



U.S. Citizenship  
and Immigration  
Services

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

109



FILE: [Redacted]  
EAC 05 126 53366

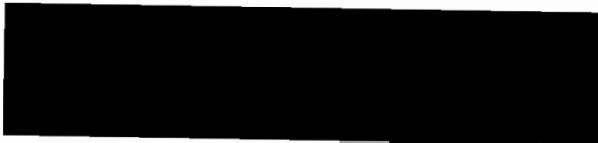
Office: VERMONT SERVICE CENTER

Date: JUN 23 2006

IN RE: Petitioner: [Redacted]

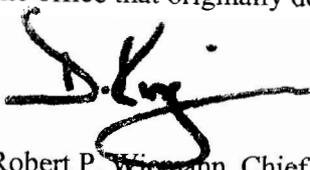
PETITION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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, Chief  
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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that her husband battered or subjected her to extreme cruelty during their marriage.

On appeal, counsel submits a brief and an annotated section of New York state domestic relations law.

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 the alien demonstrates that he or she entered into the marriage with the United States citizen spouse 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 abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

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

*(vi) 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 evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which 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 abuse 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 petitioner in this case is a native and citizen of Poland who entered the United States on June 13, 2002 as a nonimmigrant visitor (B-2). On September 23, 2003, the petitioner married [REDACTED] a U.S. citizen, in New York City. On March 28, 2005, the petitioner filed this Form I-360. On August 4, 2005, the director issued a notice explaining the deficiencies of the evidence submitted with the petition and requested the petitioner to submit additional evidence of battery or extreme cruelty. On October 3, 2005, the petitioner submitted further evidence. On November 3, 2005, the director denied the petition because the record did not establish that Mr. [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage. The petitioner, through counsel, timely appealed.

On appeal, counsel contends that Mr. [REDACTED] abused the petitioner and submits an annotated section of the New York state domestic relations law to support his contentions. We concur with the director's determination and find that counsel's claims on appeal do not overcome the grounds for denial. Nonetheless, the case will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

*Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

#### *Battery or Extreme Cruelty*

In her first affidavit dated February 19, 2005, the petitioner states that on one occasion shortly after their marriage, Mr. [REDACTED] came home intoxicated, became enraged at what the petitioner was cooking, threw the pot against the wall, grabbed the petitioner's hair, pulled her to the floor, and threatened to beat her with the pot if she ever cooked such food again. On another occasion, the

petitioner reports that Mr. [REDACTED] began insulting the petitioner, put a pillow over her face, sat on her chest and tried to strangle her. When the petitioner threatened to call the police, she states that Mr. [REDACTED] hit her with the pillow, laughed and said that he would break her legs and hands if she called the police.

The petitioner explains that when she tried to talk to Mr. [REDACTED] about his drinking problem, he would scream insults at her and call her derogatory names. In November 2003 during a visit from Mr. [REDACTED]'s sister, the petitioner states that Mr. [REDACTED] belittled her in front of his family, kicked her when she tried to get into their bed, and told her to sleep on the sofa. The petitioner reports that on another occasion when Mr. [REDACTED] came home and his dog wanted to go out, Mr. [REDACTED] kicked the dog, pushed the petitioner against the wall, screamed at her for not taking care of the dog and threatened to beat her with the dog's leash if it happened again.

Shortly after Thanksgiving in 2003, the petitioner states that Mr. [REDACTED] told her that another woman living in Texas had just given birth to his son. The petitioner reports that Mr. [REDACTED] later accused the petitioner of being inhuman to his son, caught her throat and pushed her against the wall. In March 2004, the petitioner reports that Mr. [REDACTED] left her a message that he was moving to Texas and that the petitioner would have to move because he gave their landlord notice that they were both moving out. The petitioner states that Mr. [REDACTED] stole most of her documents when he left.

In her affidavit dated March 2, 2005, the petitioner's sister, [REDACTED], states that the petitioner did not tell her about Mr. [REDACTED] abuse for a long time, but that she detected a change in Mr. [REDACTED]'s attitude towards the petitioner shortly after Thanksgiving in 2003. Ms. [REDACTED] states that in January 2004, the petitioner told her that Mr. [REDACTED] was going to leave, that the petitioner was undergoing a nervous breakdown, but that when Ms. [REDACTED] tried to contact Mr. [REDACTED] the petitioner asked her to stop interfering. Ms. [REDACTED] states that Mr. [REDACTED] abandoned the petitioner in March 2004 and that she was forced to move out of their apartment with no means of support.

In her affidavit dated March 10, 2005, the petitioner's friend, [REDACTED], states that she saw a difference in Mr. [REDACTED]'s attitude toward the petitioner shortly after Thanksgiving in 2003 when he began to belittle the petitioner in front of Ms. [REDACTED] and other friends. Ms. [REDACTED] states that the petitioner told her that Mr. [REDACTED] pushed her around and pulled her hair and that in March 2004, Mr. [REDACTED] made the petitioner move out of their apartment.

In her letter dated May 3, 2004, the petitioner's counselor, [REDACTED], states that the petitioner began weekly psychotherapy sessions on April 9, 2004. Ms. [REDACTED] further states, "Her therapy sessions focus on the failure of her marriage. In my opinion, she is suffering from symptoms of anxiety and depression as a result of having been abandoned and emotionally abused by her husband."

