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**U.S. Citizenship
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Services**

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FILE:

[Redacted]
EAC 04 006 55103

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.

Mari Johnson

→ Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Vermont Service Center Director denied the preference 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 the former Soviet Union and a citizen of Georgia 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.

The director denied the petition, finding that the petitioner had failed to establish that she had entered into the marriage in good faith and that she had been battered or the subject of extreme cruelty perpetrated by her U.S. citizen spouse.

On appeal, counsel for the petitioner asserts that the director ignored much evidence and that the petitioner met her burden of proof.

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 Attorney General 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.

According to the evidence on the record, the petitioner wed U.S. citizen [REDACTED] on June 28, 2001 in New York City. The petitioner's spouse filed a Form I-130 petition on the petitioner's behalf on December 31, 2001. The petitioner filed a Form I-485 concurrently with the Form I-130 petition. The district director denied the Form I-130 and Form I-485 petition on December 29, 2003. On October 6, 2003, the petitioner filed a self-petition, 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 first issue to be addressed in this proceeding is whether the petitioner established that she has been battered by or has been the subject of extreme cruelty perpetrated by her citizen spouse. 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 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).

Because the petitioner furnished insufficient evidence to establish that she has been battered by, or the subject of extreme cruelty by her U.S. citizen spouse, the director requested that she submit additional evidence on August 10, 2004.

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

The evidence relating to the abuse is as follows:

- 1 An assessment written by [REDACTED] Psychoneurology, stating that he had treated the petitioner over a three-month period via long distance. She said that the petitioner suffered depression, insomnia, nightmares, hallucinations, and anorexia caused by emotional traumas that accumulated during her married life.
- 2 A letter written by a priest, [REDACTED] stating that the petitioner "demonstrated serious exacerbation in her condition." [REDACTED] did not state the exact nature of the petitioner's condition.
- 3 The petitioner's statement indicating that shortly after she married, her husband became "aggressive and demeaning" towards her, began going out with his friends without telling her his whereabouts. She further stated that when her husband was under the influence of alcohol or drugs, he was physically abusive to her, sometimes in the presence of friends. She said that her

husband disappeared.

It is noted that none of the above evidence contains a description of specific instances of abuse. The assessment and statement discuss the petitioner's state of mind, but fail to detail instances of abuse with specificity. The evidence is insufficient to establish that the petitioner was battered by, or the subject of extreme cruelty by her citizen spouse.

The next issue to be addressed in this proceeding is whether the petitioner established that she entered into the marriage in good faith. Finding the evidence insufficient, in a request for additional evidence dated August 10, 2004, the director requested the petitioner to submit additional evidence to establish that she entered into the marriage in good faith.

The director listed evidence the petitioner could submit to establish that she married her spouse in good faith. The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. The discussion will not be repeated here.

The evidence consists of the following:

- The petitioner's statement.
- The assessment provided by the petitioner's psychoneurologist.
- A letter written by the petitioner's priest.

The petitioner failed to provide copies of insurance policies in which she or her spouse is named as the beneficiary. She did not submit copies of bank statements, tax records and other documentation to show she and her spouse shared financial responsibilities. The petitioner failed to submit evidence of joint ownership of property. No children were born of the marriage. The petitioner's statement about her courtship and marriage provides scant details. The evidence is insufficient to establish that the petitioner entered into the marriage in good faith.

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.