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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: MAY 04 2007
EAC 05 209 51324

IN RE: Petitioner: [REDACTED]

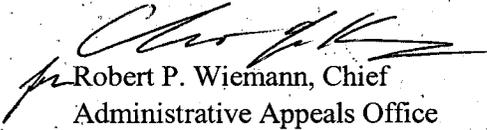
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant 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 failed to establish that she was battered by or subjected to extreme cruelty by her spouse, that she resided with her spouse, and that she entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal with copies of documents that were previously submitted, as well as new evidence.

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:

(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.

(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.

* * *

(ix) *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. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

* * *

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.

(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.

(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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

According to the evidence contained in the record, the petitioner entered the United States on September 11, 1992 as a B-2 nonimmigrant visitor. On December 3, 1992, the petitioner married F-I¹, a United States citizen, in New York City, New York. On January 25, 1993, F-I- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 was denied on September 10, 1993 for abandonment and the Form I-485 was denied accordingly.

On June 28, 2001, the petitioner filed a Form I-360 (Receipt Number EAC 01 216 50042) claiming eligibility as the battered spouse of a United States citizen. The Form I-360 was denied by the Director, Vermont Service Center, on July 22, 2002. The petitioner appealed the director's decision and the AAO dismissed the appeal on August 4, 2004.

The petitioner filed the instant Form I-360 on July 12, 2005. One day later, on July 13, 2005, the petitioner's marriage to F-I- was terminated in the New York State Supreme Court, New York County.² After conducting a preliminary review of the evidence submitted, the director found that the petitioner had failed to establish her prima facie eligibility and on July 28, 2005, requested the petitioner to submit evidence of her good moral character and to establish that she entered into her marriage in good faith.³ On September 26, 2005, the petitioner, through counsel, requested 60 additional days in which to respond to the director's request. On November 14, 2005, the petitioner submitted additional evidence.

On November 16, 2005, the director issued a Request for Evidence (RFE) requesting the petitioner to submit additional evidence to establish the current status of her marriage, that she resided with her spouse, that she was battered by or subjected to extreme cruelty by her spouse, and that she entered into her marriage in good faith. The petitioner, through counsel, responded to the RFE on January 17, 2006 and requested an additional 60 days in which to respond to the RFE.

On March 10, 2006, the director issued a Notice of Intent to Deny (NOID) indicating that the record did not establish that the petitioner had a qualifying relationship as the spouse of a United States citizen, that she was eligible for immediate relative classification based on such a relationship, that she resided with her spouse, that she was battered by or subjected to extreme cruelty by her spouse, and that she entered into the marriage in good faith. On March 17, 2006 and again on March 20, 2006, the petitioner submitted additional evidence.

After reviewing the evidence submitted by the petitioner, the director denied the petition on May 26, 2006, finding that the petitioner failed to establish that she resided with her spouse, that she was battered by or

¹ Name withheld to protect individual's identity.

² See Index No.: 314129-03.

³ The determination of prima facie eligibility is made for the purposes of 8 U.S.C. § 1641(c). A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition, does not establish eligibility for the underlying petition, is not considered evidence in support of the petition, and is not construed to make a determination of the credibility or probative value of any evidence submitted along with that petition. See 8 C.F.R. §204.2(c)(6).

subjected to extreme cruelty by her spouse, and that she entered into her marriage in good faith. The director's decision will not be repeated here. The petitioner filed a timely appeal on June 26, 2006.

On appeal, counsel for the petitioner argues that the director erroneously relied on minor discrepancies and inconsistencies in the record and contends that the petitioner has met her burden. As will be discussed, upon review, we concur with the findings of the director and are not persuaded by counsel's arguments on appeal.

Evidence that the petitioner resided with her citizen spouse

On the Form I-360, the petitioner indicated that she resided with her spouse from December 1992 until May 1993 and that she last resided with her spouse at [REDACTED] New York. In her initial statement, the petitioner provided no details regarding her residence with her spouse. The petitioner did not indicate, for instance, if she or her spouse moved into an apartment already leased by the other, did not describe the apartment or any of their shared furniture or accessories, or provide any other testimonial evidence regarding the joint residence. The petitioner's second statement, dated March 14, 2006, offers no further details regarding their shared residence. The petitioner claims that when she fled her apartment she had a rent receipt and a telephone and utility bill but does not indicate whether she and her spouse were both on the lease and whether they were jointly responsible for the utility bills. Accordingly, while she has provided an explanation for the lack of documentary evidence regarding their joint residence, her testimony contains little probative value in establishing that they did, in fact, reside together. The remaining affidavits submitted on the petitioner's behalf contain no mention of the petitioner's joint residence with her spouse.

