

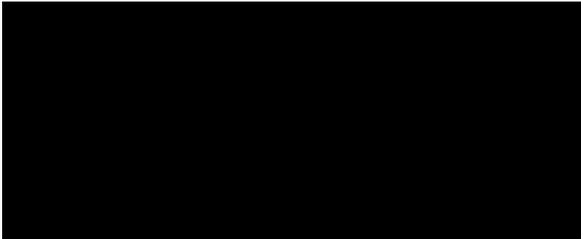
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U.S. Department of Homeland Security  
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U.S. Citizenship  
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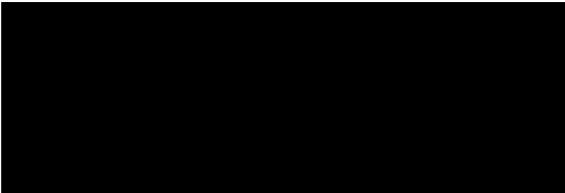
Office: VERMONT SERVICE CENTER

Date: NOV 03 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 preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of Trinidad 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.

According to the evidence contained in the record, the petitioner wed United States citizen [REDACTED] on March 13, 2000 in Hempstead, New York. On April 21, 2000, the petitioner's spouse filed a Form I-130 in the petitioner's behalf. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. The record reflects that the Form I-130 petition and the Form I-485 application were denied on January 4, 2005. The petitioner filed the instant self-petition on March 15, 2004, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her United States citizen spouse. The director denied the petition on January 28, 2005, finding that the petitioner failed to establish that she entered into the marriage to her citizen spouse in good faith, that she resided with her spouse, and that she was battered by, or the subject of extreme cruelty perpetrated by her spouse.

The petitioner, through counsel, files 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 United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his 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;

\* \* \*

(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)(1)(i)(E) requires the petitioner to establish that she 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.

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).

At the time of filing, the petitioner submitted the following evidence:

- Two photographs of the petitioner and her spouse.
- The petitioner's affidavit.
- A police clearance from the New York City police department.
- A copy of the petitioner's life insurance policy with Liberty Mutual.
- A lease signed by the petitioner and dated September 17, 2002 for the property at 250 Clarkson Avenue, Brooklyn, New York.
- A receipt for payment of the rent for October 2003.
- Copies electricity bills dated October and December 2003 in the petitioner's and her spouse's name.
- Copies of Verizon bills dated August, September and October 2003 in the petitioner's name.
- A copy of the petitioner's and her spouse's joint 2000 federal and state tax returns.
- The petitioner's marriage certificate.
- A copy of the petitioner's passport and social security card.
- A copy of the petitioner's divorce decree from her previous spouse.
- A copy of the petitioner's birth certificate.

The director found this evidence was insufficient to establish eligibility and on November 1, 2004, requested the petitioner to submit further evidence to establish that she entered into her marriage in good faith, that she resided with her spouse, and that she was battered or subjected to extreme cruelty. The director discussed the deficiencies in the evidence previously submitted by the petitioner and listed specific evidence the petitioner could submit to support each of these claims.

As it relates to the petitioner's claim of battery or extreme cruelty, the director requested:

- Reports and affidavits from police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials.
- Evidence that the petitioner has sought refuge in a shelter for the abused.
- Photographs of injuries and affidavits from witnesses.
- A detailed and specific statement from the petitioner describing her relationship with her spouse and the type of abuse suffered and any after effects.

As it relates to the petitioner's claim that she resided with her spouse and entered the marriage in good faith, the director requested:

Insurance policies . . . bank statements, tax records and other documents that show you share accounts and other similar responsibilities . . . evidence of your courtship, wedding ceremony, residences, special events, . . . evidence of joint ownership of property (such as a home, automobile, etc.) . . . birth certificates of children born to you and your spouse . . . affidavits of friends and family who can provide specific information verifying your relationship with your spouse.

The petitioner responded to the director's request on December 15, 2004, by submitting the following evidence related to her claim that she entered the marriage in good faith, that she resided with her spouse, and that she was battered or subjected to extreme cruelty:

- Copies of eight additional photographs of the petitioner with her spouse.
- An unsworn statement from the petitioner.
- Three affidavits from friends and relatives of the petitioner.
- Copies of rent receipts for November and December 2004.
- A copy of an electric bill dated December 2004.
- A copy of a Verizon bill dated October 2004.
- A copy of a portion of a Cablevision bill.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including the evidence furnished in response to the request for additional evidence. The discussion will not be repeated here.

On appeal, the petitioner, through counsel, submits a lease dated September 18, 2000, two rent receipts dated May and June 2003, and two affidavits from acquaintances of the petitioner. However, 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).

In this instance, we emphasize that the director did not request some vague class of documentation, but rather specific documents, leaving no ambiguity as to what documents were required. 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.* Because the director gave the petitioner the opportunity to submit this evidence prior to the decision, the key question is not whether the evidence exists, but whether the petitioner submitted them when asked. The submission of the requested evidence on appeal does not overcome the petitioner's failure to submit the evidence when first requested to do so. Accordingly, we need not consider such evidence on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Upon review of the record at the time of the director's decision, we concur with the findings of the director 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 the subject of extreme cruelty perpetrated by, her spouse.

