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U.S. Citizenship
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FILE: [REDACTED]
EAC 03 059 55137

Office: VERMONT SERVICE CENTER

Date: NOV 28 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 Acting Director (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), 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 September 30, 1996 in Manhattan, New York. On October 11, 1996, the petitioner's spouse filed a Form I-130 petition on the petitioner's behalf. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. The petition was denied on February 12, 1998. A subsequent appeal of the decision on the Form I-130 petition to the Board of Immigration Appeals (BIA) was dismissed on April 13, 2000. The petitioner's Form I-485 application was denied on September 1, 2000. On August 30, 2001, the petitioner was ordered removed from the United States.

On December 13, 2002, the instant self-petition was filed by the petitioner 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 petition was denied on November 26, 2004 based upon the determination that the petitioner failed to establish that she had a qualifying relationship as the spouse of a U.S. citizen, that she is eligible for classification based upon that qualifying relationship, that she resided with her spouse, that she has been battered by or subjected to extreme cruelty by her citizen spouse, and that she entered into the marriage in good faith.

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)(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).

With the filing of her petition, the petitioner submitted the following documentation:

- A copy of the petitioner's prescription for Ambien.
- Copies of documentation for the petitioner's consultation at Jamaica Hospital Medical Center.
- A copy of a doctor's note indicating the petitioner's treatment for hair loss.
- Copies of the petitioner's and spouse's tax documents for 2000, 1999, 1998, 1997, and 1996.
- A copy of the petitioner's marriage certificate.
- A copy of the petitioner's spouse's naturalization certificate.
- An unreadable copy of an identification card for the petitioner.
- Copies of two gas bills, dated December 1997 and April 2000, in the petitioner's spouse's name.
- A copy of a single electric bill dated April 2001 in the petitioner's spouse's name.
- A copy of a single electric bill dated April 2002 in the petitioner's name.
- Two copies of Verizon phone bills dated April and July 2001 in the petitioner's name.
- Copies of documents relating to the petitioner's and her spouse's joint account at Green Point Bank.
- Copies of envelopes showing the petitioner's and her spouse's address at 182 Chestnut Street.
- Copies of rent receipts issued in the petitioner's and her spouse's names from March to August 2001.
- Copies of information related to the petitioner's and her spouse's joint savings account at Chase Bank.
- Copies of photographs of the petitioner and her spouse.

The director found that the evidence submitted by the petitioner contained numerous inconsistencies and deficiencies and on September 22, 2003, requested the petitioner to submit additional evidence. The director requested specific evidence related to the petitioner's current marriage status (i.e., married or divorced), joint residence with her spouse, the bona fides of the petitioner's marriage, the petitioner's good moral character and evidence of battery or extreme cruelty.

The petitioner responded to the director's request on December 17, 2003, by providing a letter from Jamaica Hospital Medical Center, dated December 11, 2003, a letter from MediSys Family Care Center, dated October 20, 2003, copies of drug prescriptions, evidence of the petitioner's good moral character, a statement from the petitioner and four affidavits from acquaintances.

The director reviewed and discussed the evidence submitted by the petitioner, including the evidence submitted in response to the request for evidence. The director denied the petition based upon the finding that the petitioner had not established that: (1) she has a qualifying relationship as the spouse of a U.S. citizen, (2) she has resided with her U.S. citizen spouse, (3) she entered into her marriage in good faith, and (4) that she has been battered by or subjected to extreme cruelty by her U.S. citizen spouse.

The first issue to be determined in this proceeding is whether the petitioner has a qualifying relationship as the spouse of a U.S. citizen. On appeal, the petitioner, through counsel, submits a statement and a copy of the petitioner's divorce decree. When submitting the divorce decree on appeal, counsel states that the director "never

requested the exact decree just information.” Contrary to counsel’s assertion, the director’s request for evidence stated the following:

Marriage Status:

Are you and [REDACTED] still married? Yes _____ No _____

If your marriage has been lawfully terminated through divorce or annulment, *please submit a copy of the termination document (such as the court decree or judgment)*. If your divorce or annulment is still pending, please submit evidence indicating the current status of the court proceedings. Evidence may include hearing notices, court scheduling orders or docket printouts.¹

[Emphasis added.]

