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**U.S. Citizenship
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FILE: [REDACTED]
EAC 04 157 50708

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.

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 and citizen of Indonesia 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. Finding the evidence initially submitted to be insufficient to establish the petitioner's statutory eligibility, the director issued a Request for Evidence (RFE) on January 7, 2005 asking the petitioner to submit, *inter alia*, additional evidence of extreme cruelty. The petitioner timely responded on February 26, 2005 with additional evidence. On April 8, 2005, the director denied the petition, finding that the evidence submitted initially and in response to the RFE failed to establish that the petitioner was battered or subjected to extreme cruelty by her U.S. citizen husband during their marriage and that the record did not demonstrate a connection between the legal termination of the petitioner's marriage and battery or extreme cruelty by her husband.

The petitioner timely filed this appeal on May 4, 2005. On appeal, counsel submits a brief, an affidavit from the petitioner's sister, the petitioner's medical records, an additional letter from a domestic abuse therapist and a scholarly article concerning psychological abuse. Counsel contends that the evidence submitted with the petition and on appeal demonstrates that the petitioner was subjected to extreme cruelty by her husband during their marriage and that there was a connection between her divorce and her husband's extreme cruelty. As we concur with the director's determination that the petitioner established her eligibility under all the other statutory criteria, the only issues on appeal are whether the petitioner was subjected to extreme cruelty by her U.S. citizen husband during their marriage and whether a connection exists between their divorce and the alleged extreme cruelty. As discussed below, counsel's contentions and the evidence submitted on appeal fail to 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). An alien who has divorced her U.S. citizen spouse is eligible to self-petition for immigrant classification if he or she "demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." 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). A divorced self-petitioner must also satisfy the other core eligibility requirements specified in section 204(a)(1)(A)(iii)(II) of the Act.

Extreme Cruelty

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 record indicates that the petitioner met [REDACTED] a U.S. citizen, in August 2002 through correspondence on the Internet. [REDACTED] filed a Form I-129F, petition for fiancée, for the petitioner that was approved on August 22, 2003. The petitioner entered the United States with her children in K-1 nonimmigrant status on October 23, 2003 and then resided with [REDACTED] couple was married in the United States on November 26, 2003.

In her statement submitted with her Form I-360, the petitioner states that a week after her arrival in October 2003, [REDACTED] became extremely possessive of her, frequently accused her of infidelity, threatened to kick her and her children out of his house and send them back to Indonesia, and yelled at her in front of her children and [REDACTED] daughter every three to four days. Many of the incidents related by the petitioner occurred prior to the couple's marriage, although the petitioner describes three events that took place after their marriage. First, the petitioner states that on their wedding night the couple fell asleep together, but the petitioner awoke the next morning to find that her husband had slept on a couch in another room. Second, the petitioner explains that she once asked her husband for money so that she could buy Christmas presents for the children and that [REDACTED] yelled at her in front of her children and accused her of only wanting him for his money. Third, the petitioner states that on another occasion when she was getting ready to go on an outing with her sister, [REDACTED] began yelling at her in front of her children and said, "We need to talk." When the petitioner told him she did not want to fight, she states that [REDACTED] said, "You liked [sic] to fight" and told her he wanted to send her and her children back to Indonesia.

In her supplemental statement submitted with the RFE response, the petitioner further states that [REDACTED] would spy on her and listen to her telephone conversations by standing beside her or listening on another telephone in the house. The petitioner states that [REDACTED] printed her cellular telephone bills and lists of all the websites that she accessed in order to investigate her calls and use of the Internet. According to the petitioner, [REDACTED] did not want her to leave the house. If she left without first securing his permission, the petitioner explains that [REDACTED] would become enraged, yell and intimidate her. The petitioner states that [REDACTED] frequently called her derogatory and demeaning names and scared her by standing close and raising his fingers next to her face. In her first statement, the petitioner explains that she was also scared because [REDACTED] kept three guns and three swords in his home. She states that although she repeatedly asked [REDACTED] to get rid of the guns, he refused. The petitioner states that after being yelled at and scared by [REDACTED] she would go into her bedroom with her daughters and cry. According to the petitioner, [REDACTED] would frequently reconcile with her after these incidents by apologizing and saying that he was immature and that he loved her. The petitioner explains that [REDACTED] mood swings were unpredictable and that she lived in constant fear and anxiety of upsetting him.

