

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



B9

FILE: [REDACTED]
EAC 05 025 52077

Office: VERMONT SERVICE CENTER

Date: DEC 16 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:

SELF-REPRESENTED

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 Director, Vermont Service Center. 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 Korea who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen. According to the evidence in the record, the petitioner wed United States citizen [REDACTED] on May 13, 2004 in Lawrenceville, Georgia. The petitioner filed the instant Form I-360 self-petition on November 2, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

The petitioner 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.

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 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.

With the initial filing of her petition the petitioner submitted evidence of her good moral character, copies of her passport, marriage certificate, family register, her spouse's divorce decree, and a personal statement. The petitioner also submitted a copy of a computer printout from the Dekalb County Police Department. The director found this evidence was insufficient to establish that the petitioner entered into her marriage in good faith, that she has been battered by or subjected to extreme mental cruelty committed by her citizen spouse, and that she resided with her citizen spouse. Accordingly, on April 8, 2005, the director requested further evidence.

As it relates to the petitioner's claim of abuse, the director requested the petitioner to submit evidence such as reports and affidavits from police, judges, court officials or medical personnel, evidence that the petitioner sought refuge in a shelter for the abused, and photographs of injuries. The director also requested that the petitioner submit a detailed statement regarding the alleged abuse detailing her spouse's specific actions such as whether the abuse was verbal or physical, whether the petitioner was socially isolated, or whether her spouse was possessive. Finally, the director requested the petitioner to further explain allegations made in her statement and to provide specific details about her depression and her two claimed car accidents.

As it relates to the petitioner's claim that she resided with her spouse, the director requested evidence such as joint leases, mortgages, or insurance policies, utility statements, bank statements, tax documents or other financial documents listing a common address.

Finally, as it relates to the petitioner's claim that she entered into the marriage in good faith, the director requested insurance policies listing the petitioner or her spouse as the beneficiary, bank statements, tax statements or other financial documents showing joint accounts, evidence of joint property, evidence of the petitioner's courtship, wedding ceremony, special events, or affidavits from friends and family who can provide specific details about the petitioner's relationship with her spouse.

The petitioner responded to the director's request on April 30, 2005 by submitting a new personal statement and a letter from the Center for Pan Asian Community Services, Inc. The petitioner also resubmitted copies of her family register and marriage certificate. After reviewing the evidence contained in the record, the director denied the petition finding that the petitioner failed to establish that she entered into her marriage in good faith, that she resided with her spouse, and that she was battered by or subjected to extreme cruelty by her spouse.

On appeal, the petitioner submits a statement, a copy of the Dekalb County Police Department document that was previously submitted, and a document indicating the petitioner's spouse's arrests for driving under the influence and disorderly conduct. We do not find that the evidence submitted by the petitioner on appeal overcomes the findings of the director. It must also be noted that in instances where 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. If the petitioner had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence or in the petitioner's motion to reopen. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Accordingly, the AAO will not provide any discussion of the sufficiency of the evidence submitted on appeal.

Based upon a review the record before the director at the time of his decision, we concur with the director's findings. The sole evidence that the petitioner entered the marriage in good faith and that she resided with her spouse consists of the petitioner's two statements. The record contains no leases, mortgage statements, financial records or other documentation to establish a shared residence, or bank statements, utility bills, insurance information or tax documentation to show the petitioner and her spouse had joint assets or financial responsibilities. The statements submitted in support of the petition provide no details such as a specific address or how long they lived together or any detailed information regarding the petitioner's relationship with her spouse. The lack of evidence, combined with the lack of detail in the petitioner's supporting statements, do not lead to a finding that the petitioner resided with her spouse or that she entered the marriage in good faith. The petitioner's explanation for the lack of evidence is that she and her spouse lived with her spouse's mother who had all of the utility bills in her name. We note that the petitioner provides no supporting affidavits from friends or acquaintances who could provide details about the petitioner's marriage to establish that it was entered into in good faith and that she resided with her spouse.

It is further noted that the petitioner's initial statement does not comport with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3) as it is not accompanied by a full English language translation by a competent translator who has certified that the translation is complete and accurate. Finally, neither statement has been sworn to or affirmed by the petitioner before an officer authorized to administer oaths or

affirmations who has, having confirmed the petitioner's identity, administered the requisite oath or affirmation. Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the petitioner, in signing the statements, certifies the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. Accordingly, such unsworn statements are entitled to very little evidentiary weight.

As it relates to the petitioner's claim of abuse, the record contains the petitioner's unsworn statements noted above, a Dekalb County Police Department "calls for service inquiry response," and a letter from the Center for Pan Asian Community Services, Inc.

In her statements, the petitioner claims that her spouse is an alcoholic and a "mama's boy." Although the petitioner claims that she fears her spouse, she provides no details or specific incidents of abuse. The petitioner describes one incident where she found that her spouse had broken a glass table in an argument with his mother. However, as the petitioner was not present at the time, this single incident is insufficient to establish that any abuse was perpetrated against the petitioner. The fact that the petitioner's spouse is an alcoholic does not establish that the petitioner was subjected to extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The "calls-for-service inquiry response from the Dekalb County Police indicates that a call was received by an unknown male party who claimed that an unnamed female party "might try to hurt her self." The petitioner does not submit any documentation to establish that the call in question relates to the petitioner or her spouse. Further, the document indicates that the call was initiated by the male party who claimed that he was "afraid" of the female party. Accordingly, even if the petitioner established that the call related to an incident with her spouse, the document would not establish any abuse perpetrated against the petitioner by her spouse.

The letter from [REDACTED] Program Coordinator for the Center for Pan Asian Community Service, Inc. (Center), indicates that the Center "provided a victim counseling" to the petitioner in June 2004. However, the letter provides no details regarding the petitioner's claim of abuse or any indication as to whether the shelter to be provided to the petitioner was based upon her claim of abuse or simply because she had no other place to stay.

Accordingly, we concur with the director's findings that the petitioner failed to establish that she entered into the marriage in good faith, that she resided with her citizen spouse, and that she has been battered by or the subject of extreme cruelty perpetrated by her citizen spouse.

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.