On appeal, the petitioner submits a copy of what is purported to be the lease to their shared apartment. The petitioner provides no explanation for failing to mention the lease prior to appeal and for her failure to submit the lease in support of her initial Form I-360 petition, at the time of filing the instant Form I-360, or in response to the director's RFE or NOID. In instances such as this one, 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. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). In this case, the director gave numerous and specific requests for evidence related to the petitioner's residence with her spouse, leaving no ambiguity as to what documents were required. If the petitioner had wanted the submitted evidence to be considered, she should have addressed the document previously and submitted it prior to the director's decision. *Id.* Under the circumstances, therefore, the AAO need not consider the sufficiency of the evidence submitted on appeal or subsequent motion. It is important to note, however, that the information contained on the lease is not consistent with the claims made by the petitioner. Specifically, in contrast to her claim that she last resided with her spouse in May 1993 at [REDACTED], New York, New York, the lease indicates the rental of an apartment at [REDACTED] for a two-year period beginning on February 15, 1993.⁴

Given the lack of testimonial and documentary evidence, as well as the discrepant evidence noted on appeal, we find that 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.

Battery or Extreme Cruelty

⁴ The petitioner's initial Form I-360 also indicates that she last resided with her spouse at [REDACTED]

To support her claim of abuse the petitioner submitted a personal statement and affidavits from acquaintances. The petitioner claims that her spouse called her names, yelled at her, and pushed her around. The petitioner further claims that her spouse was controlling, suspicious of her phone calls, and cut her off "from social life completely." The petitioner describes one instance when her spouse became "aggressive" and "rude" because the petitioner's friend came to the apartment. The petitioner further indicates that on that occasion her spouse hit her in the face. The petitioner describes a second incident where her spouse pushed her and yelled at her because he heard a man's voice on the telephone.

In addition to the inconsistencies noted by the director in his decision, we find there are additional contradictions between the petitioner's claims and those made in the statements submitted on her behalf. For instance, contrary to the petitioner's claim that she was cut off from her friends and social engagements, [REDACTED] describes meeting the petitioner on various occasions to talk over a cup of coffee. Similarly, [REDACTED] describes meeting the petitioner while attending a party at another friend's home. While these affiants also generally refer to the petitioner's "problems" and "her difficult time" with her spouse and describe the petitioner's spouse as being "offensive" and "aggressive," they do not provide specific details or describe any incident that supports a finding that the petitioner was battered by her spouse or subjected to extreme cruelty. We note that although the petitioner claims that [REDACTED] was a witness to the incident where the petitioner's spouse hit the petitioner in the face, Ms. [REDACTED] describes hearing only "yelling and cursing." She does not indicate that she heard the petitioner being hit, that she witnessed redness or bruising on the petitioner's face, or indicate that the petitioner told her that she was struck by her spouse at the time.

Although not mentioned in her initial statement, in her statement dated March 14, 2006, submitted after the director's NOID, the petitioner asserts the additional claim that she was raped by her spouse on two occasions. The petitioner claims that she "did not want to reveal this embarrassing matter previously, but now that [she is] divorced, it easier for [her] to talk about." The petitioner does not provide any explanation as to why the fact that she had obtained a divorce made it less embarrassing to reveal this claim or why she waited until after issuance of the NOID to include this claim. As previously indicated, the petitioner's divorce took place one day after the filing of this petition. Accordingly, the petitioner's explanation is questionable given that she had numerous opportunities, including her November 14, 2005 submission, to supplement her initial claims prior to the statement given in response to the NOID.

On appeal, counsel argues that the inconsistencies noted by the director are "minor" and do not "go to the heart of the matter." Counsel further argues that inconsistencies in the statements noted by the director should be viewed in light of the fact that "it has been over twelve (12) years since the occurrence underlying" the Form I-360 took place. We do not find counsel's arguments to be persuasive. In this instance, the petitioner has failed to submit any documentary evidence such as medical or police reports, or court documents, to establish her claim of abuse. As such, the petitioner's claims are based solely upon testimonial evidence. Therefore, any inconsistencies that are identified in the testimonial evidence diminish the validity and credibility of the claims and undermine the evidentiary value of the evidence.

