

**PUBLIC COPY**



U.S. Citizenship  
and Immigration  
Services

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



B9

FILE: [Redacted]  
EAC 04 133 51217

Office: VERMONT SERVICE CENTER

Date: **DEC 27 2005**

IN RE: Petitioner: [Redacted]  
AKA [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 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 the Dominican Republic 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 June 14, 1997 in the Dominican Republic. The petitioner filed the instant Form I-360 self-petition on March 29, 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, 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.

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 copies of her birth and marriage certificates with translations, copies of her employment authorization and social security cards, her passport and Form I-94, Arrival and Departure Record, and a copy of one photograph.

The director found this evidence was insufficient to establish eligibility and on November 2, 2004, requested the petitioner to submit further evidence to establish that she 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.

As it relates to the petitioner's claim that she resided with her spouse and entered into the marriage in good faith, 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 or showing joint accounts, joint

property, and 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

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.

The petitioner, through counsel, responded to the director's request on December 27, 2004 and requested an additional 60 days in which to "obtain additional evidence . . ." The director granted the petitioner's request for additional time on January 20, 2005. The petitioner responded on March 9, 2005 by submitting a sworn statement and two statements from acquaintances.

After reviewing the evidence contained in the record, including the evidence submitted in response to the director's request for evidence, the director denied the petition finding that the petitioner failed to establish that she resided with her spouse, that she entered into her marriage in good faith, and that she was battered by or subjected to extreme cruelty by her United States citizen spouse.

On appeal, counsel for the petitioner submits a brief statement but no additional documentation. In his statement, counsel alleges that the director's decision was erroneous because the director did not accord the proper weight to the petitioner's evidence. Upon review of the record we are not persuaded by counsel's argument and concur with the findings of the director that the evidence submitted by the petitioner is not sufficient to establish eligibility.

To support her claim of a good faith marriage and that she resided with her spouse, the petitioner submits a single photograph, a statement, and two statements from acquaintances. In her statement, the petitioner provides no details about how she met her spouse, how long they dated prior to marrying, or any other details about their courtship. The affidavits from the petitioner's acquaintances provide no further details about the petitioner's relationship with her spouse or her intent at the time of her marriage. Additionally, the record lacks corroborative evidence of a good faith marriage, such as joint bank accounts, tax documents, insurance information or other documentation to establish a claim of a good faith marriage.

Similarly, the statements provide few details to establish that the petitioner resided with her spouse. None of the statements indicate where the petitioner lived with her spouse, how long the petitioner lived with her spouse, or whether they lived with any other family members or friends. The petitioner failed to submit supporting documentation that would establish a joint residence such as lease or rental agreements, utility bills, or other documentation that shows a common address.

The lack of evidence of a joint residence and good faith marriage, 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. Without any supporting documentation to support the petitioner's claim that she resided with her spouse from 1997 until 2002, the statements submitted in support of the petitioner carry little weight in establishing that the petitioner entered into her marriage in good faith. While counsel

argues on appeal that the director “failed to consider that the applicant had mainly lived with her husband in the Dominican Republic,” we note that none of statements, including that of the petitioner, or any other evidence makes any mention of joint residence in the Dominican Republic. The director cannot err by failing to consider evidence that did not exist. We note that counsel does not support his statement about a joint residence in the Dominican Republic with any documentary evidence. 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).

As it relates to the petitioner’s claim of abuse, the record contains the petitioner’s statement and the three statements of her acquaintances. In her statement, the petitioner claims that her spouse yelled at her, punched her in the arm, would throw things around the apartment and break furniture. The petitioner also claims that her spouse had an affair, did not want to the petitioner to talk to her family on the phone, made her have sex against her will, and did not provide the petitioner with food and money. In the statement provided by [REDACTED] [REDACTED] indicates that the petitioner’s spouse “used to abandon her . . . with no food or money for three days lying her [sic] he had to work. When the true fact is that he had an affair with another woman for a long time.” [REDACTED] does not indicate whether he was a witness to these alleged facts or whether they were told to him by the petitioner. Although [REDACTED] statement corroborates the petitioner’s claim that her spouse had an affair, his statement does not corroborate the claims made by the petitioner that she was punched, that her spouse would yell at her, throw things around the apartment, break furniture, or force her to have sex against her will. It is further noted that although counsel claims on appeal that [REDACTED] “clearly stated” that he was “informed of the information that he attested to” we find no such statement contained in his affidavit.

The remaining statements, provided by [REDACTED] and [REDACTED] contain identical language. The statements indicate that each affiant “witnessed the psychological maltreatment that she received while in her prior relationship as well as her recuperation from that maltreatment.” The statements do not provide any detail regarding the “psychological maltreatment” or specific incidents of abuse.

On appeal, counsel also argues that the director erred in stating that [REDACTED] did not indicate his relationship with the applicant. Counsel states:

A review of the affidavit will show that the affiant clearly stated that he is a close friend of [the petitioner] and he was informed of the information that he attested to.

While we agree that the director erroneously stated that [REDACTED] failed to indicate his relationship with the petitioner, this single mistake, on its own, is insignificant when compared with the other deficiencies noted in the record that have not been overcome.

Based upon the above discussion, we find the director properly considered the evidence submitted by the petitioner and that such evidence was afforded the proper weight. It should be noted that CIS has the sole discretion in determining what evidence is credible and the weight to be given the evidence.<sup>1</sup> Accordingly,

<sup>1</sup> See 8 C.F.R. § 204.2(2)(i) which states that the determination of what evidence is credible and the weight to be given that evidence “shall be *within the sole discretion* of the Service.” [Emphasis added.]

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.