

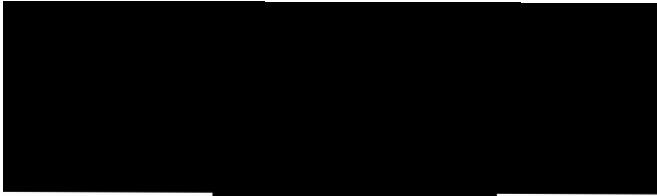
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**U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office, MS 2090
Washington, DC 20529-2090**



**U.S. Citizenship
and Immigration
Services**

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FILE:

EAC 07 139 50640

Office: VERMONT SERVICE CENTER

Date:

JUL 09 2009

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.

A handwritten signature in black ink, appearing to read "John F. Grissom".
John F. Grissom
Acting 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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

The petitioner seeks immigrant classification under 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 on May 16, 2008, determining that the petitioner had not established that she had been battered or subjected to extreme cruelty by her spouse. Counsel for the petitioner timely filed a Form I-290B, Notice of Appeal; however, the director incorrectly determined that the petitioner had not timely filed the appeal and treated the appeal as a motion. The director found that the brief and evidence submitted did not meet the requirements of a motion to reopen or a motion to reconsider and denied the motion on July 30, 2008. Counsel resubmits the brief and evidence to the AAO. The AAO has considered the brief and evidence submitted. We withdraw the director's determination that the petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by her spouse, L-S-¹. However, beyond the decision of the director, the AAO finds that the petitioner has not established that she entered into the marriage in good faith. As the petition is not approvable based on the current record and because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), the regulation in effect at the time, the matter will be remanded.

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 explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

¹ Name withheld to protect individual's identity

(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 guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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.

* * *

(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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Russia who entered the United States three times on a J-1 nonimmigrant visa: (1) in June 2004, returning to Russia in September 2004; (2) in May 2005, returning to Russia in September 2005; and (3) in July 2006. On September 5, 2006 the petitioner married L-S-, a United States citizen. The petitioner noted on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant that she resided with L-S- from August 2006 to February 2007. The record includes: a Form I-130, Petition for Alien Relative; a notice that an interview was scheduled for May 2, 2007 regarding the Form I-130; the Form I-360 filed April 17, 2007; and L-S-'s complaint for limited divorce indicating the couple voluntarily separated in February 2007. The record also includes the petitioner's March 21, 2007 answer to the divorce complaint requesting that the divorce be granted and other relief as appropriate.

Battery or Extreme Cruelty

In the petitioner's initial April 8, 2007 statement in support of the Form I-360, the petitioner stated: a month after she and L-S- were married, he lost his job and started to drink, spent their money, came home late and in October 2006 was arrested for marijuana use; in November 2006, L-S- found a new job and the relationship returned to normal; at the end of January everything started to happen again; L-S- started to drink again and spend nights outside the home; and that after he lost his job she found out that he had another woman. The petitioner stated: that when she found out about the other woman, she "asked him to leave [her] alone and never come back to [her] life never."

The initial record also included a statement from [REDACTED] who indicated that he introduced the couple, saw their relationship and love grow, and then witnessed L-S- on several occasions with another woman.

In response to the director's request for further evidence (RFE) the petitioner provided a second personal statement dated February 19, 2008. The petitioner stated: that after L-S- lost his job in

