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U.S. Citizenship  
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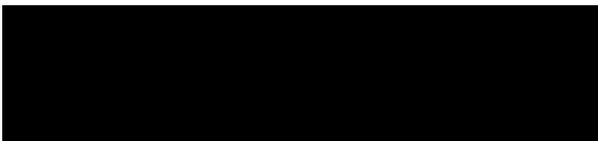
Office: VERMONT SERVICE CENTER

Date: JAN 10 2006

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 Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a native and citizen of Russia who seeks 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 an alien subjected to battery or extreme cruelty by her United States citizen spouse. Finding insufficient evidence to establish the petitioner's eligibility, the director issued a Request for Evidence (RFE) on August 19, 2004. The petitioner timely responded with additional evidence on October 8, 2004. On February 9, 2005, the director denied the petition, finding that the evidence submitted initially and in response to the Request for Evidence did not establish that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. On appeal, counsel submits a brief and asserts that the director disregarded certain probative evidence and failed to give sufficient weight to other evidence in the record. Because we concur with the director's determination that the petitioner meets all the other statutory eligibility criteria, the only issue on appeal is whether or not the petitioner's husband subjected her to battery or extreme cruelty during their marriage. As discussed below, we find that the record establishes this criterion and sustain the appeal.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if he or she demonstrates that the marriage to the United States citizen spouse was entered into in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II), 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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, including rape, molestation, incest (if the victim is a minor), or forced prostitution 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 . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The regulation at 8 C.F.R. § 204.2(c)(2) further states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(iv) *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 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.

In this case, the record shows that the petitioner married ██████████, a U.S. citizen, on December 28, 2001. To support her claim that Mr. ██████████ subjected her to extreme cruelty during their marriage, the petitioner initially submitted her own affidavit; affidavits from her mother, brother, uncle and a family friend; and medical records of her prenatal care and treatment for depression. In response to the RFE, the petitioner submitted the family court record of a divorce pre-mediation conference between the petitioner and her husband concerning a parenting plan for their daughter, a psychological evaluation of the petitioner, and a printout of an electronic mail message from the American Citizen Services Unit of the U.S. Embassy in Moscow explaining why the embassy could not certify the U.S. citizenship of the daughter of the petitioner and her husband. In his decision, the director briefly states that the petitioner and her uncle attest that Mr. ██████████ was controlling. The psychological evaluation of the petitioner submitted in response to the RFE is the only other evidence discussed in the director's decision. The director did not fully assess the affidavits and did not address other significant and credible evidence of extreme cruelty in the record.

In her affidavit, the petitioner states that her husband initially took her employment authorization card away from her and did not let her see their marriage certificate or the deed to their condominium. When the petitioner asked him about the deed, she reports that he told her it was none of her business. The petitioner states that her husband refused to obtain health insurance for her, never gave her any spending money and that she had to rely on her elderly uncle (in the United States) for money to purchase her personal necessities. Although Mr. ██████████ eventually added the petitioner to his bank account, she states that he did not allow her to write checks from the account. In addition, the petitioner explains that Mr. ██████████ would give her money only for groceries, make her return the change to him, would scrutinize the grocery receipts and if he disagreed with a purchase, would make her return the item to the grocery store.

The petitioner states that after she learned she was pregnant in March 2002, Mr. ██████████ repeatedly encouraged her to get an abortion. When she would not do so and experienced heavy vaginal bleeding early in her pregnancy, the petitioner states that Mr. ██████████ refused to take her to the hospital. The petitioner states that Mr. ██████████ later obtained a temporary health insurance card for her through a state public benefits program. The petitioner explains that in April 2002 she was hospitalized due to additional bleeding and the risk of an ectopic pregnancy. The petitioner reports that her husband did nothing to support her during this time. Instead, when her medical difficulties prevented them from having intimate relations, the petitioner states that her husband told her that they would be happier if she got an abortion.

The petitioner reports that as her pregnancy progressed, her husband's controlling behavior became abusive. For example, the petitioner states that Mr. ██████████ would give her detailed daily schedules of "when to wake up, when to shower, when to perform certain tasks in the apartment, when to call him, etc." The petitioner explains

that her husband would call her repeatedly to ensure that she stuck to the appointed schedule and that when she failed to call him at the exact time he specified, he would become enraged. According to the petitioner, Mr. [REDACTED] also told her when and what to eat and that if she could not eat because of her morning sickness, he would yell at her for wasting food and money. The petitioner reports that beginning in April 2002, Mr. [REDACTED] would leave long lists of chores for her to do while he was at work. When the petitioner was unable to complete the tasks due to her morning sickness, she states that her husband would scream at her. If Mr. [REDACTED] was dissatisfied with her work, the petitioner states that he would force her to, for example, repeatedly clean the bathroom until it met his standards. The petitioner states that her husband soon began to scream at her and make her repeat chores every day. When she displeased her husband, the petitioner states that he also threatened to send her back to Russia.

