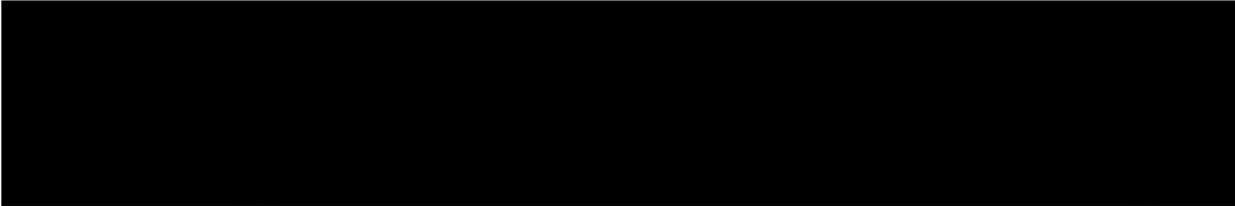




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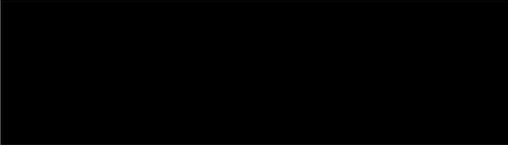
Petitioner:
Beneficiary



PETITION:

Petition for Special Immigrant Battered 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:

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director (Director), Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Russia who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that she has been battered by or the subject of extreme cruelty perpetrated by her citizen spouse.

The petitioner, through counsel, submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the information contained in the record, the petitioner wed United States citizen [REDACTED] on October 20, 1997. On November 18, 1997, the petitioner's spouse filed a Form I-130 on the petitioner's behalf. On that date, the petitioner also filed a Form I-485 to adjust status. The instant Form I-360 self-petition was filed by the petitioner on March 22, 2003, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during their marriage. The petition was denied on October 12, 2004 based upon the director's determination that the petitioner failed to establish that she was battered by, or the subject of extreme cruelty perpetrated by, her citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

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 . . . 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

Further, the regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

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 abused 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 qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

With the initial filing, to support the claim of abuse, the petitioner submitted a psychological evaluation from Dr. [REDACTED] a licensed clinical psychologist, and documents related to the petitioner's divorce from her citizen spouse.

The director determined this evidence was insufficient to establish eligibility and on March 17, 2004, requested the petitioner to submit additional evidence. As it relates to the petitioner's claim of abuse, the director specifically requested the following documentation:

- Reports and affidavits from: police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that you have sought refuge in a shelter for the abused.
- Photographs of your injuries, and affidavits from witnesses, if possible.
- A statement, in your own words describing the relationship with your abuser. Be as specific and detailed as possible, including an explanation of the type of abuse (e.g., verbal, social isolation, possessiveness, quality of life) suffered and the after-effects of the abuse.
- Affidavits from individuals who were present at the time the incident(s) occurred.

On June 7, 2004, the petitioner provided her response to the director's request. As documentation of the claimed abuse, the petitioner submitted her own statement. The director denied the petition, after reviewing and discussing the evidence contained in the record, including the statement submitted in response to the director's request for evidence. The director's discussion will not be repeated here.

On appeal, counsel claims that the director erred in denying the petition because the petitioner's "statements" as well as other evidence were "ample evidence regarding the abuse she suffered from her USC husband." Counsel does not point to specific evidence to support his assertion that the petitioner provided "ample documentation" to establish the claimed abuse. We note that contrary to counsel's indication that the petitioner submitted "statements," the record contains only one statement from the petitioner. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

On appeal, the petitioner submits additional evidence to establish the claimed abuse. Such evidence consists of a letter from Rev. Valeri Vovkovski, assistant pastor of the Holy Virgin Protection Cathedral Russian Orthodox Church Abroad and two statements from friends of the petitioner. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not consider the sufficiency of the evidence submitted on appeal.

We note that even if the petitioner's appellate submission is considered, it is not sufficient to overcome the director's stated ground for denial. The three statements do not provide sufficient detail to substantiate the claim of abuse and fail to establish that the petitioner was battered or subjected to extreme cruelty. For instance, although [REDACTED] indicates that the petitioner "explained her extremely difficult marital life and complained about the mistreatment she receives from her husband," [REDACTED] does not describe what the difficulties were and does not specify what the "mistreatment" consisted of. Similarly, the statements from the petitioner's friends indicate that the petitioner's husband "used drug[s]," "starting being aggressive," and "was drunk and verbally abusing" the petitioner. Neither statement provides any specific details about the petitioner's spouses "aggressive" actions or verbal abuse. Although one of the petitioner's friends indicates that she saw a bruise on the petitioner's arm, we note that the petitioner's statement makes no claim of physical abuse and the record contains no documentary evidence such as photographs, to corroborate a claim of battery.

At the time of the director's decision, the sole evidence related to the petitioner's claim of abuse consisted of the psychological evaluation, the petitioner's single statement, and documentation related to the petitioner's divorce. Upon review, we find this evidence is insufficient to substantiate the petitioner's claim of abuse.