September he started drinking and that was the reason for many of their fights; that L-S- would yell at her and that she would suffer verbal abuse from him; that he came close to physically attacking her; and that she was very afraid of him, afraid he would hurt her. The petitioner also stated: that L-S- would drink and would come home very late; that in October when she tried to talk to him about his behavior he said he would withdraw his sponsorship for her green card and told her to get out of the apartment that same day; and that is when she realized he had power over her; that he made fun of her English in front of his friends but apologized for his behavior the next day; and that every time they had a fight he would call her names and make degrading remarks about her country and her status in the United States. The petitioner further stated: that in November when he started a new job their relationship was better although they still had difficult times; that in December he called her at work to complain about an electric tea kettle and threw away the tea kettle to punish her; that when he came home late, he would wake her up and demand sex and would tell her it was her obligation; that he sometimes threatened that he would take their money and get sex for cash; and that a couple of times when she refused to have sex with him he searched on the Internet, or pretended to, until she said ok. The petitioner also indicated: that in January 2007 he started drinking again and that she was not quiet any more in their fights; that he made her upset and she could not sleep well so she slept on the couch; that he would upset her by teasing and threatening their cat; that he called her derogatory names, would throw dangerous things at her, would throw her out of their apartment and she would sleep in her car; in January, he came home drunk and took the car; also in January he took her keys and left and did not come back home until the next morning and she had to stay at home to wait for him and the keys and could not go to work; and that once he pretended to be crazy and when he saw how upset she was he stayed at home with her that time. The petitioner further indicated: that he stopped almost all communication and contact with everyone during the marriage; that she was scared to get a divorce and lose legal status; that L-S- did not want her to go anywhere with her Russian speaking friends; that L-S- could not keep a job and so she had to pay all joint expenses; and that because of the stress of his abuse and cruelty she had problems at her job, had trouble sleeping, that she lost weight and had a fever in the evenings. The petitioner added that the months after she was separated from her husband she did not think about collecting evidence of L-S-'s abuse and extreme cruelty but now she has included affidavits and medical records.

The record before the director also included:

- A January 18, 2008 letter from the petitioner's employer who indicated that the petitioner's mood and demeanor changed over the next few months after the petitioner's marriage. The petitioner's employer also referenced three incidents: (1) that one day when the employer called the petitioner, her husband answered the phone and said that he would give the petitioner the message to call her employer; but that the petitioner told him that she had been at home and that her husband had not given her the message and had taken her phone away "to be cruel and emotionally abusive;" (2) on another occasion when the employer called the petitioner after business hours to discuss a business matter, the petitioner's husband interrupted the conversation and the employer later learned that the petitioner's

husband had become so upset by the call that afterward he became violent and verbally abusive to the petitioner; and (3) in January 2007, the petitioner was absent from work and explained that her husband had taken her car keys and confined her to their house as punishment for quarreling with him the previous night.

- A December 25, 2007 letter by the petitioner's mother who reported that the petitioner would call her every weekend and in the middle of the week when she had a problem with her husband. The petitioner's mother reported that the couple fought, that an incident happened with the tea kettle, that once the petitioner's husband pretended to be crazy making the petitioner hysterical, and that the couple had financial difficulties. The petitioner's mother also indicated that she never met her daughter's husband face to face or talked to him.
- A January 24, 2008 affidavit signed by [REDACTED] who rented a room to the petitioner in the summer of 2005. [REDACTED] indicated that in the fall of 2006 after the petitioner was married, the petitioner called and asked to spend a few nights at the affiant's home and that is when [REDACTED] learned that the petitioner's husband would humiliate the petitioner in public and would start fights with her. [REDACTED] noted that the petitioner discussed renting a room from her but went back to her husband instead.
- A February 12, 2008 affidavit signed by [REDACTED] who indicated that she met the petitioner through a Russian community website. [REDACTED] declared that once an offensive message was posted from the petitioner's profile and the petitioner explained that her husband was very jealous and did not want her talking to people on the Internet. [REDACTED] further stated that she never met the petitioner's husband in person but that when she and the petitioner made plans to go out together, the petitioner's husband made the petitioner cancel the plans.
- A February 15, 2008 affidavit signed by [REDACTED] who declared that she and the petitioner were not close friends but that a mutual friend recommended that the petitioner talk to her about her problems with her husband. [REDACTED] indicated: that the petitioner told her that her husband drank a lot of alcohol; that he offended and humiliated her and was physically very aggressive with her when he was drunk; and that the petitioner said she was afraid of her husband and would try to end fights by saying it is better to go to sleep now and continue the conversation tomorrow but that her husband would yell at her. [REDACTED] indicated further that the petitioner told her she did not have a place to go and did not know who to ask for help, so she told the petitioner she could ask for a protective order.
- A January 15, 2008 affidavit from [REDACTED] who stated that she rented a room at the apartment occupied by the petitioner and L-S- from the beginning of 2006 until the end of 2006. [REDACTED] declared that she was not a close friend with the petitioner but that sometimes they had conversations. [REDACTED] indicated that the petitioner complained about the problems she had with L-S-, such as his anger, his drinking, his inability to hold a job, and their arguments. [REDACTED] stated that she saw the petitioner sleeping in the living room and crying at times and that in one of

their last conversations before [REDACTED] moved out, the petitioner told her that she was unhappy and things were not working out with L-S-.

