

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

PUBLIC COPY

B9



FILE: [Redacted]
EAC 06 137 50818

Office: VERMONT SERVICE CENTER

Date: JUN 27 2008

IN RE: Petitioner: [Redacted]

PETITION: Petition for Immigrant Abused 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 immigrant classification under 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 citizen of the United States.

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

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, 8 U.S.C. § 1154(a)(1)(J), 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 . . . 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 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.

* * *

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner

(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 Korea who entered the United States on November 15, 1999 without being inspected by an immigration officer. On May 19, 2003, the petitioner married D-Y-,¹ a naturalized citizen of the United States in California. The petitioner filed the instant Form I-360 on March 31, 2006. On August 17, 2006, the director issued a Request for Evidence (RFE), of *inter alia*, battery or extreme cruelty perpetrated against the petitioner by D-Y-. The petitioner, through counsel, timely submitted a request for additional time to respond to the RFE on September 21, 2006. On December 7, 2006, the petitioner submitted further evidence. On December 15, 2006, the director issued a Notice of Intent to Deny (NOID) the petition, notifying the petitioner of the deficiencies in the record and affording the opportunity to submit further evidence to establish her claim of battery or extreme cruelty. The petitioner, through counsel, responded to the NOID on January 3, 2007. The petitioner submitted no further evidence in response to the NOID but referred to the evidence submitted on December 7, 2006. The director denied the petition on February 27, 2007, finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by D-Y- during their marriage.

On appeal, counsel states that the petitioner provided sufficient evidence to establish her burden of proof and argues that the director failed to "follow the statutory standard of proof for this type of case." As will be discussed, upon review, we concur with the director's finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by D-Y- during their marriage.

At the time of filing, the petitioner submitted a declaration, dated March 14, 2006. In her declaration, the petitioner claimed that a few months after they were married, D-Y- "became a totally different person." The

¹ Name withheld to protect individual's identity.

petitioner described D-Y- as being “angry and hurtful” and stated that he insisted that they sleep in separate rooms, called the petitioner names, such as “lazy,” “fat,” “stupid and dumb.” The petitioner also provided several examples where D-Y- criticized how she performed household tasks, including a time when he yelled at her because she planted flowers too close to the border of their property and brought flowers with bugs on them into their home. The petitioner further claimed that although D-Y- promised to convert to Catholicism, he refused to go to church with her after their marriage. The petitioner also claimed that D-Y- locked his office when he left home and “arranged his papers in a way that he would know” if the petitioner touched them. The petitioner stated that although they had a joint checking account, D-Y- would not give the petitioner spending money and indicated that she was afraid to use checks or credit cards because D-Y- would get upset. The petitioner claimed that in 2004, D-Y- “kicked [her] out of the house.” The petitioner stated her belief that the reason she was kicked out was because D-Y- believed she had cancer. The petitioner also claimed that D-Y- tricked her into giving up her rights to their home by signing papers she believed were documents to refinance their home. The petitioner then claimed that around October 2005, D-Y- began pressuring her to borrow money from her family. The petitioner described one instance where she felt D-Y- was indirectly threatening to report her to immigration and claimed that “a few times” thereafter, D-Y- threatened to report her to immigration if she did not sign divorce papers.

In response to the director’s RFE, the petitioner submitted an addendum to her first declaration in which she claimed that after her marriage to D-Y-, her personality changed because she did not want anyone to know about the abuse in her marriage. The petitioner claimed that she slowly stopped attending church because D-Y- made her feel bad about attending and because it was too difficult to obtain a ride from someone else. The petitioner further stated that D-Y- controlled her relationship with her family, that he did not welcome her friends and family to their home, and that he did not want her to spend money on them.

In addition to her personal declarations, the petitioner submitted declarations, assessments and medical reports from her counselors and doctors. In a declaration dated February 21, 2006, [REDACTED], Executive Director of My Sister’s House Safe Haven, stated that during a conversation with the petitioner, the petitioner revealed that she “was a victim of abuse.” Ms. [REDACTED] then generally indicated that the petitioner is a victim of emotional and mental abuse. Ms. [REDACTED]’s determination appears to be based upon the same claims discussed by the petitioner in her declarations. Ms. [REDACTED] states:

In May 2003, [the petitioner] was married to her husband hoping that the relationship would be a happy one. However, after their honeymoon and two months of living together, he wanted to sleep in separate rooms. In November 2004, when he found out that she had a tumor, he left her. When he found out that it was benign, he came back to her. He also verbally abused her by calling her fat, stupid, dumb, lazy, ugly, etc . . . While driving and looking for directions, he called her dumb and stupid because she could not read the map or the street names. The last time he came back to her, he wanted her to borrow \$30,000 from her relatives to purchase a home

Ms. [REDACTED] also stated that D-Y- “constantly threatened” to report the petitioner to immigration and took advantage of her limited English ability by making “her sign documents against her will.”

In her second declaration, dated November 14, 2006, Ms. [REDACTED] claimed that the petitioner “shared with My Sister’s House staff the emotional, mental and *physical* abuse that she endured from her husband for

several years [emphasis added].” Notably, Ms. [REDACTED]’s initial declaration specifically indicated that there was no physical abuse. Such an inconsistency lessens the evidentiary value of Ms. [REDACTED]’s statements. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Licensed Marriage and Family Therapist, submitted a letter regarding the petitioner’s individual therapy which began in September 2006. In his letter, dated October 4, 2006, Mr. [REDACTED] stated that the petitioner complained of “depression, sad feelings, insomnia, and headaches” which Mr. [REDACTED] indicated “seemed to result from a variety of problems in her life.” Although Mr. [REDACTED] generally referenced verbal abuse and abusive behavior perpetrated against the petitioner by D-Y-, he does not provide any specific examples or descriptions of the alleged abuse.

