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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: OCT 04 2005
EAC 04 016 52458

IN RE: Petitioner: [REDACTED]
Beneficiary: [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 Kenya 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 November 7, 2002 in Tacoma, Washington. On February 24, 2003, 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 petition and application were administratively closed by the director of the Seattle district office on March 12, 2004, but no further information is available as to the administrative closure. The petitioner filed the instant self-petition on October 22, 2003, 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 June 2002 until November 2002.

The director denied the petition on November 8, 2004, finding that the petitioner failed to establish that she entered into the marriage to her citizen spouse 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 the following evidence:

- A copy of her spouse's birth certificate and name change order.
- A copy of her marriage certificate.
- A copy of her spouse's divorce decree from his previous wife.
- The petitioner's statement.
- An evaluation from a clinical social worker.
- A letter from the Tacoma police department that indicates the petitioner has no criminal record.
- A copy of bank account information in the petitioner and her spouse's name.
- A copy of the petitioner's work authorization card and driver's license.
- Copies of evidence submitted in support of the previously filed Form I-130 and Form I-485.

The director found this evidence was insufficient to establish eligibility and on August 5, 2004, requested the petitioner to submit further evidence to establish that she entered into her marriage in good faith, 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. On October 18, 2004, the petitioner requested additional time to respond to the director's request. On October 24, 2004, the petitioner submitted the following evidence:

- Two copies of utility bills.
- Five copies of bank statements for a joint account.
- Copies of three photographs.
- An affidavit from [REDACTED] a friend of the petitioner.

The director denied the petition after reviewing and discussing 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 with additional evidence. Included in the petitioner's appellate submission is a copy of the petitioner's diploma, and a letter from the president of the petitioner's community college with an accompanying certificate of acceptance. Such evidence has no bearing on the issues of whether the petitioner entered her marriage in good faith and whether she was battered or subjected to extreme cruelty. The petitioner also submits several documents as evidence to demonstrate that she would suffer "severe economic and discriminatory hardships" if forced to return to Kenya. Like the evidence related

to the petitioner's attendance at community college, we find this evidence irrelevant to the determination at hand.¹

The remaining evidence, which consists of a new statement from the petitioner and her friend, [REDACTED] and copies of photographs of the petitioner's marriage, will not be considered on appeal. 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).

The director, in the request for evidence, instructed the petitioner to submit:

Insurance policies . . . bank statements, tax records . . . evidence of [the petitioner's] courtship, wedding ceremony, residences, special events . . . evidence of joint ownership of property (such as a home, automobile, etc.) . . . [and] affidavits of friends and family who can provide specific information verifying the petitioner's relationship with his spouse.

* * *

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 . . .

The director also requested a detailed and specific statement from the petitioner describing her relationship with her spouse and the type of abuse suffered and any after effects.

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. 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 and that she was battered by, or the subject of extreme cruelty perpetrated by, her spouse.

¹ On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

To support her claim of a good faith marriage, the petitioner submitted bank statements, utility statements, tax information, and photographs. With the submission of the instant petition, the petitioner submitted what appears to be a "screen shot" of bank account information. The document lists the petitioner's and her spouse's names and indicates the account in question was opened on April 5, 2002. Although the name of the bank, "Shady Grove Banking Center," is handwritten on the document, the name does not appear on any portion of the printed screen shot. Without any other information to verify the authenticity of this account with the Shady Grove Banking Center, such as a copy of a statement or checks associated with the account, we do not find this single document establishes either the existence of or the joint nature of this account.

In response to the director's request for evidence the petitioner submitted copies of bank statements. However, although the bank statements indicate that the petitioner and her spouse opened a joint account together with the Bank of America, the statements submitted cover the period from February 2003 to July 2003. Given that the statements contain no indication as to when the account was initially opened, it is unclear how this evidence, which is dated more than three months after the petitioner claims she no longer resided with her spouse, supports a claim that at the time she entered into the marriage in November 2002, the petitioner entered into the marriage in good faith. Further, the fact that the bank statements are in both names does not establish that both parties jointly accessed the account. The petitioner has not submitted any evidence, such as cancelled checks, to show that both the petitioner and her spouse both used the account.

Similarly, as the utility bills contained in the record are dated March 2003 and June 2003, they have no relevance to the petitioner's intent at the time of the marriage in November 2002. It is further noted that these utility bills are listed in the petitioner's spouse's name only.