- A February 11, 2008 letter from the petitioner's physician who stated that he had seen the petitioner in February and March of 2007 when the petitioner reported an elevated temperature at night and had a loss of weight. [REDACTED] indicated that the petitioner's weight loss could be related to emotional stress though it is unlikely that stress is a contributing factor to the fever. [REDACTED] recommended additional sleep and rest and to achieve a sense of calm.

Based upon a review of the evidence in the record, the director found: that the evidence suggested that the petitioner and her spouse were having marital difficulties; that the petitioner's claim that she stopped almost all communications and contacts with everyone during her marriage conflicted with the statements made by her friends and family in their letters; that the information in her friends' and family's statements revealed that they did not have any first-hand knowledge of her spouse's treatment toward her; and that the letter from her physician did not indicate that the stress the petitioner experienced related to abuse perpetrated by her spouse.

On appeal, counsel for the petitioner submits four supplemental affidavits:

- A statement notarized June 13, 2008 from [REDACTED] Ms. [REDACTED] states that she did not meet with the petitioner while the petitioner was living with her husband. [REDACTED] indicates that later she understood that the petitioner's husband would not allow her to go out alone. [REDACTED] reports that the petitioner called her one night crying and said that her husband had kicked her out and that she told the petitioner to call the police or come to her place but that the petitioner did not because she was afraid she would make her husband angrier.
- A June 10, 2008 affidavit signed by [REDACTED] who re-states the information in her previous affidavit, indicates that the petitioner's husband was rude and did not seem to like her, and that she worried when she was unable to reach the petitioner by telephone.
- A June 9, 2008 letter from the petitioner's mother re-stating the information the petitioner provided in her February 19, 2008 statement.
- A June 15, 2008 statement written by [REDACTED] who indicated that she rented a room in the apartment also occupied by the petitioner and L-S- from spring to December 2006. [REDACTED] indicated that she wanted to mind her own business and that is why she wrote a short letter previously. [REDACTED] now states: that L-S- would argue with the petitioner one day and another day would try to control her; that most of their fights occurred at night because of his drinking and coming home late; that he attacked the petitioner a lot those times; that he would call her names, wake everybody in the house up by yelling at her; and that the petitioner would spend the night in the living room after the fights; and that once she saw L-S- kick the petitioner out of the room by pushing her and throwing her bag at her. [REDACTED]

indicates that she saw the petitioner crying a lot of times, she never talked to L-S- about his behavior, but his behavior seemed weird.

The record on appeal also includes a June 15, 2008 report from a psychiatrist, [REDACTED] who states that she examined the petitioner in connection with her Form I-360 appeal. [REDACTED] reports among other things: that L-S- would look for any excuse to start a fight which frequently deteriorated into verbal threats to kick the petitioner out of the apartment and throwing heavy objects in the petitioner's direction; that it was not uncommon for L-S- to throw the petitioner out of their room leaving her to sleep on the living room couch; that the petitioner began to experience constant fear of L-S- s rage and of becoming homeless; that the petitioner engaged in forced sex to keep from L-S- s aggression; that L-S- prohibited the petitioner from any social contact, especially with Russian speakers; that she could not contact her family frequently due to fear of his constant rage; and that L-S- would engage in a form of torture by keeping the petitioner up at night with fighting or insisting on sex. [REDACTED] opines that L-S- s behavior shows a pattern typical of domestic abuse, violence, constant threat, social isolation, humiliation and degradation and that the petitioner began to exhibit symptoms of severe major depression and post traumatic stress disorder, which she has to this day. Dr. [REDACTED] further opines that the petitioner's "underreporting" is consistent with Russian culture which demands high levels of secrecy in regards to personal matters.

The AAO observes that the petitioner's statement in response to the director's RFE provides significantly more information regarding the circumstances of the claimed abuse. The AAO finds that the petitioner's initial lack of forthrightness raises concerns regarding the veracity of her subsequent testimony. In addition, the petitioner's employer's statement that in January 2007, the petitioner's explanation that her husband had taken her car keys and confined her to their house as punishment for quarreling with him the previous night presents a more onerous view of the incident than that described in the petitioner's statement. In the petitioner's description of the incident, L-S- took her keys and left and did not come back home until the next morning and so she had to stay at home to wait for him and the keys and could not go to work. The petitioner does not indicate that L-S- s leaving was to "punish" her. Similarly, the petitioner's ability to communicate with her mother, with [REDACTED] and [REDACTED] undermine the petitioner's statement of isolation to her psychiatrist, [REDACTED].

