasions where she observed the petitioner interacting with her husband. Ms. [REDACTED] the petitioner’s sister, states that she used to talk to the petitioner every day about the arguments the petitioner had with her husband when they lived in Connecticut, which conflicts with the petitioner’s claim in her May 15, 2007 statement that she was too ashamed to tell anyone what was happening in her marriage. Also [REDACTED]’s description of the petitioner’s moving out and going to live with a friend named Nicole for a couple of weeks does not appear in either of the petitioner’s statements. Ms. [REDACTED] also provides no specific details and does not describe any particular occasions where she observed the petitioner interacting with her husband. The record contains no explanation for the deficiencies and inconsistencies discussed herein. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Again, any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988).

The U.S. Department of State’s 2006 Country Reports on Human Rights Practices for Haiti, reporting, in part, ineffective measures to prevent violence against women, is noted. In making a determination of statutory eligibility, however, U.S. Citizenship and Immigration Services is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Pursuant to the foregoing discussion, the record does not indicate that the petitioner’s husband subjected her to battery. The relevant evidence also fails to demonstrate that the petitioner’s husband subjected her to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty,

as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

The petitioner has not demonstrated that she is a person of good moral character and that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.