The affidavit submitted to support the petitioner's claim of a good faith marriage also does not establish the petitioner's intent at the time of her marriage. In the affidavit provided by [REDACTED] acknowledges that she knew the petitioner "got married to [REDACTED] in November 2002 and that they lived together for three weeks" in Tacoma, Washington. [REDACTED] provides no further details about the petitioner's courtship, such as how they met or how long they dated. The lack of specificity does not support a finding that the petitioner entered the marriage in good faith.

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. The petitioner failed to submit evidence of joint ownership of cars or other property or copies of a joint lease during the time the petitioner claims they resided together. 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. 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. Regardless, the copies of the photographs contained in the record are of such poor quality that it is impossible to see the subjects contained in the photographs.

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 friend, does not lead to a finding that the petitioner entered her marriage in good faith.

On appeal, counsel argues that the director "found submitted evidence credible as to [the petitioner's] residency with her husband, but gives scant basis for the presumption of bad faith in entering her marriage." We are not persuaded by counsel's argument. First, it is clear that the issue of residency is a distinct and separate issue from the issue of a bona fide marriage. Although a petitioner may submit evidence that he or she did, in fact, reside with her spouse, that fact does not de facto establish that they resided in a bona fide marriage as husband and wife, rather than as roommates in an attempt to circumvent the immigration laws and to provide the petitioner with immigration status. Second, we find the director thoroughly discussed the evidence in the record and clearly articulated her reasons for finding a lack of evidence of a bona fide marriage. Specifically, on page 2 of the director's decision, the director notes the fact that the petitioner's spouse filed his taxes as head of household. Further, on page 3 of the director's decision indicates that the utility bills were in the petitioner's spouse's name only, that the utility bills and bank statements were issued at a time that the petitioner was not living with her spouse, that there was no evidence of the joint access to the bank accounts, that the bank statements contained certain peculiarities, and that the petitioner's photos were "illegible."

Upon review, we further find that it is not clear how the director reached the determination that the petitioner submitted "credible" evidence that the petitioner resided with her spouse. The director's affirmative determination regarding residence appears to have been based on the petitioner's submission of the utility bills, bank statements, photos, a "summary page," and an affidavit from the petitioner's acquaintance. Such evidence is the same evidence which resulted in the director's negative determination regarding the bona fides of the marriage and referred to as "peculiar." Moreover, in determining that the petitioner's bank and utility statements were not sufficient as evidence of the bona fides of the marriage, the director specifically noted that the petitioner's spouse was not living in the same state as the petitioner.

The evidence contained in the record casts doubt on the petitioner's claimed residence with her spouse. On the Form I-360, the petitioner indicates that she resided with her spouse from June 2002 until November 2002. However, in her affidavit the petitioner claims that her spouse "came to Tacoma for three weeks [when they got their marriage license]" and that he "came to Tacoma again in December in order to sign all the paperwork for my immigrant visa and the adjustment." In the affidavit from [REDACTED] indicates that the petitioner only lived with her husband in Tacoma for three weeks, "after which [the petitioner's spouse] went back to Memphis, Tennessee to prepare for moving . . . [to] Tacoma, WA to live with [the petitioner] as a couple and start a new life together. But this never happened . . ."

The Forms G-325A required as part of the Form I-130 petition submitted on the petitioner's behalf also contradict the petitioner's claims in regard to the instant petition. Specifically, the petitioner's G-325A form, dated December 16, 2002, indicates that she resided [REDACTED] Tennessee from December 2001 until August 2002 and at [REDACTED] Washington from October 2002 until December 2002. The petitioner does not indicate where she lived during September 2002. The petitioner's spouse, on a Form G-325A dated December 16, 2002, indicates that he lived at [REDACTED] in Memphis, Tennessee from March 1998 until October 2002 and at [REDACTED] Washington from October 2002 until December 2002. Thus, contrary to the petitioner's initial claim of the Form I-360 that she resided with her spouse for five months and the subsequent claim in her affidavit that they resided together for little more than three weeks, the Forms G-325A indicate that they resided

together, at most, for only two months. 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).

Based upon the above discussion, beyond the decision of the director, we find the record contains not only insufficient evidence but also contradictory evidence regarding the petitioner's claim of residence with her spouse. Accordingly, we withdraw the director's affirmative finding in this regard.

