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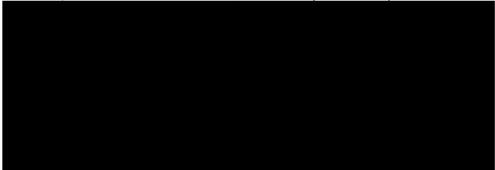
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 06 026 52013

Office: VERMONT SERVICE CENTER

Date: MAY 04 2007

IN RE: Petitioner: [REDACTED]

PETITION: Petition for 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 appeal will be dismissed.

The petitioner seeks classification as an 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 battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition, finding that the petitioner failed to establish that she was battered by or subjected to extreme cruelty by her citizen spouse.

The petitioner, through counsel, timely appealed.

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).

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 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 . . . spouse, 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 Gabon who entered the United States on July 19, 1997 as a B-2 nonimmigrant visitor. The petitioner married S-J-,* a U.S. citizen, in Denver, Colorado on October 14, 2002. On January 28, 2003, S-J- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 petition was denied on January 4, 2005 for abandonment. The Form I-485 application was subsequently denied on March 21, 2005 and the petitioner was placed in removal proceedings.¹ The petitioner filed the instant Form I-360 on October 26, 2005.

As it relates to her claim of abuse, with the initial filing, the petitioner submitted copies of documents regarding her spouse's arrest, a personal statement, and a letter from a friend of the petitioner, [REDACTED]. In her unsworn statement, the petitioner provided a detailed account of her life with her spouse, beginning with their introduction in July 1999 and ending in October 2005, the last time she saw her spouse. The petitioner claims that her spouse lied, stole money from her, abused alcohol, came home late and disappeared for weeks at a time. The petitioner also claimed that her spouse had an arrest history. The letter submitted by Ms. [REDACTED] with the initial filing is consistent with the claims made by the petitioner regarding S-J-'s alcohol abuse and his numerous and lengthy disappearances. Additionally, Ms. [REDACTED] stated that S-J- was "messing around" and would have his girlfriends call the petitioner and say "nasty words to her." Although the petitioner mentioned her spouse's arrest history, the documents submitted at the time of filing indicate only that the petitioner's spouse was a "fugitive of justice." The petitioner submitted no evidence to establish that his arrest was related to the petitioner's claim of abuse.

On December 30, 2005, the director issued a Request for Evidence (RFE) for further evidence to support the

* Name withheld to protect individual's identity.

¹ The removal proceedings remained open during the adjudication of the instant proceedings. The record reflects that the petitioner's case has been scheduled for a Master Calendar hearing in Denver, Colorado on June 13, 2007.

petitioner's claim of abuse. The petitioner, through counsel, responded to the RFE on February 27, 2006 and requested an additional 60 days in which to respond to the RFE. On March 14, 2006, the director issued a Notice of Intent to Deny (NOID) notifying the petitioner that she had failed to establish that she was battered by or subjected to extreme cruelty by her spouse. The director's NOID was based on a finding that the petitioner submitted both insufficient evidence to establish abuse and inconsistent testimony. The director's finding that the petitioner lacked credibility was based upon her rendition of events regarding an interview with the Service on the Form I-130 petition filed on her behalf. The director noted that at the time of the Form I-130 interview on January 4, 2005, the petitioner provided a sworn statement explaining that the reason that her spouse failed to attend the interview was because he "left for Illinois on Thursday, December 30, 2004," and was not due to return until January 7, 2005. In contrast, the director noted that in the initial statement submitted by the petitioner in support of her Form I-360, the petitioner identified her interview date as January 2004 and stated that at the time of the appointment her "husband was nowhere to be found," so she went to the interview without him.

The petitioner responded to the NOID on May 15, 2006 by submitting a second statement, a letter from [REDACTED], four letters from family and friends, and further evidence of S-J's arrest history. In her second statement, the petitioner reiterates the claims made in her initial statement. However, the petitioner also provides additional claims that were not previously noted. Specifically, the petitioner's second statement alleges that her spouse "often threatened . . . and yelled at [her]," and that when he was drunk he would "push [her] or pull [her] away or shove [her] down on the bed." The petitioner provides no explanation for her failure to assert these claims previously. While counsel claims that the petitioner had previously described behaviors that "clearly 'crossed the line,' including threatening and controlling behaviors, and manipulation," counsel appears to have mischaracterized the information contained in the petitioner's initial statement. As discussed above, the petitioner's initial claim discussed only her spouse's use of alcohol, disappearances, lies regarding his family, and use of money. While the petitioner also claims in her second statement that "many times" she asked her friends and family members for help with her spouse, the letters submitted on the petitioner's behalf do not corroborate these new claims of threatening behavior, extreme cruelty, or battery. Rather, the letters indicate only that the petitioner's spouse was "always absent from home," "out drinking," "unable to keep a job," that he "had trouble with the law," and "empties her bank account by taking all her money."

