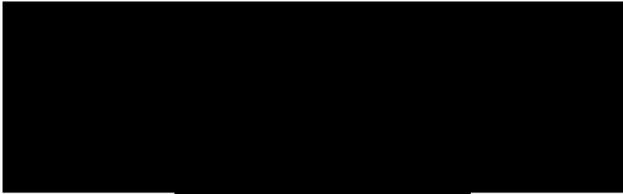


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FILE: [Redacted]
EAC 06 019 52147

Office: VERMONT SERVICE CENTER

Date: JUN 21 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
fe 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 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 did not establish that her husband battered or subjected her to extreme cruelty during their marriage and that she resided with him.

On appeal, counsel submits a brief and copies of documents previously submitted below.

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

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

(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.

* * *

(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.

* * *

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Colombia who was paroled into the United States on November 13, 2001. On December 7, 1997, the petitioner married E-R-¹, a U.S. citizen, in Florida. The petitioner filed a previous Form I-360 (Receipt Number EAC 03 256 52981), which was denied on November 3, 2004 for lack of the requisite battery or extreme cruelty. The petitioner did not appeal the adverse decision.

¹ Name withheld to protect individual's identity.

The petitioner filed the instant Form I-360 on October 12, 2005. The director subsequently issued a Request for Evidence (RFE) of the requisite joint residence and battery or extreme cruelty. The petitioner, through counsel, requested and was granted additional time to respond and timely submitted an additional affidavit of the petitioner. The director then issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite joint residence and battery or extreme cruelty. The petitioner, through counsel, timely responded with further evidence. On August 7, 2006, the director denied the petition on the grounds cited in the NOID and counsel timely appealed.

On appeal, counsel claims that the director incorrectly determined that the petitioner lacked credibility due to minor inconsistencies in the record. We concur with the director's determinations. Counsel's assertions on appeal fail to overcome the grounds for denial.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that her husband subjected her to battery or extreme cruelty during their marriage:

- The petitioner's first undated statement initially submitted with the instant Form I-360 and the petitioner's April 6, 2006 statement submitted in response to the RFE;
- Copies of five, undated photographs of the petitioner, two of which show discoloration under her left eye and one which shows three areas of discoloration on her thighs;
- Letters from six of the petitioner's acquaintances stating that they know the petitioner and her husband from church activities, through other friends or that they "deal with" the former couple;
- Letter from the petitioner's friend, [REDACTED] and
- Letter from the petitioner's friend, [REDACTED]

In her first, undated statement, the petitioner reports that shortly after their marriage, she discovered that her husband was using drugs. After she confronted him, the petitioner states that her husband entered a rehabilitation program and was fine for a time after his return, but then her husband went to Puerto Rico, called her, told her "bad words" and humiliated her. After his return, the petitioner states that her husband continued to speak bad words to her, humiliate her and would not let her go out or talk to her friends. The petitioner reports that her husband called her a prostitute and told her that she was not smart and was nothing without him. After the former couple moved to Orlando in March 2002, the petitioner states that her husband beat her and threatened that he would kill her if she called the police. The petitioner reports that her husband then went to Puerto Rico again and she moved and changed her telephone number while he was gone. The petitioner states that she did not see her husband for almost two years until he found her and threatened her on three occasions to give him her address and telephone number because he can make her comply with her wifely duties. The petitioner explains that she twice went to the Sheriff's office to get a restraining order against her husband, but they told her that they could not do so because her husband had not abused her recently.

In her April 6, 2006 statement, the petitioner adds that when her husband beat her he also threatened that he would not go with her to their immigration appointments and so she was forced to do whatever her husband wanted. The petitioner also states that after her husband beat her, he would sharpen a knife while looking at her in an intimidating way. The petitioner further reports that her husband beat her shortly before her interview with Citizenship and Immigration Services (CIS) scheduled for April 30, 2002. The petitioner explains that the day after her husband beat her, she went to see her immigration attorney² who instructed her to have pictures taken of the bruises on her body inflicted by her husband and to file a police report. The petitioner states that her friend took pictures of her bruises, but she never went to the police because she was scared of what her husband would do to her.

