

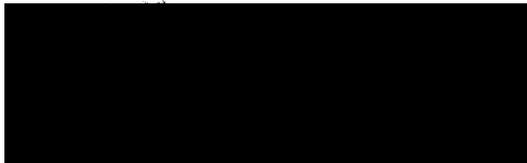
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**U.S. Citizenship  
and Immigration  
Services**

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FILE: [REDACTED]  
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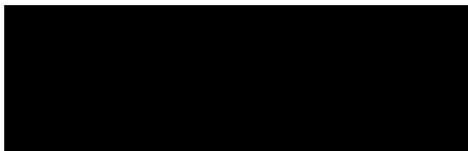
Office: VERMONT SERVICE CENTER

Date: DEC 05 2005

IN RE: Petitioner: [REDACTED]

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, Director  
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 is a native of Thailand and citizen of Germany who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse. The director determined that the petitioner had not established that she was battered or subjected to extreme cruelty by her U.S. citizen husband. On appeal, counsel states that the director failed to consider certain facts and the petitioner's statement. Counsel's claims do not overcome the deficiencies of the petition and the appeal will be dismissed.

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 he or she demonstrates that the marriage to the United States citizen spouse was entered into in good faith and that during the marriage, 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 spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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

The regulation at 8 C.F.R. § 204.2(c)(2) further 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 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.

In this case, the petitioner initially submitted a copy of her marriage certificate to [REDACTED], a U.S. citizen, and a copy of a love letter written to the petitioner's husband by another woman. Finding this evidence insufficient to establish the petitioner's eligibility, the director issued a Request for Evidence (RFE) on September 24, 2004 asking the petitioner to submit, *inter alia*, evidence that she had been subject to battery or extreme cruelty by her husband during their marriage. The RFE listed specific types of evidence that the petitioner could submit to establish battery or extreme cruelty. In response, the petitioner submitted a one-page statement, photographs of her husband with another woman, two additional letters from this woman to her husband and a one-paragraph affidavit from the petitioner's friend [REDACTED]. The director denied the petition on April 6, 2005 finding that the evidence submitted initially and in response to the Request for Evidence did not establish battery or extreme cruelty of the petitioner by her husband.

Counsel timely filed an appeal on May 9, 2005. On the Form I-290B, counsel stated that she would submit a brief and evidence to the Administrative Appeals Office (AAO) within 30 days. Having received nothing further, the AAO contacted counsel on November 22, 2005 and requested that she either submit copies of the brief and additional evidence or confirm her failure to submit these materials. That same day, counsel sent a facsimile to the AAO indicating that neither she nor the petitioner filed a brief or additional evidence as indicated on the Form I-290B. Because we concur with the director's determination that the petitioner met all the other eligibility criteria, the only issue on appeal is whether the petitioner's husband subjected her to battery or extreme cruelty during their marriage.

In her letter, the petitioner states that [REDACTED] treated her "as a second class [sic]," did not give her money and that she just cooked and cleaned for him and his children. She states, "I even got beat up from him. There is only trouble. Live with fear [sic]." The petitioner also states that her husband "has found a new lover." The petitioner does not describe any incidents of abuse in detail or specifically explain why she was fearful of her husband. [REDACTED] states that she was initially hired by the petitioner's husband to be the petitioner's personal trainer and that she and her husband subsequently became friends with the petitioner and [REDACTED]. [REDACTED] explains, "[p]roblems started to arise in their marriage that made me worry for [REDACTED]. It seemed to me that [REDACTED] became abusive and [REDACTED] was unsafe." [REDACTED] does not specifically describe the problems that occurred in the petitioner's marriage or how she came to know of such problems. [REDACTED] also does not explain or substantiate her impression that [REDACTED] was abusive and that the petitioner was unsafe. While the other letters and photographs indicate that the petitioner's husband was having an extramarital affair, such infidelity alone does not establish extreme cruelty. The record is devoid of any other relevant credible evidence to corroborate the petitioner's claim that she was subject to battery and extreme cruelty by [REDACTED] during their marriage.

On the Form I-290B, counsel states:

The Center Director erred in denying [REDACTED] I-360 petition in that he failed to consider that as a victim of extreme cruelty, she was afraid to tell anyone what was going on in her life. She lived in a small town where everyone knows each other and her husband is very well known with a lot of connections and influence. Although [REDACTED] may not have communicated it well in her letter, she does clearly states [sic] that her husband did not support her; that he beat her up; that all she did was cook for her husband and his children; that she lived in fear; that her husband had a lover. Moreover, the Center Director totally ignored [REDACTED] affidavit. However, we will submit another affidavit from [REDACTED]. Regarding [REDACTED]'s letter, she was not explicit because she is afraid of any repercussions from [REDACTED] because she is also employed by [REDACTED]. Lastly, [REDACTED] was shut-off from everyone because of [REDACTED] wrath.

Counsel submitted no evidence to corroborate her statements that the petitioner was afraid to tell others about her experiences, that she lived in a small town where her husband is well known, that [REDACTED] feared repercussions from [REDACTED] because she was employed by him, or that the petitioner was socially isolated by her husband's behavior. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, contrary to counsel's assertion, the director did not ignore the petitioner's letter, but in fact discussed this document on page two of his decision.

As discussed above, the petitioner asserts in her letter that her husband did not support her, that all she did was cook and clean for him and his children, that she lived in fear, that he beat her up and that he was intimately involved with another woman. Yet the petitioner's letter does not describe her husband's behavior and its effects on her in any substantive detail. The record is devoid of any other evidence to support the petitioner's claim and only corroborates her husband's extramarital affair. As mentioned above, counsel did not submit a brief or any additional evidence on appeal. Accordingly, the record does not establish that during their marriage, the petitioner's husband subjected her to battery or extreme cruelty as that term is defined by the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

We further note that in her letter, the petitioner refers [REDACTED] as her "ex-husband" and mentions speaking with her "divorce attorney." If the petitioner was divorced from her husband at the time her petition was filed, she would also be ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act unless she submitted a copy of her divorce decree and demonstrated a connection between her divorce and her former husband's battery or extreme cruelty. See Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). See also Memorandum from Michael A. Pearson, Exec. Assoc. Comm., CIS Office of Field Operations, *Eligibility to Self-Petition as a Battered Spouse of a U.S. Citizen or Lawful Permanent Resident Within Two Years of Divorce*, (Jan. 2, 2002).

The petitioner has not established that her U.S. citizen husband subjected her to battery or extreme cruelty during their marriage. Consequently, she is ineligible for classification as a special immigrant under Section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The burden of proof in visa petition 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 is dismissed.

**ORDER:** The appeal is dismissed.