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[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: JUN 01 2006
EAC 03 237 56601

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

[REDACTED]

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

2 Robert P. Wiemann, Chief
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 Hong Kong and citizen of the United Kingdom who is seeking classification as a special immigrant pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the battered spouse of a lawful permanent resident of the United States.

On September 6, 2005, the director determined that the petitioner failed to establish that she is eligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act. The director denied the petition, finding that the petitioner failed to establish that she has resided with the United States lawful permanent resident spouse; has been battered by, or the subject of extreme cruelty perpetrated by, her United States lawful permanent resident spouse; and entered into the marriage in good faith.

On appeal, counsel for the petitioner submits a statement and additional evidence. Counsel also requested an extension of time to submit additional evidence in support of the appeal. More than six months have lapsed and counsel for the petitioner failed to submit anything more.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident 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 Attorney General that—

- (aa) the marriage or the intent to marry the lawful permanent resident 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)(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 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.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

Good faith marriage. A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws.

According to the evidence on the record, the petitioner wed [REDACTED] a lawful permanent resident of the United States, on May 22, 1998 in Alameda County, California.¹ On August 13, 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 United States lawful permanent resident 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 United States lawful permanent resident 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 perpetrated by, her spouse, the director requested that she submit additional evidence on July 14, 2004. On September 14, 2004, the petitioner responded to the request, and submitted additional evidence. The director issued a notice of intent to deny the petition. The petitioner responded to the notice of intent to deny the petition.

On appeal, counsel for the petitioner submits additional evidence relating to battery or extreme cruelty.

The evidence relating to the abuse is as follows: statements from the petitioner, her parents, sisters and aunt; a letter written by [REDACTED] marriage and family therapist, dated May 4, 2005; and a letter written by [REDACTED] a licensed psychologist, dated November 3, 2005.

The petitioner stated that her husband treated her like a slave and would demand sex all the time. She said that her husband took advantage of her, abused her and yelled at her. The petitioner spoke in very general terms. She failed to provide sufficient details about the alleged abuse.

The petitioner's sister [REDACTED] stated that the petitioner told her that her husband had mistreated her and even pushed her around. The basis of her testimony is second-hand knowledge and is thus given less weight.

[REDACTED] another sister of the petitioner, stated that she accompanied the petitioner home once and they found the petitioner's spouse alone with a woman wearing little clothing. Discovering one's spouse engaging in an extramarital affair is not battery or extreme cruelty as defined in the Act and pertinent regulations. [REDACTED] stated that the petitioner came to her saying that her husband had thrown her out of their home and that she learned from the petitioner that the petitioner's husband "had been very mean to her."

[REDACTED] the petitioner's aunt, claimed that she overheard phone conversations between the petitioner and her spouse. She said that the spouse demanded money from the petitioner and treated the petitioner rudely. In a statement, [REDACTED] said that she lived with the petitioner's husband and noticed that the petitioner slept on the couch and that the husband treated the petitioner rudely. Rudeness does not necessarily equate to battery or extreme cruelty.

¹ Although [REDACTED] is referred to as the petitioner's spouse, he was in fact, an intended spouse because he did not terminate his prior marriage before marrying the petitioner.

The petitioner's parents wrote that during a visit to the United States they were present when their daughter, the petitioner, returned to her aunt's home because her husband was not ready to live with her. The parents further indicated that their daughter seemed to be timid, nervous, and confused. They attributed the petitioner's unhappiness to her marriage. The conduct described, refusing to share an abode, does not rise to the level of battery or extreme cruelty.

MFT, wrote that she saw the petitioner on April 10, 2003 at an outpatient mental health clinic. According to the petitioner's treatment team determined that her "former abusive marital relationship had contributed to her symptoms of hypervigilance, flashbacks of the abuse, feeling vulnerable, unsafe, powerless and depression." did not provide details about the abuse. Similarly, failed to provide details about the abuse.

The evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by her United States resident spouse. The conduct complained of does not rise to the level of battery or extreme mental cruelty. On appeal counsel asserts that the level of abuse from the petitioner's ex-husband is sufficient to meet the extreme cruelty standard. The assertions of counsel do not constitute evidence. 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 Obaigbena*, 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). Accordingly, the petitioner has not established that she has been battered by, or subjected to extreme cruelty by, her lawful permanent resident spouse. She is thus ineligible for classification under section 204(a)(1)(B)(ii) of the Act and her self-petition must be denied.

The second issue to be addressed in this proceeding is whether the petitioner established that she had resided with her spouse during the marriage. Because the petitioner furnished insufficient evidence to establish that she resided with her spouse, the director requested that she submit additional evidence on July 14, 2004. On September 14, 2004, the petitioner responded to the request, and submitted additional evidence. On June 13, 2005, the director issued a notice of intent to deny the petition. The petitioner responded to the notice of intent to deny the petition.

On the Form I-360, the petitioner is required to state when and where she resided with her spouse. The petitioner indicated "2001 --? 2001" on the Form I-360. Later, the petitioner's counsel indicated that the response was her error. In connection with a Form I-130 petition, the petitioner's spouse indicated on his Form G-325A dated March 27, 2000, that he had resided at Oakland since 1995. The petitioner did not claim to have lived at that address on her Form G-325A. In an affidavit, a former roommate of the petitioner's spouse said that the petitioner lived with her spouse for more than a month in early 1999. The petitioner failed to resolve the inconsistencies between the roommate's testimony and the Form G-325A's. On her 1999 tax return, the petitioner indicated that she lived on . On her 2000 and 2001 tax returns, she indicated that she lived on Abbey Street. On her 2002 return, she indicated that she lived on . None of her reported addresses match that of her husband's. The petitioner submitted a Form G-325A with her Form I-360 in which she listed her residences from 1995 through January 2005. She did not indicate that she had ever resided at her husband's address. The petitioner failed to establish that she resided with her spouse. Accordingly, her petition may not be approved.

The next issue to be addressed is whether the petitioner established that she married her husband in good faith. Because the petitioner furnished insufficient evidence to establish that she entered into her marriage in good faith, the director requested that she submit additional evidence on July 14, 2004. On September 14, 2004, the

petitioner responded to the request, and submitted additional evidence. On June 13, 2005, the director issued a notice of intent to deny the petition. The petitioner responded to the notice of intent to deny the petition.

In support of her claim that she married her spouse in good faith, the petitioner submitted her own statement, those of her parents, sisters, aunt and a friend. She submitted HIV test results, copies of credit cards and an identification card showing she used her married name. She also submitted one photograph of the petitioner and her spouse.

While the photograph is evidence that the petitioner and her spouse were together at a particular place and time, it does not establish the petitioner's intent at the time of her marriage or that she resided with her spouse. In the statements provided by the petitioner, the petitioner fails to detail her reasons for marrying her spouse and to provide a statement regarding her intent at that time. She indicated that they had a short courtship because he insisted they marry right away so that he could apply for her residence. She admits that she did not move in with him right after they married because she wanted to get to know him better. She also admits that she paid him to attend a Citizenship and Immigration Services (CIS) interview with her after he filed the Form I-130 petition. The other statements fail to outline the petitioner's emotions or intent. Further, as noted by the director, the record is absent evidence of the commingling of funds and assets, or financial accounts or documentation, which demonstrate a good faith marriage. The record contains a letter from the petitioner's spouse indicating that he is disabled and unable to work. The letter does explain the absence of documentation of shared assets and responsibilities. The petitioner failed to establish that she entered into the marriage in good faith. Accordingly, the petition must be denied.

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. § 1362. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.