The petitioner also submitted a letter from Dr. [REDACTED], who stated that he is the internist who has been treating the petitioner for her medical condition since September 2006. In his letter, Dr. [REDACTED] states that the petitioner’s medical conditions, which include increased thyroid hormone levels, and high triglyceride and cholesterol levels, “can arise from constant and intense stress [emphasis added].” He did not, however, offer any direct correlation between the petitioner’s medical condition and D-Y-’s alleged abuse. In fact, Dr. [REDACTED] provided no details which indicate his knowledge or belief regarding the petitioner’s victimization or any other statement which demonstrates that the petitioner’s medical condition is attributable to the claimed abuse by D-Y-. We note that the record also contains the petitioner’s medical records related to a nodule in the petitioner’s lung. In contrast to Dr. [REDACTED]’s letter regarding the petitioner’s medical condition, which was written nearly a year after she stopped residing with her spouse, the medical reports from December 17 and 27, 2004, during which time the petitioner was still in the allegedly abusive relationship with D-Y-, indicate that the petitioner “has had some stress related to her marriage plus her difficulty with English,” but further indicate that the petitioner “has been in excellent health.” The reports highlight the fact that the petitioner has been a “cigarette smoker, about a pack a day. She smoked for 30 years [emphasis in original],” but provide no correlation between the petitioner’s condition and the claimed abuse.

The petitioner also submitted statements from friends and family members, [REDACTED], [REDACTED], Father [REDACTED], and Father [REDACTED]. In their letters, [REDACTED] and [REDACTED] described the claims made by the petitioner regarding being called names, chastised over household tasks, unable to enter into locked rooms in their house, and pressured to lend D-Y- money. They do not, however, indicate that they ever witnessed any particular incident of abuse or provide any further details regarding specific incidents claimed by the petitioner. Similarly, [REDACTED] generally claimed that D-Y- “constantly abused” the petitioner, described the petitioner’s marriage as unhappy and D-Y-’s behavior as “selfish[,]” but offered no specific examples of the abuse or D-Y-’s behavior. Likewise, Father [REDACTED] stated that the petitioner was a “passive spouse[,]” who suffered from a “problematic relationship” and Father [REDACTED] stated that the petitioner “suffered significantly from [Y-D-’s] behavior and described Y-D- as being “stubborn.” No further details or specific description of the alleged abuse were provided.

The director found that the petitioner’s evidence was vague and lacked detail and, therefore, determined that she failed to establish that she was battered or subjected to extreme cruelty by D-Y- during their marriage. On appeal, counsel states that the director erroneously required documentation to substantiate the petitioner’s

doctor's statements and also refers to an incomplete sentence in the director's decision to support her argument that the director failed to follow the "statutory standard of proof for this type of case." Upon review, we agree with counsel that the lack of corroborating evidence is not a sufficient reason to discount evidence. We, therefore, withdraw this particular finding. We further acknowledge that the director did not complete a sentence when discussing his findings regarding the petitioner's addendum. However, as our review encompasses an assessment of all of the evidence submitted by the petitioner, we find these errors to be harmless.

Section 204(a)(1)(J) of the Act requires CIS to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of" Citizenship and Immigration Services (CIS). Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While CIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

In this case, while we find the petitioner's evidence to be credible, we do not find it sufficient to meet the petitioner's burden of proof. First, the petitioner has failed to allege any threat of or actual physical act of abuse perpetrated against her by D-Y-. Although M [REDACTED]'s second letter references physical abuse, this claim contradicts her initial letter and, as stated previously, diminishes the evidentiary value of her statements. The petitioner's allegation of extreme cruelty is based upon the claims that her spouse yelled at her, called her names, made it uncomfortable for her family to visit (although she was still able to visit and communicate with them), locked his office when he was away, and kicked her out of their home. The petitioner also claimed that she was economically abused because D-Y- did not give her spending money and she was "afraid he would get upset" if she used the checks or credit card. In contrast, however, the petitioner also stated that she had her "own money" with which she bought her own clothes and presents for D-Y-. Finally, the petitioner claims that her spouse "tricked" her into relinquishing her rights to their home and that he pressured her into obtaining a loan from her family. Again, however, the petitioner does not indicate that she was threatened or forced to sign the papers regarding their home or to obtain the loan. While we also acknowledge the petitioner's claim that D-Y- threatened to report her to immigration, her statement refers to only one instance in which she felt indirectly threatened and "a few" other unspecified occasions. As described, D-Y-'s actions, while maybe unkind and inconsiderate, 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 claims made by the petitioner and the general statements submitted on her behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that D-Y-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner.

Accordingly, the petitioner has failed to establish that she was battered or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Consequently, the petitioner is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

Beyond the decision of the director, we note that on the petitioner's marriage license, the petitioner indicated that she had been married on two occasions prior to her marriage to D-Y-. The record, however, contains a reference to and documentation of the termination of only one prior marriage. Without further explanation regarding this inconsistency and relevant documentation which establishes either, the termination of the prior marriage, or that the information contained on the marriage license is erroneous, the petitioner has failed to establish that she had a qualifying relationship as the spouse of a United States citizen and that she was eligible for immediate relative classification based upon that relationship.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the reasons stated above, 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.