

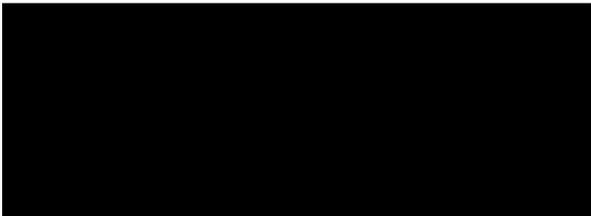
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B9

DATE: **FEB 28 2012** Office: VERMONT SERVICE CENTER

File: 

IN RE: 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The AAO's previous decision will be affirmed and the petition will remain denied.

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 a United States citizen.

Applicable 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 based on his or her relationship to the abusive spouse, 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 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 explained 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 set forth

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 regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

Facts and Procedural History

The petitioner is a citizen of Saint Lucia who entered the United States as a nonimmigrant visitor on December 21, 2000. She married [REDACTED]¹ the claimed abusive United States citizen, on [REDACTED]² She filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on March 29, 2010. The director denied the petition determining that the petitioner had failed to establish that she had been subjected to battery and/or extreme cruelty by her United States citizen (USC) spouse. Counsel for the petitioner timely submitted a Form I-290B, Notice of Appeal or Motion, a brief and an additional affidavit. Upon review, the AAO dismissed the appeal, concurring with the director's decision. On the instant motion to reopen now before the AAO, counsel for the petitioner provides two affidavits from two of the petitioner's friends and asserts that the affidavits further document the extreme cruelty alleged by the petitioner. Counsel contends that the affidavits submitted on motion are not inconsistent with the petitioner's initial representations and detail the tactics of control utilized by the petitioner's husband in order to maintain his dominance over the petitioner. Counsel avers that the affidavits demonstrate an overall pattern of

¹ Name withheld to protect the individual's identity.

² The petitioner was placed in removal proceedings on February 2009 prior to her marriage to [REDACTED].

abuse aimed at ensuring the petitioner's husband's dominance and control over the petitioner. The matter is reopened to consider the additional two affidavits submitted on the petitioner's behalf.

Battery or Extreme Cruelty

The AAO previously discussed and set out the deficiencies of the statements submitted by the petitioner as well as the affidavits of the individuals who submitted statements on her behalf. On motion, counsel submits a second affidavit signed by [REDACTED] on April 1, 2011. In his second affidavit, [REDACTED] declares that he witnessed [REDACTED] calling the petitioner names and on one occasion he tried to talk to [REDACTED] regarding his actions toward the petitioner but [REDACTED] called the police and told the police to make him leave and he stayed away thereafter. [REDACTED] notes that in subsequent conversations with the petitioner he learned from the petitioner that [REDACTED] behavior did not change. The second affidavit submitted on motion is signed by [REDACTED] on April 7, 2011. [REDACTED] declares that she has known the petitioner for three and one-half years and is a licensed clinical social worker. She states that the petitioner told her of [REDACTED] name calling and confided that [REDACTED] was controlling and emotionally abusive. [REDACTED] recounts an incident when she was on the phone with the petitioner and heard [REDACTED] in the background shouting at the petitioner to get off the phone. She indicates that on another occasion while she was visiting the petitioner [REDACTED] arrived, was rude, and called the petitioner names so she left because it was clear [REDACTED] did not want her there and she did not want him to cause harm. [REDACTED] also declares that although she encouraged the petitioner to meet with her, the petitioner declined because [REDACTED] expected her to be home after work. [REDACTED] also indicates that she urged the petitioner to get professional help but that the petitioner was terrified of [REDACTED] and told her of incidents of [REDACTED] sexual assault. She notes that she considered calling [REDACTED] but was concerned he would react even more viciously toward the petitioner. Both [REDACTED] note that the petitioner was embarrassed by [REDACTED] behavior and they witnessed changes in the petitioner's behavior from [REDACTED] constant abuse.

In our previous decision, the AAO observed that the petitioner, in her two brief affidavits did not describe a single incident of abuse in probative detail and failed to mention any social isolation or sexual abuse. The AAO observed that the record did not include substantive descriptions or other evidence of physical violence and that the petitioner's brief assertions and those of her friends regarding the derogatory name calling and abandonment did not establish that [REDACTED] behavior constituted extreme cruelty. Upon review of the two affidavits submitted on motion, the petitioner's friends indicate generally their belief that the petitioner was socially isolated and was subjected to emotional abuse and degradation. Although they provide general testimony regarding their interactions with [REDACTED] their testimony does not provide the probative detail necessary to establish that the petitioner was a victim of actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence. Their statements are deficient in this regard. Moreover, again the petitioner has not provided an account of any incident of battery, social isolation, or other behavior constituting extreme cruelty in probative detail. Neither counsel nor the petitioner has provided explanations for the petitioner's lack of such testimony. The petitioner's statements are critical in establishing extreme cruelty or battery and must include sufficient detail of specific events and incidents to result in a determination that she was subjected to battery or extreme cruelty. The record on motion does not include the petitioner's testimony or other evidence detailing specific events that include extremely cruel behavior or

conduct comparable to the conduct set out in the definition of extreme cruelty in the statute, regulation, and pertinent case law.

Conclusion

Upon review of the affidavits of [REDACTED] submitted on motion, the record remains deficient in establishing that the petitioner was subjected to battery or extreme cruelty perpetrated by her spouse. The petitioner has not provided additional testimony sufficient to overcome the AAO's prior decision. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

ORDER: The motion is granted. The AAO's March 11, 2011 decision is affirmed and the petition remains denied.