The AAO also observes that the statements submitted in response to the director's RFE by individuals on the petitioner's behalf, as the director noted, do not include personal observations of abuse, but rather rely upon the petitioner's perception of the circumstances of her relationship. The AAO notes that the one individual who states that she had first-hand knowledge of the circumstances of the relationship, [REDACTED] who testified that she was one of the couple's housemates, either from the beginning of 2006 until the end of 2006 or from spring to December 2006, does not appear to believe that the couple's relationship escalated to the point of domestic violence that would require police intervention. The AAO observes that [REDACTED] testified that she saw the petitioner crying but never talked to L-S- about his behavior, and only characterized L-S- s behavior as "weird." Despite the inconsistencies in perception and the petitioner's significant elaboration regarding her relationship, upon review of the totality of the record, the AAO finds the record sufficient to establish that the petitioner was subjected to extreme cruelty. The AAO, thus,

withdraws the director's decision on this issue.

The record, however, as currently constituted is not approvable. Beyond the decision of the director, the record does not include sufficient evidence establishing that the petitioner's intent in entering the marriage was in good faith.

Good Faith Entry into Marriage

In her initial statement, the petitioner indicated that she met L-S- in July 2005 and that they did not want to separate, but she returned to Russia to finish her university studies in September 2005. The petitioner stated that L-S- called her almost every weekend while she was in Russia and when she returned to the United States in July 2006 and she and L-S- continued their relationship. The petitioner indicated that they rented an apartment in August and started to live together and that in a month he offered to marry her. The petitioner's subsequent statement does not provide any information regarding their courtship or the petitioner's intent in entering the marriage. The record also includes:

- A lease dated July 24, 2006 for a specific unit at condominiums on [REDACTED]. The lease is for a one-year term for four persons beginning July 24, 2006 to July 24, 2007.
- A lease dated August 1, 2006 for the same unit at condominiums on [REDACTED]. The lease is for a six-month term for five persons beginning August 1, 2006 and ending on a date that appears to be January 31, 2007.
- A copy of a letter dated August 29, 2006 addressed to the couple at the [REDACTED] address thanking the couple for opening a bank account and September 19, 2006 and November 16, 2006 bank statements. The November 16, 2006 statement shows a negative balance.
- An amended personal automobile policy addressed to the petitioner at the [REDACTED] address that identifies L-S- as an occasional driver. The policy is effective February 7, 2007 and is valid for a six-month period.

The record in this matter provides no details regarding the couple's courtship, their interactions prior to marriage, or their interactions subsequent to the marriage except as it relates to the alleged abuse. The petitioner does not provide any details that suffice to establish that her intent upon entering the marriage was to establish a life together. The AAO observes that the petitioner has not provided any probative documentary evidence that would assist in establishing that she entered into the marriage in good faith. The petitioner's marriage certificate and Form I-130 filed by her husband confirm their marital relationship, but do not establish the petitioner's own good faith in entering the marriage. The AAO notes that the petitioner has provided copies of two leases for either four or five persons that list the term of the lease for the premises as six months or as one year. Although the leases show that the couple may have resided together with others in the same apartment, the leases do not establish the petitioner's intent in entering the marriage. Similarly, the two bank statements do not substantiate that the couple each used the account and thus commingled their assets. The

AAO also questions the addition of the petitioner's spouse to an automobile insurance policy in February 2007, at a time the divorce complaint indicates that the two had separated.

As noted in the regulation 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. The AAO acknowledges that while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf also fails to support a finding that she entered into this marriage in good faith. It is the generality and barenness of detail included in the petitioner's statement and the lack of specifics noted by others regarding the petitioner's relationship with L-S- that fail to establish that the petitioner entered into the marriage in good faith. Accordingly, the AAO finds that the record is insufficient to establish that the petitioner entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) the regulation in effect when the petition was filed. On remand, the director should address all grounds for the intended denial of the petition.

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. The petitioner has not sustained that burden.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reason discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.