In the psychological evaluation, [REDACTED] does not describe any occurrence of physical abuse or extreme cruelty and instead indicates that the petitioner's relationship with her spouse "was a 'nightmare'" from the beginning because of the petitioner's spouse's roommate who resided with them. [REDACTED] further indicates that the petitioner's spouse "forced her to work in order to obtain medical benefits," that there were "verbally abusive situations" where the petitioner "felt unsafe," and that the petitioner's privacy was violated because her spouse opened her mail and demanded money from the petitioner's bank account. Finally, [REDACTED] states that the petitioner had infrequent sexual activity with her spouse and she discovered that he was involved in "an intimate gay relationship," and that she was concerned about contracting HIV.

In her statement, the petitioner states that she was "verbally and emotionally abused" because her spouse started "requesting [the petitioner] to pay for all the bills and for his expenses," "called [the petitioner] names," and "threatened to call the INS." The petitioner indicates that she decided to leave the apartment she shared with her spouse when she found a bag of marijuana and because her spouse's relationship with their male roommate was not "normal."

Neither the evaluation submitted [REDACTED], nor the petitioner's statement, describes any single act or pattern of acts which demonstrates that the petitioner was battered or subjected to extreme cruelty. We first note that no claim has been made that any physical violence or battery occurred. Further, the petitioner's claims that she had to pay all their bills, that she was called names, that her husband abused drugs, and that her husband may have been involved in an extramarital homosexual affair, do not demonstrate that the petitioner was a victim of any violence, forceful detention, psychological abuse, sexual abuse or exploitation such that these actions rise to such a level as to be considered acts of extreme cruelty.

It is further noted that the record contains several documents related to the petitioner's divorce which call the petitioner's claims of abuse into question. In the Judgment for Dissolution of Marriage, dated August 20,

2001, [REDACTED] of the Circuit Court of Cook County Illinois, made the following findings as it relates to the petitioner's spouse's petition for divorce from the petitioner:

That the [petitioner and her spouse] were lawfully joined in marriage on the October 20, 1997, in Chicago, Illinois and which marriage was registered in Cook County; that the parties lived together as husband and wife until on or about September 1, 1999, whereafter the parties ceased to live together as husband and wife. That during that said period, [the petitioner's spouse] behaved towards [the petitioner] as a good, true and affectionate spouse.

That without cause or provocation by [her spouse], the [petitioner] is guilty of adultery.

Upon receiving notice of the default judgment, the petitioner filed a motion to vacate the judgment for dissolution of marriage claiming that she had entered her appearance and was not properly notified of the proceedings prior to the judgment.

Subsequently, the petitioner's spouse filed his objection to the petitioner's motion and also filed a motion for contempt of court against the petitioner. In his objection and motion, the petitioner's spouse contends that the petitioner was properly notified and that the clerk of court confirmed the fact that the petitioner had not entered her appearance prior to the judgment. The petitioner's spouse's motion further states:

[The petitioner's] real motivation is to seek to have the grounds for divorce amended to allege physical and mental cruelty against her by [her spouse] . . . This attempt, signified by the bringing of this Motion, is a bald and unconscionable fraud and a blatant abuse of the process of the INS as well as this Court.

Although the record contains the petitioner's reply to her spouse's objection and motion, there is no evidence that the petitioner's reply was ever filed in court.¹ The petitioner does not submit any other documents to show the court's findings related to the petitioner's spouse's allegation regarding the petitioner's "real motivation" and whether the original judgment for dissolution of divorce remains in effect. Without any further documentation, and based upon the allegations made, we are unable to make a positive finding regarding the petitioner's credibility and her claims alleging abuse.

Beyond the decision of the director we find the petitioner has failed to establish her good moral character as required by 8 C.F.R. §§ 204.2(c)(1)(i)(F) and (c)(2)(v). Specifically, the police clearance submitted by the petitioner in response to the director's request for evidence indicates that the record check is "a name check only and is not substantiated by photographs or fingerprints." [Emphasis in the original]. The name check was made on the name [REDACTED]. The request for evidence issued by the director stated that the following evidence may be submitted to support a finding of good moral character:

¹ Unlike the other documents related to the petitioner's divorce, this reply contains no date stamp to show that it was actually filed with the court. Further, the "notice of mailing" attached to this reply does not contain the signature of a notary to confirm the fact that the reply was mailed.

1. Your own affidavit supported by police clearances . . . or records from each place you resided for at least 6 months during the 3-year period before filing this petition. If you have resided outside the United States during this 3-year period, you must submit police clearances from those locations.
2. If police clearances, criminal background checks, or similar reports are not available for some or all locations, please submit an explanation and submit other evidence to support your affidavit. Evidence may include affidavits from responsible persons who can knowledgeably attest to your good moral character.

*

*

*

** Please note: if the police clearance is researched by name only, you must supply the law enforcement agency with all aliases you have used, including maiden and/or married name(s), if applicable. *Service records indicate you have used the following aliases, Rimma Vershinina; Rimma Vershinia; and Rimma Zereneva. If you submit a police clearance researched by name only, it must include the aliases listed here as well as any other aliases you have used.*

[Emphasis added.]

As clearly indicated by the director, the petitioner has used at least three aliases, only one of which was used in obtaining the required police clearance. Accordingly, the record does not contain sufficient documentation to establish the petitioner's good moral character.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.