The remaining issue is whether the petitioner has established that she was battered or subjected to extreme cruelty.

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

- The petitioner's statement.
- A statement from the petitioner's acquaintance.
- An assessment from a clinical social worker.

In her statement, the petitioner indicates that her spouse became "very abusive in [their] conversations," that he yelled at the petitioner for "calling him so much and begging him to live with [her]," and that he called her names and hung up on her. The petitioner also states that her spouse's phone service was disconnected and she was no longer able to reach him by phone and that ultimately she caught her spouse with another woman.

In the evaluation submitted by [REDACTED] which is based upon the petitioner's recollection of events during a single, two-hour evaluation, [REDACTED] describes the circumstances of the petitioner's marriage. Dr. [REDACTED] states:

As time went on his phone calls to her decreased and he would not return her calls. She learned later that he was having an affair and that he had been fired from his job but had not informed her. Despite his promise to support her, she had ended up spending all her savings on him and the expenses that he incurred.

Throughout their marriage, [the petitioner's] husband was verbally abusive towards her. He would regularly curse at her, called her [names] and telling her she was "[expletive] up." He would make demeaning remarks to her and tell her that she was worthless and "crazy." The petitioner was devastated as he not only had been verbally abusive throughout the marriage but had committed adultery and lied to her.

In the statement submitted by [REDACTED] states that the petitioner's spouse "cut off communication" and the marriage was over when the petitioner found her spouse in a "compromising position with another woman." [REDACTED] does not describe any incidents of abuse or indicate that the petitioner told her that the petitioner was abused by her spouse.

The director, in her decision, noted contradictory information in the statements submitted and found such evidence was not sufficient to find the petitioner was battered or subjected to extreme cruelty. The director noted counsel's statement that [REDACTED] determined the petitioner suffered from psychological abuse so severe that she was deeply afraid to divorce husband, that the petitioner's spouse tried to prevent the petitioner from studying nursing, and that the petitioner was tied to her abusive spouse for fear of being deported. The director determined that counsel's statements were not supported by the evidence in the record. The director indicated that [REDACTED] evaluation did not contain any statement related to the petitioner's fear to divorce her spouse. The director also indicated that the petitioner's affidavit stated that her spouse was "supportive" of her plans to further her education and that she took time off from school, not because she was forced to by her spouse, but rather because she could not afford the fees. The director further noted that the petitioner's statement indicated her spouse did not want a divorce for financial reasons.

On appeal, counsel asserts that the director "appears to completely disregard the central finding of the evaluation and the accompanying affidavits that [the petitioner] has suffered severe emotional trauma as a result of the cruel behavior of her ex-husband" In an attempt to overcome the director's findings that the petitioner's evidence was contradictory, counsel argues that the director gave no "consideration of the timeline of these events" and states that while the petitioner's husband was "initially supportive of her desire to study nursing during the Summer of their engagement and shortly after the time of their marriage . . . the fact that these circumstances changed over time does not render them contradictory" Counsel does not address the other contradictory statements specifically noted by the director. Regardless, as we previously noted, it is the petitioner's responsibility 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. *Id.* Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaignena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).²

In review, we concur with the director's determination and find the evidence contained in the record does not support a finding of battery or extreme cruelty. First, as previously indicated, the statements made by the petitioner in support of the instant petition have been shown to contradict previous information previously submitted by the petitioner. Such contradictions cast doubt on the petitioner's overall veracity. Moreover, even if the petitioner's statements were found to be truthful, we are not persuaded that the circumstances described rise to such a level that we can find the petitioner was battered or subjected to extreme cruelty. The claims that the petitioner was called names, that her spouse did not inform her that he lost his job, that he did

² Despite the fact that we have not considered the petitioner's affidavit submitted on appeal pursuant to the precedent set in *Matter of Soriano*, we note that in her affidavit the petitioner does not state that her spouse was not supportive of her education and reiterates the fact that she stopped studying "due to financial reasons." The petitioner also fails to describe any qualifying physical or psychological abuse and states only that her spouse "hurt [her] feeling[s] by cheating on [her] with another woman while [the petitioner] was struggling in Washington to prepare [their] future together."

not support her financially, that he failed to come to live with her and ultimately had an extramarital affair, do not sufficiently establish that the petitioner suffered any physical abuse or extreme cruelty.

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 proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.