The petitioner states that her life "changed dramatically" as a result of her husband's behavior. She explains that before living with her husband she was happy and led a productive life as a piano teacher. However, after her marriage, the petitioner reports feeling depressed, anxious, unable to sleep, humiliated, frustrated, scared, lonely and trapped. She states that she and her children went to the doctor at least three times for problems related to the stress of living with her husband. On appeal, the petitioner submits records from her December 1, 2003 visit to Washoe Family Care/Washoe Urgent Care, but it is unclear if her symptoms relate to the effects of her husband's treatment. The records state that the petitioner's symptoms were a cough, sore throat, hoarseness and congestion and that she was prescribed medication. A letter from [REDACTED] O.M.D., also submitted on appeal, states that he treated the petitioner on November 4, 2003 for anxiety, depression, indigestion, itching, nervousness and fatigue, symptoms that [REDACTED] states "could be caused by extreme Stress [sic]."

The petitioner states that on December 6, 2003 she ran away from her husband's house with her children, called the national domestic violence hotline from her sister's house and was advised to obtain a temporary protection order. The record contains a copy of the Temporary Order for Protection Against Domestic Violence (TPO) issued on December 8, 2003 by the Washoe County Court of Nevada on behalf of the petitioner and her children against [REDACTED]. The petitioner states that shortly after the TPO was issued, [REDACTED] left a threatening message on her sister's cellular telephone and sent the petitioner an electronic mail message telling her to get ready to go back to Indonesia.

Affidavits from two other individuals only partially corroborate the petitioner's statements. [REDACTED] states that he has known the petitioner for more than 10 years and knows about the abuse inflicted upon her by [REDACTED] does not describe in detail any incidents of abuse that he personally witnessed, but he states that he drove the petitioner to the courthouse to obtain her TPO. On appeal, the petitioner submits an affidavit from her sister, [REDACTED]. [REDACTED] states that after the petitioner was married, she telephoned [REDACTED] many times late at night when she was scared and crying due to her husband's behavior and "was in jeopardy of having a mental breakdown." [REDACTED] further states that the petitioner and her children stayed with [REDACTED] and her family after they fled from [REDACTED]. [REDACTED] reports that when [REDACTED] left her a message asking to speak to the petitioner, the petitioner "was sh[iver]ing and was in no condition to talk." [REDACTED] explains that when [REDACTED] left another message "stat[ing] that

he is going to take action," the petitioner called the police to escort her back to [REDACTED] house to get her belongings. [REDACTED] states that the petitioner "dared not go back or look at him ever since."

The record contains three letters from [REDACTED], Staff Therapist and Program Coordinator of the Domestic Abuse Treatment Program at the University of Nevada, Reno. In her first letter, [REDACTED] confirms that the petitioner will begin a group treatment for female victims of domestic abuse in February 2005. In her second letter, [REDACTED] states that she conducted two intake assessments with the petitioner in January 2005 and she describes the petitioner's experiences with her husband as related by the petitioner during these sessions. [REDACTED] states that her general impression was that the petitioner "appeared to be re-experiencing events while she explained her relationship with her former husband. Her affect appeared to match the content of her reports (e.g., she cried when she spoke of his insults and general lack of warmth)." [REDACTED] concludes that the petitioner "did experience emotional abuse with her former husband. Durring [sic] the time they were together, Farida appears to have experienced severe depression and moderate anxiety as a result of her husband's behavior towards her."

In her second letter, [REDACTED] also stated, "My role has *not* been to investigate or substantiate any allegations that have been made during our therapy sessions. Additionally, I have not conducted a formal mental health evaluation." (emphasis in original). In his decision, the director cited this comment in support of his determination that "[t]he emotional abuse identified by the therapist does not appear to be elevated to the level of extreme cruelty." In addition, the director stated, "Since the therapist did not utilize psychological testing in the assessment/therapy session, it can not be concluded, based on your self-reports, that you suffered extreme cruelty perpetrated by your former husband." (emphasis in original).

As counsel correctly states on appeal, the statute and regulations do not require psychological testing as evidence of extreme cruelty. Rather, the regulation requires consideration of any relevant credible evidence. 8 C.F.R. § 204.2(c)(2). In her second letter, [REDACTED] describes the petitioner's affect during her descriptions of her husband's actions. Hence, [REDACTED] professional opinion that the petitioner suffered emotional abuse is based on her direct observation of the petitioner's behavior, not solely on the petitioner's "self-reports." Moreover, on appeal, the petitioner submits a third letter from [REDACTED] who states that the petitioner completed the 12-week Domestic Abuse Treatment Program at the University of Nevada, Reno on May 11, 2005. [REDACTED] explains that this program is a "group treatment for women victims of recent emotional, sexual, and physical abuse." [REDACTED] also states that at the beginning of treatment, the petitioner "exhibited problems consistent with women who have been in an emotionally abusive relationship." Specifically, [REDACTED] notes the "high levels of sadness, disappointment, and fear" exhibited by the petitioner as well as her "self-invalidation." Accordingly, we have fully considered Ms. [REDACTED] letters as credible evidence relevant to the issue of extreme cruelty.

