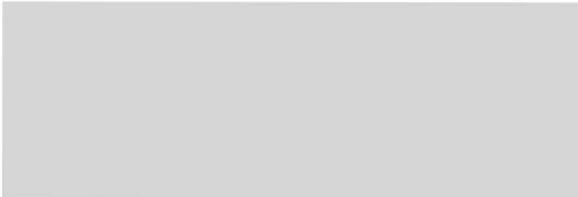




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JUL 06 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Vermont Service Center director (the director) denied the immigrant visa petition. 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.

The director denied the petition based on a lack of evidence that the petitioner's spouse subjected her to battery or extreme cruelty during their marriage. On appeal, the petitioner submits new affidavits from herself, her mother-in-law, and [REDACTED] who claims to have known the petitioner for twelve years.

Relevant Law and Regulations

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).

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 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)(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 Colombia, entered the United States on December 23, 1999 as a B-2 visitor. On [REDACTED] 2008, she married K-O-¹, a United States citizen. On April 26, 2010, the petitioner's husband filed a Form I-130 Petition for Alien Relative on her behalf. On March 1, 2011, USCIS denied the Form I-130 petition due to the petitioner's husband's conviction on [REDACTED] 2003 for "sexual assault by overcoming victim's will" in violation of Colorado Revised Statute 18-3-402, which is a "specified offense against a minor" within the meaning of Section 402 of the Adam Walsh Child Protection and Safety Act of 2006 (Adam Walsh Act), Pub. L. 109-248, amending sections 101(a)(15)(K), 204(a)(1)(A) and 204(a)(1)(B)(i) of the Act. According to the record, the victim of the crime committed by the petitioner's husband was 17 years old and the petitioner's husband served three years in jail. In the denial of Form I-130, USCIS indicated that the petitioner's husband did not demonstrate that he did not pose a risk to the safety and well-being of the petitioner.

The petitioner filed the instant Form I-360 self-petition on May 10, 2011. On June 23, 2011, the director issued a Request for Evidence (RFE) of, among other issues, the requisite battery or extreme cruelty. The petitioner timely responded with additional evidence, including affidavits from herself and her mother-in-law, an affidavit from [REDACTED] the aunt of the petitioner's husband, as well as three letters from various staff at [REDACTED], a social service agency, and copies of

¹ Name withheld to protect the individual's identity.

receipts for bail posted by the petitioner for her husband. The director found the evidence contained in the self-petition, as well as the additional evidence submitted in response to the RFE, insufficient to establish the petitioner's eligibility. The director denied the self-petition and the petitioner appealed.

Upon a full review of the record as supplemented on appeal, the petitioner has overcome the director's ground for denial. The appeal will be sustained for the following reasons.

Battery or Extreme Cruelty

In support of her petition, the petitioner submitted a mental health assessment from [REDACTED] LMHC, several affidavits and letters in response to the RFE, and two additional affidavits with the Notice of Appeal (Form I-290B). The evidence submitted by the petitioner demonstrates that her spouse battered her, and 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).

The petitioner submitted two affidavits from her and her mother-in-law, as well as affidavits from Ms. [REDACTED] and Ms. [REDACTED]. The petitioner's affidavits, dated August 24, 2011 and August 8, 2012, are largely consistent with the affidavits of the petitioner's mother-in-law and the affidavits, letters and mental health assessment submitted in support of the self-petition. The petitioner's two affidavits refer to and include descriptions of specific insults her husband directed towards her, as well as specific physical acts, including that he tore her clothes off if she was dressed, in his view, too provocatively; he forced the petitioner to have sex with him; he grabbed her by the arms to the degree that he inflicted bruises; and the petitioner and her husband struggled over a cell phone that culminated with the petitioner's husband pushing her down the stairs. In her affidavits the petitioner states that her husband's family, with whom they lived at the time, witnessed some of these events and his aggression towards her.

Similarly, the petitioner's mother-in-law's affidavits refer to and describe specific incidents of battery or extreme cruelty, such as when her son tore the petitioner's clothes off because, in his view, the petitioner was not dressed appropriately and that her son "hurt his wife . . . repeatedly." Ms. [REDACTED] affidavit, dated August 6, 2012, recounts a specific incident in a parking lot following a New Year's Eve party, in which the petitioner's husband slapped the petitioner so hard in the face that the petitioner fell down. Ms. [REDACTED] affidavit, dated August 20, 2011, the letters from staff at [REDACTED] and the assessment by [REDACTED] LMHC, generally confirm the petitioner's statements regarding her husband's behavior towards her.

The preponderance of the evidence establishes that the petitioner's spouse subjected her to battery or extreme cruelty during their marriage. The evidence demonstrates that the petitioner's spouse battered her or threatened her with violence, psychologically or sexually abused her, or otherwise subjected her to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has shown that her spouse 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 demonstrated that her spouse subjected her to battery or extreme cruelty during their marriage. Accordingly, the petitioner is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. 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. Accordingly, the appeal will be sustained and the petition will be approved for the above-stated reasons.

ORDER: The appeal is sustained.