The petitioner does not explain why she failed to include the aforementioned details in her first statement and several aspects of the petitioner's testimony detract from the credibility of her statements. Apart from stating her husband's threats and how the photographs were taken, the petitioner does not describe her husband's battery or the context of the conflict in any probative detail. Although the petitioner states that her husband also spoke bad words to her and humiliated her, she does not state the specific language her husband used or describe any particular incidents of humiliation in probative detail. Moreover, the petitioner states that her husband's behavior forced them to move several times during their marriage, but she does not describe in detail any specific incidents of abuse that caused their relocation. The petitioner also states that her husband would not let her go out or talk to her friends, but the petitioner states that she continued to go to work and the letters from the petitioner's friends and acquaintances indicate that she went to church and interacted with them during her marriage.

The remaining, relevant evidence fails to fully support the petitioner's claim. Some of the copied photographs show what may be bruising under the petitioner's left eye and on her thighs. However, the copies are muted and printed in black and white. The copies are also undated and the petitioner submitted no testimony from the friend whom she states took the photographs or the attorney who instructed her to have the photographs taken. We note that the record contains a letter dated April 29, 2002 to the Jacksonville, Florida CIS office from the attorney [REDACTED] who is a member of present counsel's law firm. [REDACTED] states that the petitioner visited his office on that date because of "problems that she is actually having with the petitioner regarding her application for adjustment of status." [REDACTED] states that he is unable to accompany the petitioner to her scheduled interview, but that he intended to file a "new I-751 with a request for waiver[.]" Although [REDACTED] represented the petitioner on her previous Form I-360 and is a named member of present counsel's law firm, the record is devoid of any testimony from [REDACTED] regarding the petitioner's injuries on April 29, 2002 or providing any other probative information to support the petitioner's claim. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

² The petitioner refers to this individual as "the attorney who was working on my I-130 petition."

██████████ and ██████████ also fail to provide probative details to support the petitioner's statements. ██████████ states that she witnessed the verbal and physical abuse inflicted upon the petitioner by her husband, but she does not describe any particular incidents of abuse in detail. ██████████ states that on one occasion when he visited the former couple he noticed that the petitioner's husband "treated her bad, he continuously insulted her with bad words," but ██████████ provides no further, probative details.

In sum, the relevant testimonial and documentary evidence fails to sufficiently corroborate the petitioner's statements and the petitioner's testimony alone does not establish that her husband battered or subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- The petitioner's first undated statement initially submitted with the instant Form I-360 and the petitioner's April 6, 2006 statement submitted in response to the RFE;
- November 8, 1998 letter of ██████████
- Residential lease dated April 1, 2000 for an apartment on ██████████ in Gainesville, Florida for a term of April 1, 2000 to March 31, 2001, which is signed by the petitioner and ██████████ as the lessees;
- October 6, 1998 letter of ██████████
- Copies of the 1997 federal income tax returns signed and filed by the petitioner and her husband as married filing separate return and listing each other as the other's spouse, but stating different addresses for the petitioner and her husband;
- Copy of the 1998 joint federal income tax return signed by the petitioner and her husband;
- Copy of the 1999 joint federal income tax return of the petitioner and her husband and the attached Form W-2, Wage and Tax Statements of the petitioner and her husband;
- Copy of the petitioner's 2000 federal income tax return filed as married filing separate return and listing her husband as her spouse;
- Correspondence from the Internal Revenue Service (IRS) jointly addressed to the petitioner and her husband and dated June 5 and 7, 2000
- October 1, 1998 letter certifying that the petitioner's husband was admitted to the House of Freedom Ministry's rehabilitation center for drug and alcohol abuse on April 21, 1998;
- Four joint credit union account statements addressed to the petitioner and her husband at four different addresses and dated between March 1999 and December 2002;
- Letters from six of the petitioner's acquaintances;
- Letter from the petitioner's friend, ██████████ and
- Letter from the petitioner's friend, ██████████

On the instant Form I-360, the petitioner states that she resided with her husband from December 1997 to April 2003. In her first, undated statement, the petitioner explains that shortly after their marriage, she discovered that her husband was using drugs and he went to "Freedom House" for about eight months. The letter from Freedom House confirms that the petitioner's husband was admitted to the rehabilitation center on April 21, 1998, but states that the petitioner's husband would reside at the center for 15 months, the length of the center's rehabilitation program.