In May 2002, the petitioner states that she received notice that her medical insurance would be terminated because the agency determined that her husband made too much money to qualify for the public program. The petitioner reports that her husband told her to get an abortion before the insurance was terminated. When she would not do so, the petitioner states that her husband refused to obtain private health insurance for her and told her she would have to return to Russia where she could receive free medical care. The petitioner explains that she had no financial resources of her own to purchase health insurance and returned to Russia because she did not want to risk remaining in the United States without such coverage.

Shortly after the birth of the couple's daughter on November 5, 2002, the petitioner states that her husband called her four times, but refused to send her money or the documents needed to register their daughter's birth and bring the baby to the United States. The petitioner explains that she was only able to register her daughter's birth after her uncle in the United States obtained a copy of her marriage certificate. In early December 2002, the petitioner states that her husband stopped contacting her and never returned her calls. In early January 2003, the petitioner states that she was shocked to receive a divorce complaint from her husband.<sup>1</sup> In May 2003, the petitioner states that she realized that her advance parole was about to expire and decided to return to the United States to try and resolve the situation with her husband in person. When she went to the U.S. Embassy in Moscow and asked how she could bring her infant daughter to the United States, the petitioner explains that she was given forms and told that her husband needed to sign them. The petitioner reports that she sent the forms to her uncle in the United States who went to see her husband and asked him to sign the forms, but that Mr. [REDACTED] again refused.

The petitioner explains that she returned to the United States alone in May 2003 and thought that her daughter would soon be able to join her. After her return, the petitioner states that she went to see her husband, but he refused to let her enter their condominium and again refused to sign the documents for their daughter. Subsequently, the petitioner states that after the judge in their divorce case ordered Mr. [REDACTED] to allow her to get her personal belongings, Mr. [REDACTED] yelled at the petitioner and again refused to let her enter their condominium. Shortly thereafter, the petitioner reports that her husband's attorney told her she could go and collect her possessions, but that when she arrived, her husband would not allow her inside and shoved boxes of her belongings at her on the street. The petitioner states that she is heartbroken and devastated by her husband's treatment of her and their daughter. She reports feeling stressed, demeaned, degraded and worthless while

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<sup>1</sup> The record shows that at the time of filing, the petitioner's marriage to Mr. [REDACTED] had not been legally terminated and that as of March 26, 2004, the couple was still involved in pre-mediation proceedings within Family Court Services of the Superior Court of San Diego.

living with him and states, "I feel that Yuriy is trying to discard Larisa [their daughter] and me as though we were pieces of garbage."

Other evidence in the record corroborates the petitioner's claim and further documents the effects of her husband's abuse. The petitioner's prenatal records from the Alvarado Hospital Medical Center in San Diego confirm that the petitioner experienced vaginal bleeding in late March 2002, that she was at risk of having an ectopic pregnancy and that she was hospitalized on April 24, 2002 due to complications with her pregnancy. The petitioner also submitted medical records of her assessment and treatment for depression in August and September 2003. These records show that the petitioner was diagnosed with major depressive disorder and prescribed anti-depressant medication. The records further state that the petitioner had no prior history of any mental health problems and that the precipitating factors of the petitioner's depression were her husband's desire that she obtain an abortion, his refusal to obtain health insurance for her, his unexpected filing for divorce and his refusal to sign the documents for his daughter to obtain a U.S. passport. The family court record states that Mr. [REDACTED] had not provided for his daughter since her birth and did not see her during his return trip to Russia in the summer of 2003. The electronic mail message from the U.S. embassy in Moscow confirms that the embassy denied the application for a Consular Report of Birth Abroad to a U.S. citizen for the couple's daughter. The message further states that without Mr. [REDACTED] participation, it will be "very difficult" to establish the child's U.S. citizenship.

Although the affidavits from the petitioner's family members and friend are of limited probative value to the extent that they describe events as related to them by the petitioner, two of the affidavits provide credible evidence to corroborate certain events that they witnessed and attest to the effects of Mr. [REDACTED] abuse on the petitioner based on the affiants' direct observations of and interactions with her. [REDACTED] the petitioner's mother, states that after the petitioner returned to Russia she stayed with her. In early January, Ms. [REDACTED] confirms that they received a package with divorce papers from Mr. [REDACTED]. Ms. [REDACTED] states that her daughter became deeply depressed and was unable to continue nursing her baby because she lost her milk. Ms. [REDACTED] explains that the petitioner's decision to return to the United States without her daughter was extremely hard for her and that through their subsequent telephone conversations, Ms. [REDACTED] can tell that the petitioner is deeply depressed because she is separated from her child and because her husband refuses to sign the documents to allow their child join her in the United States.

[REDACTED] states that the petitioner is his relative. Mr. [REDACTED] confirms that he gave money to the petitioner for her personal necessities because her husband would not do so. After the petitioner returned to Russia, Mr. [REDACTED] confirms that he went to see Mr. [REDACTED] and asked him to sign the papers for the baby, but that Mr. [REDACTED] refused. Mr. [REDACTED] also confirms that the petitioner has stayed with him since her return to the United States, that he took her back to her marital residence to collect her belongings on three occasions and that Mr. [REDACTED] refused to let her enter the apartment. Mr. [REDACTED] states that since her return to the United States, the petitioner is sad all the time and frequently has migraine headaches.

