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FILE: 
EAC 04 024 53230

Office: VERMONT SERVICE CENTER

Date: **NOV 28 2005**

IN RE: Petitioner: 

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 the Dominican Republic 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 August 2, 1994 in the Bronx, New York. On November 1, 2003, the petitioner filed the instant petition 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. On the Form I-360, the petitioner indicates that she resided with her spouse from August 1994 until January 1995.

The director denied the petition on January 12, 2005, finding that the petitioner failed to establish that she resided with her United States citizen spouse during the marriage, that she entered into the marriage to the citizen in good faith, 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 insufficient evidence to establish her eligibility. Accordingly, on August 19, 2004, the director requested the petitioner to submit further evidence to establish that she resided with her spouse, that she entered into her marriage in good faith, and to support her claim of abuse. The director listed specific evidence the petitioner could submit to support each of these claims. The petitioner responded to the director's request on September 17, 2004.

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

On appeal, counsel for the petitioner submits a brief statement and a copy of a document related to the petitioner's spouse's conviction for the criminal sale of a controlled substance that was previously submitted. No new evidence has been submitted on appeal.

In review, we find the record insufficient to establish that the petitioner 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.

As it relates to the issue of the petitioner's good faith marriage and whether she resided with her spouse, the record contains the following evidence:

- The petitioner's statement.
- An unsworn statement from an acquaintance of the petitioner.
- The petitioner's marriage certificate.
- Copies of two Chase bank statements.
- Copies of two Con-Edison bills.

In her statement, the petitioner provides no details about how she met her spouse or about their courtship. The petitioner begins with the statement that she married her spouse on August 2, 1994, but provides no further details about their married life together, such as where they lived. Instead, the petitioner simply states that she "resided continuously" with her spouse until she could no longer "tolerate" her spouse's treatment of her. Similarly, the unsworn statement provided by an acquaintance of the petitioner provides no details about the petitioner's courtship, marriage, or residence, other than to state that he "helped her to move and get rid of her husband[']s abuse."¹

¹ We note that acquaintance's statement has not been sworn before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (7th Ed., West 1999). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, does it contain the requisite statement, permitted by Federal law that in signing the statement, the acquaintance certifies the truth of the statement, under penalty of perjury. 28 U.S.C. § 1746.

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. We note that no children were born of the marriage. Although the marriage certificate 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.

We note that while the petitioner submits a bank statement indicating a joint account with her spouse, she does not submit evidence that both she and her spouse accessed the account, such as cancelled checks signed by the petitioner and her spouse. Moreover, we note that the statements cover the period from June 24, 1997 through July 23, 1997, a period more than two years after the petitioner indicated she resided with her spouse. The bills from Con-Edison are in the petitioner's name only, and in one case, show the petitioner's account as delinquent.

The lack of evidence to demonstrate the commingling of assets or financial liabilities, combined with the scarcity of information in the petitioner's supporting letters does not lead to a finding that the petitioner entered her marriage in good faith or that she resided with her spouse.

On appeal, counsel attempts to explain that the reason the petitioner placed all of the utility bills in her name and opened a bank account as a trust account only, was due to "her husband's incarceration." We note that 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). Regardless, as the evidence indicates the petitioner's spouse was convicted and sentenced in December 1996, nearly two years after the period in which the petitioner claims she resided with her spouse, we are not persuaded by counsel's statement. There is no explanation for the lack of evidence related to the period of time in which the petitioner's claims to have resided with her spouse, from August 1994 until January 1995.

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

- The petitioner's statement.
- An unsworn statement from the petitioner's acquaintance.
- An assessment from a psychotherapist.

In her statement, the petitioner indicates that her spouse called her names, that he was "jealous," and verbally and physically abusive. The petitioner generally describes two incidents which began at her place of employment in which her husband displayed his jealous nature and called her names. During one incident, the petitioner claims that her husband slapped her across the face after she pushed him. Although the petitioner claims that she sent her daughter to the Dominican Republic because her spouse "was physically abusing her in [her daughter's] presence," as previously noted, the petitioner's statements only detail incidents at the petitioner's work, not at her home or in front of her daughter. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or

reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The psychotherapist's letter, which is based solely upon the petitioner's recollection of events approximately 8 years prior to the assessment, states that the petitioner sought assistance with "feelings of depression . . . and [concern] about the quality of life since her husband abandoned her in 1995." The letter further indicates:

Shortly after the marriage, she learned of her husband's drug use. She experienced physical abuse by her husband. Shortly after her child joined the family, [the petitioner] was forced to send her to the Dominican Republic. The patient felt this was the only way to protect her from witnessing or falling prey to her abusive husband. [The petitioner] pressed charges to the abuse. When she informed the authorities her husband left. She has not seen him since 1995 and his whereabouts are unknown.

The assessment fails to corroborate the petitioner's claim of verbal abuse. Further, the record does not contain a copy of any documents to establish that the petitioner ever "pressed charges" against her husband for the purported abuse.

Based upon the above discussion, 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.