Although the petitioner submits a copy of her life insurance policy, the policy does not indicate to whom the policy is payable upon the death of the petitioner.<sup>1</sup> The petitioner also submitted a copy of a lease and rent receipts. We note, however, that although the lease lists both the petitioner and her spouse as tenants, the lease was not signed by the petitioner's spouse. Moreover, as the rent receipts are dated for October 2003 and November and December 2004, the record remains absent evidence of the petitioner's joint residence with her spouse from the beginning of the marriage in March 2000. Accordingly, they are insufficient to show the

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<sup>1</sup> We note that copies of pages 4, 6, and 7 are missing from the policy description.

petitioner's intent at the inception of the marriage. We note that although the director raised the issue regarding the lack of the petitioner's spouse's signature on the lease, the petitioner fails to address this issue or provide any explanation on appeal. Accordingly, without further evidence, such as cancelled checks to show who actually paid the rent, the fact that the petitioner's spouse did not sign the lease, in addition to the lack of evidence related to their joint residence prior from the beginning of their marriage, discredits the petitioner's claim of joint residence.

Similarly, the electricity bills and Verizon bills are dated between October and December of 2003 and October and December 2004. As such, they have no relevance to the petitioner's intent at the time of the marriage in March 2000. From the copy of the single Cablevision bill submitted by the petitioner we are unable to discern a date of service or in whose name the service is listed. Given that there are no bills prior to late 2003, it is unclear how this evidence, which is dated more than three years after the inception of the petitioner's marriage, supports a claim that at the time she entered into the marriage in good faith and that she resided with her spouse.

The petitioner also submitted a copy of her and her spouse's joint 2000 federal and state tax returns. Again, however, although the director noted that the unsigned documents were not evidence that the taxes were actually filed, the petitioner provides no further documentation or statement to demonstrate the filing of these taxes. Moreover, despite the petitioner's claim that she resided with her spouse in 2001, 2002, and 2003, the petitioner does not provide evidence of taxes for these years or an explanation for the lack of such documentation.

In addition, the affidavits and the statements provided by the petitioner, her relatives, and acquaintances, do not establish the petitioner's intent at the time of her marriage or that she resided with her spouse. In the affidavit provided by [REDACTED] does not provide any details about how the petitioner met her spouse or about their courtship. [REDACTED] provides no details about the petitioner's living arrangements. Similarly, the affidavits from the petitioner's sister, [REDACTED], and daughter [REDACTED] provide no specific information about the petitioner's life with her spouse prior to the marriage or details about the petitioner's residence with her spouse after their marriage.

The petitioner's statements contain the same general statements as those made in the affidavits by her relative and acquaintances. For instance, to describe her courtship, the petitioner states, "[w]e dated for awhile and I introduced him to my close circle of friends and relatives . . . [h]e later asked me to be his wife and faithfully promised to do the right thing as a husband and father to my children." The petitioner provides no specific details about how she met her spouse or other statements to establish that when she entered into the marriage, she did so in good faith. Further, the petitioner does not provide any specific details about when she first began living with her spouse or where they lived together during the marriage. The lack of specificity in all of these statements does not support a finding that the petitioner entered the marriage in good faith or that she resided with her spouse.

As discussed above, the record remains absent evidence of insurance policies in which the petitioner or her spouse is named as the beneficiary, or other documents that show that they shared accounts and other responsibilities with each other during the time the petitioner claims they resided together. The petitioner failed to submit evidence of joint ownership of cars or other property or copies of a joint lease. Although the marriage certificate submitted by the petitioner is evidence of a legal marriage, the fact that a legal marriage

took place does not establish that the marriage was entered into in good faith or that the petitioner resided with her spouse after the marriage ceremony. Similarly, while the petitioner's photographs are evidence that the petitioner and her spouse were together at a particular place and time, they do not establish that they were engaged in a bona fide marriage. The lack of evidence to demonstrate the commingling of assets or financial liabilities, combined with the scarcity of information in the supporting letters from the petitioner and her friends and relatives, do not lead to a finding that the petitioner entered her marriage in good faith.

As it relates to the petitioner's claim of abuse, the record contains:

- The petitioner's statement.
- Affidavits from the petitioner's acquaintance and relatives.

In her statements, the petitioner claims that her spouse abused drugs, called her names, and forced her to "bathe [him], scrub and cut his finger and toe nails and properly put lotion all over his body." The petitioner also claims that had to have sex with her husband even if she did not feel like it and that she was punched and slapped by her husband.

In the affidavits provided by [REDACTED] states that the petitioner told her that her husband wasn't acting as before." [REDACTED] n says the petitioner indicated that she was responsible for all of the chores around the house and that the petitioner's spouse was using drugs. [REDACTED] states, "[s]he told me she wasn't happy with her marriage and that her sex life was a disaster. Her husband doesn't like to work and calls her [names]."

In the affidavit provided by the [REDACTED] states the petitioner told her "that her husband takes drugs and he always [has] friends over and that she has no privacy."

The affidavit provided by [REDACTED] indicates "there is a lot of drinking, smoking and he abuses her." While [REDACTED] n does not elaborate on any specific incident of battery or physical abuse, she does state, "one day I heard him saying to her bitch come here and cut my toe nails."

We note that none of the affidavits describe any of the incidents of physical abuse claimed by the petitioner, such as the incident in which the petitioner claims her son saw her spouse "pounding [her] with his fist" or the incident where the petitioner was "slapped . . . very hard across [her] mouth." The fact that the petitioner's spouse may have abused drugs or alcohol does not establish that the petitioner was subjected to extreme cruelty. The facts as described by the petitioner and her relatives and acquaintance that the petitioner was allegedly called names, that her "sex life was a disaster," and that the petitioner had to cut her spouse's finger and toe nails, are not sufficient to establish a claim of extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which 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 . . . .

In this instance, the petitioner has failed to demonstrate that the treatment she received by her spouse during the marriage involved any overall pattern of violence, any act or threatened act of violence, or forceful detention, psychological or sexual abuse or exploitation.

Accordingly, we find the record is insufficient to establish that the petitioner married her spouse in good faith, that she resided with her spouse, and that she has been battered by, or has been the subject of extreme cruelty perpetrated by, her 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.