In his decision the director further stated: "[T]here are contradictions in your affidavits. For example, you state that he isolated you. Yet, in another paragraph you state that he accused you of having affairs. How could this be if he was isolating you?" On appeal, counsel contends that the director's "reasoning reveals a fundamental misunderstanding of the dynamics of abusive relationships" and cites [REDACTED] third letter and the article submitted with the appeal. In her third letter, [REDACTED] explains, "Social isolation (e.g., limiting her ability to leave the house) and false accusations (e.g., accusing her of having affairs) are very common scenarios in emotionally abusive relationships. Such contradictions are one of the main reasons emotionally abusive relationships are so destructive to an individual's well being." [REDACTED] statement is affirmed by an article submitted on appeal that is entitled "Psychological Abuse: A Variable Deserving

Critical Attention in Domestic Violence” and was published in 1999 in *Violence and Victims*. This article describes the Psychological Maltreatment of Women Inventory (PMWI), developed to assess the manner in which a male partner controls a female partner. The PMWI contains both a “dominance-isolation scale” that includes restricting a woman’s access to the telephone and asking her to account for her time and report where she has been, and an “emotional verbal scale” that includes yelling, screaming, calling the woman names, and insulting or shaming her in front of others. The article also describes one of the first studies addressing the comparative role of psychological and physical aggression in abusive relationships. Two of the six types of psychological abuse measured in the study were restriction and jealousy.

While this evidence demonstrates that isolation and simultaneous accusations of infidelity are not inconsistent features of psychological abuse, the evidence does not persuasively establish that [REDACTED] behavior rose to the level of extreme cruelty. The petitioner does not persuasively explain why she was frightened by [REDACTED] behavior. For example, she does not state that [REDACTED] ever threatened to use his guns or swords against her, her children or other individuals or that he ever held or gestured towards the weapons during their arguments. In addition, although the petitioner reports that [REDACTED] would become enraged if she left the house without his permission, she does not state that he threatened to punish, harm or physically restrain her if she did so. Moreover, the petitioner does not state that, apart from their wedding night, [REDACTED] repeatedly refused to sleep with her or otherwise maliciously rejected her attempts at intimacy.

Two additional aspects of the record detract from the probative value of the petitioner’s statements. First, the language, grammar and syntax of the petitioner’s typewritten statement (describing the alleged abuse and submitted in response to the RFE) differ significantly from these aspects of her handwritten statement initially submitted with the petition. While the substance of the petitioner’s second statement does not contradict that of her first statement, the different vocabulary and syntax of the two documents suggests that the second statement is not derived solely from the petitioner’s own words. Second, we note that when discussing the difficulties faced in defining psychological abuse, the article submitted on appeal states, “[A]greement about what level of psychological aggression would meet some legal or mental health criterion of psychological abuse seems harder because psychological aggression is so common” Hence, while some of [REDACTED] actions correlate to certain types of behavior used to measure psychological aggression (as described in the article), the record does not establish that [REDACTED] aggressive behavior rose to the level of extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The director cited two additional reasons for his conclusion that [REDACTED] did not subject the petitioner to extreme cruelty: “You stated that you and the children sought medical treatment three times for stress-related illnesses. However, you did not provide any medical records/reports to support this statement. You also stated that your spouse threatened your sister by a message on her cell phone. A notarized statement by your sister was not included to support this statement.” As discussed above, the petitioner submitted evidence on appeal that she was treated on one occasion for conditions that the treating physician stated could be caused by stress. The petitioner also submitted an affidavit from her sister that affirms that [REDACTED] left two messages on her sister’s voicemail, the first of which distressed the petitioner, and the second of which threatened to take unspecified action. The petitioner does not explain on appeal what kind of action she believed Mr. Mayes would take or why she found his threat credible.

As further evidence that the petitioner had not been subjected to extreme cruelty, the director cited a court record submitted with the petitioner’s RFE response, which states that the petitioner’s TPO was dissolved on

January 20, 2004. The TPO states that it was issued without a hearing. The court record from the hearing to extend the TPO indicates that the petitioner appeared pro se, but an attorney represented her husband. The document states that during the hearing the petitioner re-affirmed her statement in her TPO application, expressed her fear of [REDACTED] and said that [REDACTED] called and threatened her sister. The court record states that after hearing the testimony and arguments presented, "the Court found that there has not been a course of conduct that rises to the level of family violence." The petitioner submitted no statement or other evidence to rebut this court record. She did not explain, for example, that she was unable to adequately express her fear of [REDACTED] to the judge, that she could not find an attorney to represent her at the hearing, or that the judge disregarded her statements regarding [REDACTED] behavior. On appeal, counsel also fails to rebut this court record. For example, counsel does not submit the definition of "family violence" under Nevada state law nor document why that definition or its interpretation by Nevada state courts accords greater weight to physical as opposed to psychological abuse. Consequently, the court record of the dissolution of the petitioner's TPO supports the conclusion that [REDACTED] did not subject the petitioner to extreme cruelty.