The status of the petitioner’s marriage, as well as the date the marriage was terminated, is a legitimate and necessary inquiry. Section 1503(b) of the Violence Against Women Act, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000) indicates that if the petitioner is not married to the alleged abuser at the time the petition is filed, the petitioner must show a connection between the legal termination of the marriage within the past 2 years and the battering or extreme cruelty by the United States citizen spouse. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. [That suggests that we would deny for abandonment, which we cannot do in VAWA cases. Instead, we simply make a decision based on the record.] Failure to respond to a request for additional evidence will result in a decision based on the evidence previously submitted. 8 C.F.R. § 204.1(h). Where, as here, 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. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). We emphasize that the director’s request clearly indicated the specific documents to be submitted. If the petitioner had wanted the divorce decree to be considered, she should have submitted it in response to the director’s request for evidence. *Id.* Accordingly, we will not accept or consider the petitioner’s divorce decree on appeal.² Based on the record of proceeding before the director, the petitioner did not establish that she had a qualifying relationship as the spouse of a U.S. citizen.

Next, we will jointly consider the issues of whether the petitioner resided with her spouse and whether she entered into the marriage in good faith as the documentation submitted by the petitioner for each of these claims is the same. Specifically, the petitioner submitted tax documents, bank information, utility bills, rent receipts, envelopes, photographs and affidavits.

The petitioner’s 1997, 1999, and 2000 tax returns list a joint residence for the petitioner and her spouse at [REDACTED]. However, although the record contains a lease agreement between the petitioner’s spouse and [REDACTED] for the [REDACTED] for September 1996 through

¹ We note that the director’s request for evidence was sent to the petitioner, care of counsel’s address of record.

² The divorce decree became final on May 13, 2002. Accordingly, it is unclear why the petitioner indicated in part 3 of the Form I-360 petition, which was filed in December 2002, that she was “married.” Additionally, the petitioner has failed to provide any explanation for her failure to submit the divorce decree either at the time of filing the petition or in response to the director’s request for evidence, given that the divorce was finalized more than seven months prior to the filing of the petition.

September 1998, the lease does not include the petitioner's name. Moreover, the lease is contradicted by the Forms G-325A that the petitioner and her spouse submitted in support of the Form I-130 submitted on the petitioner's behalf and by their marriage certificate. The Forms G-325A indicate that they both began residing at [REDACTED] in June of 1996. The marriage certificate indicates that as of September 1996, the petitioner's spouse was living at 48 Ashford Street in Brooklyn. If the petitioner and her spouse were already residing at [REDACTED] in June 1996, as they both indicated on their separate Forms G-325A, there is no explanation for the fact that the lease and the marriage certificate indicate that the petitioner's spouse was residing at 48 Ashford Street more than three months later.

Additional inconsistencies are in the copies of the rent receipts submitted for the [REDACTED]. The first set of receipts, issued in the petitioner's spouse's name and signed by [REDACTED] is dated from January 1997 through June 1997. The second set, dated March through June of 2001 and August 2001, was issued in both the petitioner's and her spouse's names and signed by [REDACTED].

Further, while the petitioner's 1997 and 1999 joint tax returns show the [REDACTED] address, the petitioner's spouse's 1997 and 1999 Form W-2 Wage and Tax Statements list his address at [REDACTED]. The record also contains a single paystub, dated June 13, 1997, issued to the petitioner's spouse which indicates his filing status as "S [single]" and his address at [REDACTED]. Although the petitioner's 1998 tax returns lists their address at [REDACTED] the record contains no other supporting evidence that the petitioner ever lived at the [REDACTED] address.

Although the petitioner submits copies of utility bills throughout the 1997 to 2001 time period listing both the petitioner and her spouse at the [REDACTED] address, the contradictions described above cast serious doubt on the petitioner's claim that she entered into the marriage in good faith and that she resided with her spouse. 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).

Given the petitioner's claim that she resided with her spouse from 1996 until 2001, we would expect the petitioner to be able to submit insurance policies in which she or her spouse is named as the beneficiary, bank statements or other documents that show the joint use and access of both parties, and the joint ownership of property or automobiles. Although the petitioner submits evidence that a joint account was opened in September 1998, she provides no evidence that both she and her spouse had access to and use of the account. 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 or that they resided together. Based on the lack of evidence to demonstrate the commingling of assets or financial liabilities, combined with the numerous discrepancies contained in the petitioner's evidence, the petitioner has not established that she entered her marriage in good faith or that she resided with her spouse.