The letter submitted by the petitioner from a counselor, [REDACTED] was written after a single session with the petitioner in April 2006. The letter indicates that during their session, the petitioner:

[R]eported episodes wherein [her spouse] was threatening, yelling, and physically violent when intoxicated in the home. She stated that he twisted her arm or pushed her down during arguments.

Ms. [REDACTED] concludes her letter by stating that the petitioner "endured approximately three years of an emotionally chaotic and abusive relationship" and is "unable to reconcile or understand why this happened and why her husband abandoned her despite her best efforts." This letter, however, is not sufficient to establish the petitioner's claim of abuse. First, as previously noted, there is no explanation for the fact that after the director's NOID, the petitioner has reported claims that were not mentioned in her initial statement. Second, even if the claims were consistent, the claims made in the petitioner's statement and Ms. [REDACTED] letter are too general to support a claim of abuse. Neither statement contains any descriptions of specific incidents of the alleged abuse.

Although the petitioner also submitted evidence related to her spouse's July 13, 2002 arrest in response to the

NOID, she again failed to present any evidence to show that his arrest relates to the petitioner and her claim of abuse.

The director denied the petition on June 29, 2006, finding that the record contained both insufficient and inconsistent evidence to establish that the petitioner had been battered by or subjected to extreme cruelty by her spouse. In determining that the petitioner failed to establish her eligibility, the director noted the inconsistencies related to the Form I-130 interview, inconsistencies in the statements submitted by the petitioner in response to the NOID, the insufficiency of the statements submitted on the petitioner's behalf, as well as the lack of evidence relating the petitioner's spouse's arrest history to the petitioner.

On appeal, counsel argues that the record establishes that the petitioner has been "clear, consistent, and detailed" in her statements and that the record does not support an adverse credibility finding. In part, counsel claims that the director "seiz[ed] upon a new theory to support a denial after issuance of the NOID." We are not persuaded by counsel's arguments. First, counsel's argument that the director "changed the rules in the middle of the game" and "improperly limited the evidence that could be sufficient to overcome the intended denial" is unpersuasive. In the RFE, the director specifically noted that the claims made by the petitioner and on her behalf were not sufficient to establish a claim of abuse. In addition to the insufficiency of the claims, the director highlighted discrepancies in the record and indicated that those discrepancies gave the director "cause" to question the petitioner's veracity. Accordingly, the RFE was issued based on both insufficiencies and inconsistencies in the record. The director's NOID reiterated these two bases for denial. In addition to the aforementioned reasons for denial, in his final decision the director found further inconsistencies between the information initially submitted and the information submitted in response to the NOID. Accordingly, we find that the petitioner was given ample notice of the deficiencies in the record as well as specific reasons for denial. Although counsel may disagree with the director's ultimate conclusion, the director's RFE, NOID, and denial comply with the pertinent regulatory provisions at 8 C.F.R. §§ 103.2(b)(8), 204.2(c)(3)(ii)-(iii).

Second, the record does not support a finding that the petitioner has been "clear, consistent, and detailed" in her statements. As it relates to the statements made at the time of the petitioner's Form I-130 interview, counsel focuses only on the fact that the petitioner was mistaken about the date of her interview and states that "[basing] an adverse credibility finding upon such a picayune detail . . . cannot be sanctioned." While we agree that the petitioner's misstatement of the actual date of her interview may be insignificant, counsel appears to have overlooked a substantial part of the director's decision. Specifically, counsel fails to address the portion of the director's findings that centered on the fact that at the time of the Form I-130 interview, the petitioner claimed that her spouse had just left on a trip to Illinois, while in contrast, in the statement made in support of the Form I-360, the petitioner indicated that her spouse was "nowhere to be found." Such disparities indicate that the petitioner was untruthful either at the time of her interview or in the present matter and therefore are sufficient to find that the petitioner lacks credibility.