In review, the evidence indicates that [REDACTED] unkind treatment of the petitioner before and during their marriage caused her to suffer from depression and anxiety. The record does not persuasively establish, however, that [REDACTED] behavior rose to the level of extreme cruelty, as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner has thus not established that she was subjected to extreme cruelty during her marriage pursuant to Section 204(a)(1)(A)(iii) of the Act.

Connection Between the Divorce and the Extreme Cruelty

An alien who has divorced her U.S. citizen spouse is eligible to self-petition for immigrant classification only if she "demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." 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). Citizenship and Immigration Services (CIS) policy guidance further states:

Whether the legal termination of the marriage is connected to the battering or extreme mental cruelty is a matter of evidentiary proof. That proof must demonstrate that the abuse occurred during the marriage, that the abuser was a USC or LPR when the abuse occurred, and that the legal termination of the marriage occurred within the two-year period immediately preceding the filing of the self-petition. The evidence submitted to meet the core eligibility requirements may be sufficient to demonstrate a connection between the divorce and the battering or extreme mental cruelty. While a copy of the self-petitioner's final divorce decree (with date issued) shall be required in every case where divorce is an issue, the Service will not require that the divorce decree specifically state that the termination of the marriage was due to domestic violence.

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).

In this case, the record shows that the petitioner and [REDACTED] were divorced on March 15, 2004 and the petitioner filed her Form I-360 self-petition on April 29, 2004. In finding that the petitioner had not demonstrated a connection between her divorce from [REDACTED] and his extreme cruelty, the director stated:

Page 8

“[O]n November 26, 2003, you and [REDACTED] were married. By December 6, 2003, you were separated from your husband and began to reside with your sister. You were married a total of eleven (11) days. You had been together for around 40 days. . . . As you describe the time that you lived with your spouse, it would appear that it was incompatibility issues rather than extreme cruelty that caused you to separate.”

We note two aspects of the director’s statement that bear discussion. First, while the statute requires that a self-petitioner be divorced from an abusive U.S. citizen or lawful permanent resident within the last two years, the law does not mandate a minimum length of time for the former marriage. Battery and extreme cruelty often occur shortly after an alien is married to an abusive spouse. Second, the director states that the petitioner was married for 11 days. However, the record shows that the petitioner was married for approximately four months, from November 26, 2003 to March 15, 2004, the date her divorce decree was ordered by the Nevada state district court. In family-based immigration cases, the existence of a marriage is determined by its official certification by civil authorities and its legal termination, not merely the period of the couple’s joint marital residence. *See* 8 C.F.R. §§ 204.2(a)(2), 204.2(c)(2)(ii).

On appeal, counsel contends that the petitioner established a connection between her divorce and the extreme cruelty inflicted upon her by [REDACTED] because she “demonstrate[d] that she left her husband’s home because of the abuse she was suffering there, and that because she refused to return home, [her] husband file[d] for divorce.” Counsel cites the affidavit of [REDACTED] the petitioner’s sister, as evidence that [REDACTED] filed for divorce because the petitioner refused to return to their marital residence. Yet [REDACTED] makes no statements regarding the petitioner’s divorce. Although the record indicates that [REDACTED] treatment of the petitioner was directly related to their separation, the petitioner herself does not discuss their divorce or explain why she believes her husband filed for divorce. The submitted divorce decree was entered on March 15, 2004 and was granted “on the grounds of incompatibility.” While CIS policy does not require that a self-petitioner’s divorce decree state domestic violence as a ground for the divorce, the petitioner has neither established that [REDACTED] subjected her to extreme cruelty during their marriage nor demonstrated a connection between her divorce and [REDACTED]’s alleged extreme cruelty.

We note that the article submitted on appeal cites numerous studies showing that psychological abuse often precedes physical abuse and that the lasting effects of psychological abuse are equally or more damaging to the victim. While we stress that an alien should not be found ineligible simply because she sought refuge from her spouse before his abuse escalated, the record in this case does not establish that [REDACTED] subjected the petitioner to extreme cruelty during their marriage or that their divorce was connected to such cruelty. Accordingly, the petitioner is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must therefore 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. Consequently, the appeal is dismissed.

ORDER: The appeal is dismissed.