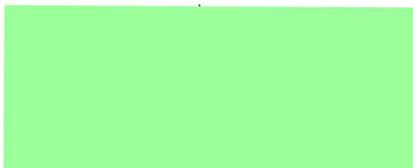


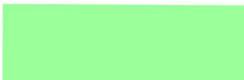


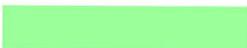
U.S. Citizenship
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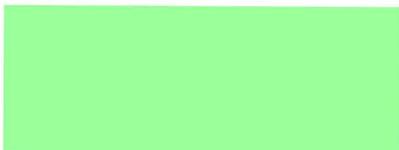
Date: **MAR 14 2013**

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:

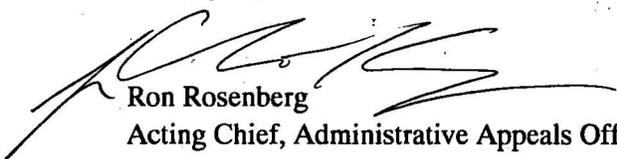


INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Ron Rosenberg
Acting 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 dismissed.

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 for failure to establish that the petitioner’s husband subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel reasserts the petitioner’s eligibility.

Relevant 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, 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 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 . . . 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:

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.

Pertinent Facts and Procedural History

The petitioner is a citizen of Ghana who entered the United States on June 19, 1999, as a nonimmigrant visitor. The petitioner married a U.S. citizen on August 13, 2007 in Worcester, Massachusetts. The petitioner filed the instant Form I-360 on October 4, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's husband's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and counsel timely appealed.

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 fails to establish the petitioner's eligibility. Counsel's claims do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's husband did not subject her to battery or extreme cruelty. In her first affidavit, the petitioner recounted that her husband spent time

with new friends, called her names, did not pick her up from a train station, missed important appointments, screamed at her, had an extramarital affair, and abandoned her. In response to the RFE, the petitioner stated that she became depressed when her husband started calling her names and became possessive. The petitioner recalled that she learned he was having an extramarital affair and then he abandoned her. The petitioner's statements do not indicate that her husband ever battered her or that his behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi).

In response to the RFE, the petitioner submitted a letter from her former employer, [REDACTED] [REDACTED] briefly stated that the petitioner was having marital problems and was "continually upset and distraught." [REDACTED] however, does not discuss any specific instance of battery or extreme cruelty that he may have witnessed or otherwise had knowledge of.

The petitioner also submitted a psychological evaluation in response to the RFE. In the psychological evaluation, dated August 8, 2011, [REDACTED] a licensed clinical and forensic psychologist, diagnosed the petitioner with Post Traumatic Stress Disorder (PTSD). [REDACTED] stated that the petitioner reported that after six months of marriage, her husband resumed drinking alcohol excessively, called her names and was possessive of her. [REDACTED] stated that after the petitioner learned about her husband's extramarital affair, her husband abandoned her and then she became depressed. Although [REDACTED] stated in general terms that the petitioner's husband had "hostile and threatening behavior" and would "rage" at the petitioner, he did not provide specific instances of this alleged abuse. While the AAO does not question the expertise of [REDACTED] the specific acts that were identified by him, including the petitioner's husband's drinking, name calling, possessiveness, extramarital affair and abandonment do not, in this case, constitute extreme cruelty as that term is defined in the regulation.

On appeal, counsel asserts that the director erroneously interpreted the term "extreme cruelty" to require physical violence when psychological abuse alone can constitute extreme cruelty. While counsel is correct that psychological abuse is one form of violence included in the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi), we find no error in the director's determination that the petitioner did not establish that her husband's actions constituted extreme cruelty. The director correctly applied the regulatory definition of that term and did not impose an additional requirement of physical violence. The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states that "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" as well as "acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence." The director correctly determined that the petitioner failed to establish that her spouse's behavior included battery or was part of an overall pattern of violence.

Counsel also cites *Hernandez v. Ashcroft*, 345 F.3d 824, (9th Cir. 2003), in support of his assertion that the petitioner's husband's behavior "went far beyond mere unkindness and reached the realm of psychological abuse and extreme cruelty." As it arose in the Ninth Circuit Court of Appeals, *Hernandez v. Ashcroft* is not binding on the petitioner's case, which arose in the First Circuit. The Court's interpretation of the term extreme cruelty in *Hernandez* also does not support counsel's claim. As the Court stated in *Hernandez*, "[n]on-physical actions rise to the level of domestic violence when 'tactics of control are intertwined with the threat of harm in order to maintain the perpetrator's dominance through fear.'" *Id.* at 840 (citation omitted). The petitioner in this case has not

demonstrated that her husband's drinking, name calling, extramarital affair, possessiveness and abandonment were part of an overall pattern of violence involving such control or threats. Accordingly, the petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

On appeal, the petitioner has failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.