Regarding the director's findings related to the inconsistent claims contained in the petitioner's initial statement and the claims contained in her second statement and assessment, counsel argues that the petitioner has submitted evidence:

[T]hat both clearly indicated her reluctance to discuss the escalating abuse in her marriage, as well as provided reasonable, detailed and consistent explanations for the minor (and clearly immaterial) inconsistencies noted by the Service

Counsel does not point to specific evidence where the petitioner provided a "reasonable, detailed and consistent explanation" for her inconsistent claims and we can find no explanation in any of the petitioner's statements. Although the petitioner does address the inconsistent claims related to her Form I-130 interview, she does not address the fact that in relation to her Form I-360, her successive statements contain claims that were not mentioned in her initial statement. Counsel's argument that the petitioner's failure to relate the "relatively few instances of actual violence" in her first statement should be attributed to her "reluctance to disclose the abuse in her marriage" appears to be based upon counsel's own interpretation of the petitioner's actions rather than actual fact. 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). As previously noted, the record contains no statement from the petitioner indicating her "reluctance" to disclose the alleged abuse or any other explanation for the inconsistent claims. In fact, the petitioner's statement indicates just the opposite as she states that she asked family and friends for help with her spouse. We find it significant that none of those friends or family relate any claim of physical threats or violence against the petitioner.

Counsel also submits a document titled, "Assessment of Abuse From Client" as "further evidence of the consistency with which [the petitioner] has described her husband's abusive behaviors." Counsel states that this intake sheet was completed by the petitioner at counsel's request, in response to the director's RFE. However, counsel does not explain why this document was not submitted at that time or even in response to the director's NOID. We note that in instances where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. In this instance the petitioner was given several notices regarding the deficiencies in the record and was afforded ample opportunity to submit additional evidence. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the document in response to the director's RFE or NOID. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Accordingly, the AAO need not consider the sufficiency of the evidence submitted on appeal.

Even if considered on appeal, however, we note that contrary to counsel's assertion, the assessment does not highlight consistencies, but rather, contains additional claims and contradictory information when compared to the petitioner's previous claims. First, contrary to the claims contained in her second statement and in what the petitioner reported to Ms. [REDACTED] that her spouse would shove her and push her down during arguments, in the assessment the petitioner answered "no" to the following statements regarding her spouse's actions:

- Held you down
- Held you
- Wrestled you to the ground
- Pushed you or shoved you
- Picked you up/threw you down

More significantly, although the petitioner does not mention these actions in any of her previous statements or in her statement to Ms. [REDACTED] she claims in the assessment that her spouse choked her and "held her neck for 2 minutes" and that he "forced [her] to have sex when [she] did not want to."

In addition, counsel argues that the petitioner has established her spouse's "pattern of financial manipulation," as evidenced by his requests for money and notes his "failure to contribute to the household expenses." Counsel further argues that the petitioner was subjected to emotional abuse based upon her spouse's drinking and disappearances, his lies, and his reluctance to introduce the petitioner to members of his family. We are not persuaded by counsel's arguments. According to the petitioner's statements and the documentary evidence in the record, the petitioner had a job and access to and control over her own money, including the ability to send money to her family in Gabon. The fact that the petitioner's spouse made requests for money, that he was unemployed and failed to contribute to their household expenses is not sufficient to establish that the petitioner was subjected to "economic coercion." Counsel's claim that the petitioner's spouse was reluctant to introduce the petitioner to members of his family is also not sufficient to establish a claim of social isolation and is not supported by the petitioner's own statements. The petitioner's testimony indicates that she did, in fact, meet the petitioner's family, to include his mother, brothers, and sisters. Further, as evidenced by the numerous letters from friends and family submitted on the petitioner's behalf, while the petitioner may not have immediately been introduced to her spouse's family, she was not prevented by her spouse from pursuing and enjoying relationships with her friends and family. Accordingly, these facts are not consistent with counsel's assertion of control, social isolation, or economic coercion.

Finally, counsel contests the director's failure to "give any weight to the criminal record" of the petitioner's spouse and argues that his record corroborates "her claims of her husband's general character and bolsters her claims of his abusive behavior." We do not find counsel's argument to be persuasive. While counsel alleges that the petitioner's spouse's criminal behavior, which includes a driving under the influence (DUI) offense and charges involving a knife and a gun, is evidence of his general character, the record contains no documentary evidence that his criminal behavior was directed at or related to the petitioner. In fact, counsel herself acknowledges that the petitioner has never been "the victim of [her spouse's] criminal activity." Behavior that is directed at a third party and is wholly unrelated to the petitioner is not sufficient to establish a claim of abuse. 8 C.F.R. § 204.2(c)(1)(vi).