The final issue to be considered is the petitioner's claim that she was battered or subjected to extreme cruelty by her U.S. citizen spouse. With the original filing the petitioner submitted an undated consultation report which indicated that she was being treated for depression and that she was separated from her husband. The petitioner also submitted a letter, dated October 23, 2002, from [REDACTED]. In her letter, [REDACTED]

³ The petitioner does not provide copies of her spouse's 1998 and 2000 W-2 forms to compare to the address contained on the tax returns for those years.

indicates that the petitioner was treated for depression on June 12, 2002, by [REDACTED] and that [REDACTED] evaluated the petitioner as a follow up to the earlier treatment. Neither the report, nor [REDACTED] letter makes any reference to the petitioner's depression or treatment being related to abuse.

The petitioner submitted another letter dated October 23, 2002, from [REDACTED] a dermatologist. In her letter, [REDACTED] explains that she treated the petitioner on July 5, 2000 "for hair loss." Again, however, there is no indication in [REDACTED] letter that the petitioner's hair loss is connected to her claimed abuse rather than some other medical condition. We further note that while the petitioner's hair loss occurred in 2000, there does not appear to have been any further treatment for that condition in the two-year period preceding [REDACTED] October 2002 letter.

In response to the director's request for evidence, the petitioner submitted additional letters from doctors. One letter from [REDACTED] of the Jamaica Hospital Medical Center, dated December 11, 2003, states that the petitioner suffers from "depression with insomnia" and that she has "been abused by her husband and under psychiatric care. [REDACTED] does not describe how long the petitioner has been under psychiatric care, whether he is providing the psychiatric care, or how he is aware that the petitioner has been abused. A second letter, from [REDACTED] dated October 20, 2003, indicates that he has seen the petitioner "on three occasions since June 2002" and that he is "currently treating her for Depression." [REDACTED] does not indicate that the petitioner's depression is in any way related to abuse or make any reference to the fact that the petitioner has been abused by her spouse. Further, as it appears that [REDACTED] is providing the petitioner's psychiatric care, it is unclear what information or treatment [REDACTED] letter is based upon.

In response to the director's request of the petitioner to provide a detailed statement about the abuse she purportedly suffered, the petitioner submitted a statement in which she claims that she was dependent upon her spouse and that he maintained control over her by holding her immigration status over her head. The petitioner also claims that her spouse would take trips by himself and that her "ultimate disgrace came when [her spouse] abandoned [her]."

The petitioner also submitted affidavits from acquaintances who indicate that the petitioner "suffered a lot," and that she was "tortured" by her spouse. Two of the affidavits attempt to describe the incidents of "torture" and "suffer[ing]" inflicted upon the petitioner. The first affidavit, provided by [REDACTED] states that the petitioner's spouse would "smack and push" her. A second affidavit, from [REDACTED] indicates that he was "present at their home when [the petitioner's spouse] got into an argument with [the petitioner] and punched her on her chest knocking her onto the sofa." We note that the record does not contain any statement or claim by the petitioner that she was physically abused or battered by her spouse. Rather, the petitioner's sole claim is that she was dominated and controlled by her spouse because he held her immigration status over her head. The fact that the affidavits contain unsupported statements, not even claimed by the petitioner, calls the veracity of the affidavits into question, as it appears these statements were manufactured in attempt to enhance the petitioner's claim of abuse.

The facts as described by the petitioner and the evidence submitted to support her allegations 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).

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. The petitioner's claim that her spouse intentionally

provided incorrect answers during their immigration interview is not supported by the findings of the BIA⁴ or, more importantly, our own independent review. Given the contradictory evidence submitted by the petitioner, which was discussed at length in this decision, we find no merit in the petitioner's claim that her spouse sabotaged their joint interview and do not find her claims of being threatened with deportation are supported by the record or described in such a way as to establish a claim of an overall pattern of abuse or violence. Finally, the petitioner's claim that she was ultimately "abandoned" by her spouse also does not rise to such a level as to be considered extreme cruelty.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, 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.

ORDER: The appeal is dismissed.

⁴ In a decision dated April 13, 2000, the BIA found that although the petitioner attempted "to explain those numerous, significant and diverse discrepancies [that occurred during the petitioner's and her spouse's interview before the Service] which cast serious doubts on the bona fides of the marriage [the petitioner] failed to resolve the ambiguities in the record with valid, independent and objective evidence."