In response to the RFE, counsel submitted a psychological evaluation of the petitioner conducted by Dr. [REDACTED]. The attached curriculum vitae of Dr. [REDACTED] shows that he has a doctorate in clinical psychology, is a diplomate of the American Board of Psychological Specialties in assessment, evaluation and testing; and that much of his work concerns the provision of competent diagnosis and treatment to members of culturally and linguistically isolated populations. [REDACTED] states that he met with the petitioner on two occasions for a total of approximately three hours and that the evaluation was conducted through a Russian language interpreter from a refugee resettlement organization. Dr. [REDACTED] describes the petitioner's

experiences as related by her, but states, "Her distress was also directly evident during the evaluation. She was reluctant to talk about her experiences and presented as very quiet and withdrawn." Dr. [REDACTED] diagnosed the petitioner with "Adjustment Disorder with Mixed Anxiety and Depressed Mood (309.28) as per criteria set forth in the Diagnostic and Statistical Manual, Fourth Edition – Text Revision (DSM-IV-TR)."

Dr. [REDACTED] concludes his diagnosis by stating:

Ms. [REDACTED] reported and exhibited no indicators of other major mental disorders during the clinical interview or on psychological measures. She has certainly faced a series of challenging events in her marriage. It is thus probable that these stressors created conditions in which clinically significant symptoms emerged. The lack of resolution to some marriage-related problems likely perpetuates noted symptoms. It thus appears that Ms. [REDACTED] present difficulties are linked with reported events rather than with some other pre-existing psychopathology.

In assessing this portion of Dr. [REDACTED] evaluation, the director stated:

It is noted that Dr. [REDACTED] attributes your depression and anxiety to the difficulties you experienced in your marriage. While it is noted that you ascribe these problems to emotional abuse, Dr. [REDACTED] has not offered that he also concludes that the stress you experienced in your marriage was due to extreme mental cruelty. The Service cannot find that experiencing marriage difficulties is one in the same as being subjected to extreme mental cruelty.

On appeal, counsel contends that because Dr. [REDACTED] has no formal training in either immigration or criminal law and there is no evidence that he reviewed the legal definition of extreme cruelty, Dr. [REDACTED] is not qualified to determine whether the petitioner was subjected to extreme cruelty. Counsel states, "Dr. [REDACTED]s only position in this case was to conduct a full professional analysis of the psychological effects of Mrs. [REDACTED] prior experiences, not to assign legal definitions quantifying his perception of the cruelty of her husband's actions during the course of their marriage." We agree. We further note that according to his curriculum vitae, Dr. [REDACTED] only experience in working with survivors of domestic abuse is a one-year internship for a child abuse treatment agency while he was a doctoral student. Hence, Dr. [REDACTED] evaluation is probative only in respect to how it diagnoses the petitioner's symptoms and determines that they are linked to her experiences with her husband.

In determining that her husband did not subject the petitioner to extreme cruelty, the director only briefly addressed the petitioner's affidavit, Mr. [REDACTED] affidavit and Dr. [REDACTED] evaluation. The director did not fully assess the affidavits of the petitioner and Mr. [REDACTED] and did not address the petitioner's medical records, the family court record, the electronic mail message from the U.S. Embassy in Moscow, or Ms. [REDACTED] affidavit. This evidence demonstrates that during their joint residence, the petitioner's husband was extremely controlling, repeatedly degraded the petitioner, and threatened to send her back to Russia. Mr. [REDACTED] refused to take the petitioner to the hospital when she experienced vaginal bleeding in the early stages of her pregnancy. Medical records confirm that the petitioner experienced abnormal bleeding, was at risk of having an ectopic pregnancy and was subsequently hospitalized. After the petitioner's public health insurance was terminated, Mr. [REDACTED] refused to purchase private insurance for her and sent the petitioner back to Russia. After the couple's daughter was born, Mr. [REDACTED] provided no financial or material support to the petitioner or their baby. Mr. [REDACTED] also refused to provide documentation to register the child's birth and U.S. citizenship. As a result, the petitioner has been separated from her daughter, was diagnosed

with and treated for major depressive disorder in August 2003, as confirmed by medical records; and, according to a professional psychological evaluation, continued to suffer from depression and anxiety related to her husband's treatment over a year later in the Fall of 2004. The record thus shows that Mr. [REDACTED] maltreatment of the petitioner during their marriage rose to the level of extreme cruelty.

The petitioner has established that her U.S. citizen husband subjected her to extreme cruelty during their marriage. We concur with the director's determination that the petitioner meets all the other statutory requirements. Hence, the petitioner has established that she is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition will be approved. [REDACTED] the petitioner's child whose birth and parentage are documented in the record, is a derivative beneficiary of this petition.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal is sustained.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained and the petition is approved.