As discussed above, we find the testimonial evidence insufficient to establish the petitioner's claim of abuse. The petitioner's testimony fails to describe any specific incident in detail and the testimonial evidence submitted on her behalf contains only general statements that do not describe instances of physical abuse or extreme cruelty. The facts as described by the petitioner, that her spouse lied, took money from her, and disappeared frequently, do not show that the petitioner's spouse's actions were aimed at maintaining control over the petitioner and do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The petitioner's spouse's actions, while maybe hurtful to the petitioner, do not appear to have been part of an overall pattern of violence against the petitioner. Further, notwithstanding the inconsistent claims made by the petitioner in relation to her spouse's failure to attend her Form I-130 interview, the claims made by the petitioner in support of her Form I-360 appear to escalate with each successive statement, to include the additional claims that were provided in the appellate material. Such inconsistencies diminish the evidentiary value of the petitioner's testimony. Accordingly, we concur with the determination of the director that the petitioner has failed to establish that she was battered or subjected to extreme cruelty by her spouse during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner has failed to overcome this finding on appeal.

Beyond the decision of the director, we also find that the petitioner failed to establish that she resided with her spouse. On the Form I-360, the petitioner indicated that she resided with her spouse from October 2002 until

August 2005 and that she last resided with him at [REDACTED], Denver, Colorado. In her personal statement, the petitioner indicates that in October 2002 her spouse moved into her place at [REDACTED], Colorado," but provides no information about that shared residence or any documentary evidence to demonstrate their residence at this address.

As documentary evidence of their residence at [REDACTED], the petitioner submitted a June 2004 bank statement addressed to the petitioner and her spouse, a January 2005 utility bill, an auto insurance policy, and copies of her 2004 tax returns. In addition, the petitioner submitted a lease for this apartment for a lease term from May 24, 2003 to July 21, 2004. However, while the lease is dated May 24, 2003 and contains the signature of the petitioner's spouse in the signature line below the signature of the petitioner, we note that information contained in the petitioner's personal statement casts doubt on the authenticity of the lease. Specifically, in her personal statement, the petitioner claimed:

On Saturday, May 18th, 2003, around 4:30 p.m. [S-J-] came back to collect his belongings. I didn't see him for two months. During that time he never called me - he simply disappeared . . . I decided to move to my present address: [REDACTED]

Based upon the petitioner's testimony, her spouse was not present at the time she moved into the apartment at [REDACTED] and had been gone for at least one week prior to the date that the petitioner and her spouse purportedly signed the lease. Even more significant is the fact that the record contains a separate copy of a lease for this address which was submitted in support of the Form I-130. Although that copy of the lease is also dated May 24, 2003, for the same lease term, the petitioner's spouse's name is written in print and is located on the signature line next to the petitioner's. The inconsistencies between the petitioner's testimony and the disparate information contained on the two copies of the lease raise doubts as to her claims regarding a joint residence at the [REDACTED] address.

Given the petitioner's failure to provide any probative testimonial evidence regarding her residences with her spouse, such as a description of their residences, jointly owned belongings, or shared activities at the home, as well as the inconsistencies noted between her testimony and the documentary evidence, we find 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. Accordingly, we withdraw the director's affirmative determination on this issue.

Finally, we note that the record of proceeding contains evidence which indicates that the petitioner provided false information in order to obtain a nonimmigrant visa. Specifically, the record contains a sworn statement signed by the petitioner, in which she indicated to the interviewing officer that she lied about her marital status, claiming that she was married, when she was, in fact, single. We acknowledge the fact that this appears to be the first time the petitioner has been confronted with these allegations by the Service and that she has not been afforded the opportunity to respond to the allegation of providing false information. However, our decision to dismiss the appeal is not based upon a specific determination of fraud under section 212(a)(6)(C) of the Act.² Rather, this issue has now been documented in the record, and as such, raises even more questions regarding the petitioner's credibility and past actions which the petitioner must answer in any

² Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

subsequent proceeding before the Service or an immigration judge.

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.