In her first statement, the petitioner explains that when her husband returned from rehabilitation, he was fine for some time, but then went to Puerto Rico. When he returned, the petitioner states that she took him back in to her apartment. In March 2002, the petitioner reports that she and her husband moved to Orlando, but that after her husband beat her on an unspecified date, he went to Puerto Rico and she moved to another apartment.

In her April 6, 2006 statement, the petitioner explains that after their marriage, she and her husband lived at [REDACTED]'s home on [REDACTED] in Gainesville, Florida, where the petitioner had been living before she was married. The petitioner states that she and her husband lived at the [REDACTED] residence until November 8, 1998. However, [REDACTED] states that the former couple resided with her beginning in May 1998. In addition [REDACTED] states that the petitioner and her husband lived in her home in Kissimmee, Florida from August 1997 until May 1998. Yet the petitioner states that she did not begin residing with her husband until after their marriage in December 1997. The petitioner provides no explanation of these discrepancies.

In her April 6, 2006 statement, the petitioner reports that while her husband was at the rehabilitation center, she moved to a residence on [REDACTED] in Gainesville, Florida and her husband lived with her after he got out of the rehabilitation center. The petitioner further explains that her husband's behavior forced the former couple to move more than five times during their marriage. The petitioner states, "since we rented rooms in other people's houses, mostly because of our economic situation, people got tired of having my husband's behavior and the insecurity of having him around, we were always forced to move."

The petitioner does not, however, specify the other three or more addresses at which the former couple resided and she does not state the approximate dates of their joint residence at each address or the approximate dates of her husband's trips to Puerto Rico during their marriage. Without such information, the relevant documentary evidence fails to fully support the petitioner's claim. The petitioner's 1997 tax return states her address as a residence in Kissimmee, Florida, the home of [REDACTED] Collado, but the petitioner's husband's 1997 tax return states his address as a residence on Southeast [REDACTED] in Gainesville, Florida. The March 1999 credit union statement is jointly addressed to the former couple at the [REDACTED] residence and this same address is listed on the copy of the former couple's 1998 tax return. However, the 1998 tax return is signed only by the petitioner and not her husband. The July 2000 credit union statement and the June 2000 IRS correspondence are addressed to the former couple at the [REDACTED] residence that the petitioner states she and her husband only shared with [REDACTED] until November 8, 1998. The copy of the former couple's 1999

income tax return also states the [REDACTED] address as their joint residence, but the 1999 Forms W-2, Wage and Tax statements, report a different address in Gainesville for the petitioner and a different address in Haines City for the petitioner's husband. The April 1, 2000 lease for the [REDACTED] residence may explain why that address is listed as the former couple's joint residence on their 1999 tax return, which was prepared on April 15, 2000, although the 1999 Forms W-2 for the petitioner and her husband list different addresses. Yet the petitioner does not explain why her husband is not included in the April 1, 2000 lease, which she entered individually with [REDACTED].

The letters from the petitioner's acquaintances and friends fail to provide probative information to support her claim. The letters from the petitioner's six acquaintances submitted on appeal simply state that the individuals know the petitioner and her husband and do not provide any probative information about the petitioner's purported residence with her husband. [REDACTED] states that she has known the petitioner and her husband for nine years, but she primarily discusses the purported abuse and does not provide any probative details about the petitioner's alleged residence with her husband. [REDACTED] states that he has known the former couple for eight years and that he visited them on one, unspecified occasion. [REDACTED] discusses the petitioner's marital problems, but provides no further, detailed information regarding her purported residence with her husband.

While it is credible that the petitioner's husband's drug use and unstable behavior may have forced the former couple to move several times during their marriage, the petitioner fails to provide a sufficient description of their shared residences that is consistent with the relevant testimonial and documentary evidence. In addition, the petitioner does not explain the discrepancies between her statements and those of [REDACTED] and [REDACTED] regarding the former couple's allegedly joint residence in 1997 and 1998 or account for why she entered a lease individually with [REDACTED] on April 1, 2000. Consequently, the petitioner has failed to establish that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The petitioner has not established that her husband subjected her to battery or extreme cruelty during their marriage and that she resided with him. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.