We note that counsel fails to reconcile the inconsistencies noted by the director between the brief counsel submitted on the petitioner's behalf and the petitioner's actual claims. Specifically, counsel's brief stated that the petitioner's spouse abused drugs and alcohol and described the incident that led to the end of their

relationship wherein a man broke into their home, pointed a gun at her spouse, and threatened to kill him if he did not bring the man his money. The petitioner's statements do not mention her spouse's alleged drug or alcohol use and fail to address the incident noted in counsel's brief until *after* the director's NOID.

On appeal, the petitioner also submits a letter from [REDACTED], M.D. The petitioner offers no explanation for her failure to submit evidence of treatment prior the appeal. Accordingly, as previously noted, the AAO need not consider such evidence on appeal. *Id.* Even if considered, the letter offers little evidentiary value as it relates to the petitioner's claim of abuse. Dr. [REDACTED] states that the petitioner suffers "from posttraumatic stress disorder as a complication of spouse abuse," but does not describe any of the petitioner's testimony or provide examples of incidents of abuse to document his conclusion that the petitioner was subjected to "spouse abuse." Further, Dr. [REDACTED] fails to provide any information regarding the number of times he saw the petitioner or to state what criteria were utilized in determining that the alleged abuse was the source of the petitioner's medical condition.

In accordance with the above discussion regarding both the insufficiency and the reliability of the testimonial evidence in the record, we concur with the findings of the director. The petitioner has failed to overcome this finding on appeal. The petitioner has failed to establish that she was battered by or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The petitioner's initial statement, which was provided in her November 14, 2005 response to the director's RFE, does not provide any details regarding how she met her spouse, their courtship, wedding, or any of their shared experiences, apart from the claimed abuse. The petitioner's statement, dated March 14, 2006, offers minimal additional information regarding her claim of a good faith marriage. She states:

I came to the U.S. as a tourist and met [F-I-] at my friend's party. We fell in love with each other at the first glance (that's what I thought). We dated for 2 months, he insisted that I stay in the country, get married with him and don't return to the U.S.S.R. as it would make him suffer without me. I married [him] with high expectations of starting a family and living happily with him.

The petitioner did not further discuss their life together during the two-month period following their initial meeting and leading up to their marriage. The petitioner also failed to discuss their life together after their marriage other than as it relates to her claim of abuse.

The statements provided on the petitioner's behalf are of minimal probative value as they make general claims and offer no specific details about the petitioner's relationship with her spouse prior to their marriage or any other information which establish that she was planning a life with her spouse after their marriage. We note that none of the petitioner's friends indicate that they were present at the petitioner's marriage. It is further noted that N [REDACTED] did not even know the petitioner until after the petitioner was already married.

As referenced previously, in her March 14, 2006 statement, the petitioner claimed that because she fled her apartment in a hurry, she left with only a few documents; photos from her wedding that were in her wallet, a rent statement, and a telephone and utility bill. The petitioner further claimed that these documents were lost when they were given to a prior attorney who eventually left the United States with no notice to the petitioner.

Although the lack of documentary evidence of a good faith marriage is not automatically disqualifying, the petitioner offers no testimonial evidence regarding what she and her spouse did, in fact, share together. She does not indicate whether they had joint car or health insurance, life insurance, bank accounts or other financial accounts. Although the petitioner references a rent receipt and utility bills, she does not indicate whether she and her spouse were jointly responsible for payment of the rent and utilities.

In his decision, the director found it notable that the petitioner filed her taxes as "single" during the time in which she was still legally married. On appeal, counsel claims that the director gave this fact "too much weight" and attributes this "mistake" to the petitioner's "ignorance." Counsel states that the petitioner:

[C]hecked the 'Single' box because she believed that, under circumstances, since she was no longer together with her husband and paid her taxes separately from her husband, she was, in fact, single. She did not realize that in the legal sense she should file as still married even though she was not with her husband and no longer shared the same dwelling.

Counsel's explanation appears to be based upon his own interpretation of the petitioner's actions. He fails to submit any sworn statement from the petitioner herself to explain that this improper filing status was attributable to her mistaken beliefs. 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-Sánchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, the record does not contain any documentary or testimonial evidence regarding the petitioner's and her spouse's filing of taxes during the time in which the petitioner claims to have been residing with her spouse.

As discussed above, we concur with the finding of the director. The petitioner has failed to overcome the finding on appeal. Accordingly, the petitioner has failed to establish that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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.