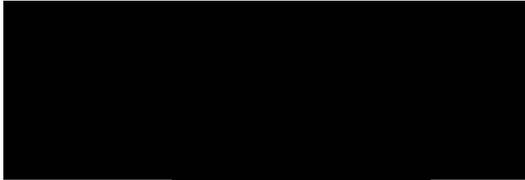


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services



B9

FILE: [Redacted]
EAC 05 189 51564

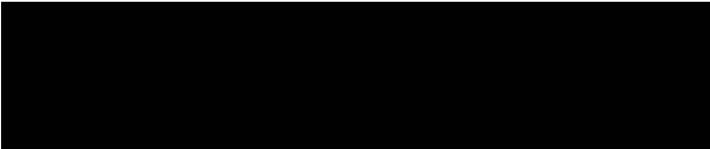
Office: VERMONT SERVICE CENTER

Date: NOV 17 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:



PHOTOCOPY

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.

A handwritten signature in black ink, appearing to read "R. Wichmann".

Robert P. Wichmann, 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 appeal will be dismissed.

The petitioner seeks classification as an 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 because the petitioner did not establish that her husband battered or subjected her to extreme cruelty.

On appeal, counsel submits a brief and copies of documents previously submitted.

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 or a child of 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).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider 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 [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which 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 further explicated 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of China who entered the United States on July 4, 2002 as the nonimmigrant fiancée (K-1) of E-X¹, a U.S. citizen. The petitioner married E-X- on September 29, 2002 in Nevada. The former couple's marriage was dissolved on July 14, 2003. The petitioner was placed and remains in removal proceedings before the San Francisco Immigration Court with her next hearing scheduled for November 22, 2006. On June 20, 2005, the petitioner filed the instant Form I-360. On October 19, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded. On April 28, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish, *inter alia*, the requisite battery or extreme cruelty. The petitioner, through counsel, timely responded to the NOID. The director denied the petition because the record did not demonstrate that the petitioner's former husband battered or subjected her to extreme cruelty during their marriage.

On appeal, counsel claims that the director's decision cited inconsistencies and relied on adverse credibility determinations that are not supported by the record. Counsel's contentions do not overcome the ground for denial and the appeal will be dismissed.

¹ Name withheld to protect individual's identity.

Battery or Extreme Cruelty

The petitioner submitted the following evidence relevant to her claim of battery or extreme cruelty:

- Her February 9, 2005 declaration;
- Her supplemental declaration dated December 2, 2005;
- The petitioner's third declaration dated June 26, 2006;
- The undated statement of [REDACTED] the petitioner's former English teacher;
- The June 20, 2006 letter from the petitioner's friend, [REDACTED] and
- The June 18, 2006 letter from the petitioner's friend, [REDACTED]

In her three declarations, the petitioner states that her former husband's behavior began to change after his fiancée petition filed on her behalf was approved. The petitioner explains that her former husband did not save any money to buy her parents the customary gifts and that she consequently had to cancel their visit to her parents' home. The petitioner states that her former husband then insisted she leave China immediately after receiving her visa, did not allow her time to settle her affairs, and spoke to her with a harsh and impatient tone on two occasions. After their arrival in the United States, the petitioner reports being shocked to find out that her former husband did not have a home, but lived illegally in the back of his store.

The petitioner states that her former husband asked her for all of her money shortly after they arrived, only gave her money to buy groceries and would ask for the change and the receipt when she returned. The petitioner reports that her former husband did not buy her any clothes and she had to wear old clothes left by her former husband's first wife. The petitioner explains that her former husband would only let her call her family in China by using his leftover telephone cards with only a few minutes of talking time remaining. The petitioner reports that although she went to English classes in the morning, her former husband demanded that she return immediately afterwards. The petitioner states that her former husband demanded that she cook all of the meals, clean and care for his son. The petitioner reports that her former husband would call her useless, stupid and compare her to a pig. The petitioner also states that her former husband forced her to engage in sexual relations against her will even when his son was sleeping in the same room with them. The petitioner explains that she did not know that in the United States a husband cannot force his wife to have sexual relations because in China such an issue "would be considered a family matter and the public courts would not interfere." The petitioner also explains that she never thought of calling the police or telling her friends the details of her marital problems "because of the private nature of what happened."

the petitioner's former English teacher, states that he met the petitioner when she was his student in the Fall of 2002. [REDACTED] explains that the petitioner told him that she could not buy a textbook for herself because she had been harassed by her former husband about money and was afraid to make such a purchase. [REDACTED] further states that once the petitioner was sick, but told him that she wasn't allowed to get medical treatment. On another occasion, [REDACTED] reports that the petitioner came to class with a severe burn and said that a boy had bump er w e she was cooking,

but [REDACTED] “wondered about [the burn’s] origins and lack of professional treatment.” [REDACTED] indicates that the petitioner confided in him about her marital problems and stayed with him from the winter of 2002 until the summer of 2003. [REDACTED] states that the petitioner had little money with her when she left her former husband and received no money from him after she left.

The petitioner’s friend [REDACTED] states that the petitioner called her, cried and stated that her situation had become intolerable. [REDACTED] indicates that the petitioner told her that her former husband was “selfish and inconsiderate” and “violent and savage in his character.” [REDACTED] provides no substantive details or dates concerning the alleged abuse. [REDACTED] another friend of the petitioner, states that she lost contact with the petitioner after the petitioner went to the United States, but that she later found out that the petitioner had divorced and that “her situation was bad.” [REDACTED] provides no probative information regarding the petitioner’s claims.

The testimonial evidence indicates that the petitioner’s former husband mistreated her, but the evidence fails to establish that his behavior rose to the level of battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). The petitioner and the supporting affiants do not state that her former husband ever physically assaulted her, threatened her with violence, or that his nonviolent behavior was part of an overall pattern of violence. The evidence also fails to establish that the petitioner’s former husband’s mistreatment constituted psychological abuse and the petitioner’s testimony regarding the former couple’s intimate relations is insufficient to establish sexual abuse. In addition, the record contains a notable discrepancy. [REDACTED] states that the petitioner once came to class with a severe burn that was apparently left untreated, but the petitioner herself does not discuss this incident in any of her three statements submitted below. In her third declaration dated June 26, 2006, the petitioner states, “there were several instances when I ordinarily would see a doctor for help, but [my former husband] resisted.” However, the petitioner describes only one occasion when she had the flu and her former husband told her to take some health supplements. She does not state that she ever suffered a severe burn, for which her former husband refused to provide medical treatment.

The record fails to establish that the petitioner’s former husband battered or subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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.