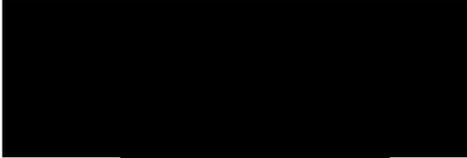


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FILE: [REDACTED]  
EAC 06 046 50122

Office: VERMONT SERVICE CENTER

Date: JAN 08 2007

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.

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

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 appeal will be dismissed.

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 because the record did not establish that the petitioner resided with her spouse.

The petitioner, through counsel submits a timely 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 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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . ,

deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

The petitioner in this case is a native and citizen of Ukraine. The petitioner entered the United States on October 12, 2000 as a B-2 nonimmigrant visitor. The petitioner married A-M-,<sup>1</sup> U.S. citizen in Penn Run, Pennsylvania on January 25, 2004. Her spouse died on March 30, 2005. The petitioner filed the instant Form I-360 on November 29, 2005. On February 9, 2006, the director issued a request for evidence (RFE) of, *inter alia*, further evidence that the petitioner resided with her spouse. The petitioner responded to the RFE on April 12, 2006. On May 26, 2006, the director issued a Notice of Intent to Deny (NOID) and the petitioner responded on July 3, 2006. After reviewing the evidence in the record, including the evidence submitted in response to the RFE and NOID, the director denied the petition on July 28, 2006, finding that the petitioner failed to establish that she resided with her spouse. On August 30, 2006, the petitioner, through counsel, filed a timely appeal. Upon review, as will be discussed, we concur with the determination of the director and find that the petitioner fails to overcome that determination on appeal.

On the Form I-360, the petitioner indicates that she resided with her spouse from October 3, 2003 until June 2004 and that they last resided together at [REDACTED]. In her personal statement, the petitioner claims that she was first introduced to her citizen spouse over the telephone in June 2003. The petitioner then states that she first went to meet her citizen spouse in early October 2003 and that she returned to his home on October 30, 2003.

In response to the director's RFE, the petitioner submitted copies of receipts and money orders. The evidence does not contain any reference to the petitioner or her residence at the claimed address. Moreover, the receipts and money orders are all dated *after* the petitioner's spouse's death. As such, these documents are not considered probative evidence of the petitioner's good faith marriage. Similarly, the copies of the utility bills submitted by the petitioner in response to the RFE are all in the petitioner's spouse's name and dated after his death. While the petitioner also submitted a letter from [REDACTED] the general statements contained in the letter are not sufficient to establish the petitioner's residence with her spouse. Mr. [REDACTED] does not indicate his relationship to the petitioner and her spouse, does not describe how he obtained his knowledge regarding the petitioner and her spouse, and does not provide any specific dates related to the petitioner's residence.

In response to the director's NOID, the petitioner submitted additional statements from acquaintances. However, like the statement submitted by Mr. [REDACTED] the statements submitted in response to the NOID contain little probative value regarding the petitioner's residence with her spouse. For instance, the letter from [REDACTED] states that she met the petitioner and her spouse in 2003, that they were a "lovely couple," and were guests at Ms. [REDACTED]'s home for three days. Ms. [REDACTED] does not indicate that she ever visited the petitioner and her spouse at their residence or provide any other information regarding her knowledge of their residence together. The remaining letters, from [REDACTED] and Father [REDACTED], indicate only that the petitioner was married to A-M-. They do not provide any information regarding the petitioner's claimed residence with her spouse.

Additionally, the petitioner submitted an additional receipt and photographs. The receipt, however, is in the petitioner's spouse's name and contains no reference to the petitioner or her residence. The photographs, which appear to have been taken at the church on the petitioner's wedding day, are not considered evidence of the

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<sup>1</sup> Name withheld to protect individual's identity.

petitioner's residence with her spouse.

Based upon the above discussion, we concur with the director's finding that the petitioner failed to establish her residence with her spouse.

On appeal, the petitioner, through counsel, submits copies of documents previously submitted at the time of filing and in response to the director's RFE and NOID. We note that documents submitted by counsel on appeal show that additional documents were submitted in response to the director's RFE that were not contained in the record and therefore not considered by the director. A review of these documents reveal the same deficiencies as the evidence previously discussed. Specifically, none of the documents contain the petitioner's name and several are dated after her spouse's death.

Given the lack of specificity in the testimonial evidence and the lack of documentary evidence that the petitioner resided with her spouse at [REDACTED] as claimed, the petitioner has failed to establish that she resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Beyond the decision of the director, we find the evidence in the record is not sufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her spouse. For this additional reason, the petition may not be approved. The petitioner's claim of abuse is based upon the assertion that her spouse started to change after they were married and told the petitioner she should find another husband because "he was not good for me." The petitioner further states that although her spouse initially wanted to do the petitioner's immigration paperwork himself, he eventually went to see an attorney and to a priest for assistance. The petitioner states that her spouse became extremely angry when the priest told him that the petitioner would get a share of his home upon his death. The petitioner claims that on one occasion her spouse did not give her money for food, telling her bread and water would be enough. The petitioner describes a second incident which culminated in her leaving after her spouse screamed at her. In contrast to the petitioner's description of only two instances involving her spouse's treatment of her, the psychosocial assessment submitted by the petitioner indicates that the petitioner's spouse "became more distant as time went on . . .," that he became "increasingly belligerent and volatile," and that the petitioner "was very often 'afraid of [his] temper.'" It is noted that despite numerous assertions in the assessment that the petitioner "repeatedly approached her parish priest for assistance with the marital relationship," the letter submitted by Father [REDACTED] does not offer any information regarding the purported abuse.

The general claims contained in the petitioner's statement and the psychosocial evaluation are not sufficient to establish a claim of abuse. The petitioner makes no allegation of threatened or actual physical abuse. Further, the assertion that she was spoken to harshly on one occasion and screamed at on another is not sufficient to establish a claim of extreme cruelty. The petitioner has failed to provide evidence that she victim of any act or threatened act of violence, forceful detention, psychological or sexual abuse or exploitation, or that her spouse's actions were part of an overall pattern of violence.

Accordingly, we withdraw the director's decision in this regard. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.

**ORDER:** The appeal is dismissed.