In response to the director's request for additional evidence, the petitioner submitted her supplemental affidavit dated September 30, 2005 and a second letter from her counselor, Ms. [REDACTED], dated

September 26, 2005. In her second affidavit, the petitioner explains that after Mr. [REDACTED] began changing two months after their marriage, he would push her against the wall, pull her hair, and insult her when she tried to find out what was wrong. She reiterates that Mr. [REDACTED] had problems with alcohol and substance abuse. She reports that Mr. [REDACTED] would lock her in the apartment all day until he came back from work. She states that when he went to Texas to visit his son, he did not leave her any money for living expenses or the bills. When he returned, the petitioner reports that he would insult her, throw her around the apartment and said that he would get rid of her because she was not letting him be with his son. The petitioner states that she was afraid to tell her sister and Ms. [REDACTED] about Mr. [REDACTED]'s abuse. The petitioner explains that Mr. [REDACTED] first left a note telling her that he was thinking of moving to Texas and that a few weeks later, he left her a voice mail message that he had given notice to their landlord. Before he moved out, the petitioner states that Mr. [REDACTED] once told her that if she ever dialed 911, he would kill her. The petitioner further explains that she never sought shelter except with her sister after she moved out of her and Mr. [REDACTED]'s apartment. She also states that she never took pictures of herself after Mr. [REDACTED]'s assaults because it never occurred to her to preserve evidence of his abuse and she was not proud of her appearance at that time.

In her second letter, Ms. [REDACTED] confirms that the petitioner saw her for six psychotherapy sessions between April 9 and May 21, 2004. She again states that the therapy sessions focused on the failure of the petitioner's marriage and that the petitioner suffered symptoms of anxiety and depression from being abandoned and emotionally abused by Mr. [REDACTED]. The majority of Ms. [REDACTED] second letter recounts the petitioner's marital experiences as related by the petitioner.

On appeal, counsel claims that Mr. [REDACTED] subjected the petitioner to extreme cruelty through his frequent intoxication, threats, behavior regarding his son through an extramarital relationship, belittlement and humiliation of the petitioner, and forcing her out of their apartment. Counsel cites the cruel and inhuman treatment ground for divorce in New York state domestic relations law as persuasive authority. While counsel acknowledges that New York state law does not bind our decision, he offers no compelling reason why we should recognize such law as persuasive authority. For example, the record contains no evidence that the petitioner received a divorce from Mr. [REDACTED] on the ground of his cruel and inhuman treatment ( N.Y. Dom. Rel. § 170(1) (McKinney 2003)).

We concur with the director's determination and find that the record does not establish battery or extreme cruelty. The petitioner reports incidents of Mr. [REDACTED] alleged physical assaults, threats, and other behavior that could constitute battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1). However, her statements are not adequately corroborated by the other relevant evidence in the record. Ms. [REDACTED] letters do not mention Mr. [REDACTED] physical assaults and the petitioner does not explain this discrepancy by stating, for example, that she felt uncomfortable discussing Mr. [REDACTED] physical abuse with Ms. [REDACTED]. Apart from her assertion that the petitioner suffered from Mr. [REDACTED]'s emotional abuse, Ms. [REDACTED] provides no detailed, substantive clinical assessment of the petitioner's condition and does not indicate that the petitioner's affect or behavior is consistent with surviving domestic violence. For example, Ms. [REDACTED] does not explain that many survivors of domestic violence find the emotional

betrayal and psychological abuse to be more damaging than the physical assaults of their abusers and hence, tend to focus on those aspects of the abuse during therapy. The record also does not state Ms. [REDACTED] professional credentials or indicate that she has any **specialized training or experience** in diagnosing and treating survivors of domestic violence. Accordingly, Ms. [REDACTED]'s letters are of little probative value.

The affidavits of the petitioner's mother and friend similarly provide little support for the petitioner's claim. In her first affidavit, the petitioner states that when they were visiting her sister for Thanksgiving in 2003, Mr. [REDACTED] grabbed her arm, but released it when her sister entered the room. The petitioner states that she did not tell her sister about Mr. [REDACTED]'s abuse because she was humiliated. However, in her own affidavit, Ms. [REDACTED] does not discuss this incident. In her second affidavit, the petitioner states that she was afraid of telling Ms. [REDACTED] or Ms. [REDACTED] about her marital problems. Yet she does not explain her fear by stating, for example, that Mr. [REDACTED] threatened to harm her if she told anyone about his abuse. The testimonial evidence indicates that apart from the incident when Mr. [REDACTED] grabbed the petitioner's arm, neither Ms. [REDACTED] nor Ms. [REDACTED] personally observed Mr. [REDACTED] physically assault or psychologically abuse the petitioner. Ms. [REDACTED] and Ms. [REDACTED] also do not provide any substantive, detailed discussion of why they believe that the petitioner was subjected to Mr. [REDACTED] "abusive behavior." Ms. [REDACTED] states that the petitioner was undergoing a nervous breakdown, but neither she nor Ms. [REDACTED] discuss in any detail significant changes in the petitioner's physical or mental health that they observed during her marriage and after her separation from Mr. [REDACTED]. Consequently, the affidavits of Ms. [REDACTED] and Ms. [REDACTED] are of little probative value.

The present record does not establish that Mr. [REDACTED] battered or subjected the petitioner to extreme cruelty during their marriage as required by section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.