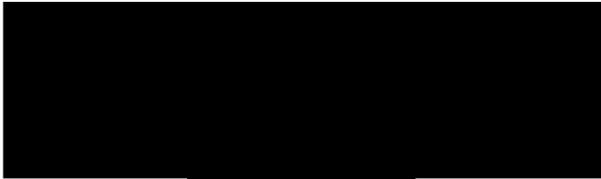


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MAR 02 2007

FILE: [Redacted]  
EAC 05 234 50075

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]

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

ON BEHALF OF PETITIONER:



**INSTRUCTIONS:**

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

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

The petitioner, through counsel, timely appealed.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

\* \* \*

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social

workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The petitioner in this case is a native and citizen of the Philippines who entered the United States on January 20, 2004 as a B-2 nonimmigrant visitor. The petitioner married D-D-\*, a U.S. citizen, in Las Vegas, Nevada on May 22, 2004. The petitioner filed the instant Form I-360 on August 22, 2005.<sup>1</sup>

As it relates to her claim of abuse, with the initial filing, the petitioner submitted an affidavit dated August 18, 2005 and a personal statement dated September 15, 2005. Additionally, the petitioner submitted two affidavits from acquaintances. In her affidavit, the petitioner claimed that her husband did not work, that he would stay out all night and sleep all day, and withdrew money from their joint account without the petitioner's knowledge. In addition, the petitioner claimed that her spouse gambled, drank, smoke and womanized. The petitioner describes one instance where after questioning her spouse about his insurance settlement and he yelled at her and told her to "keep [her] mouth shut." Although the petitioner claims that she was socially isolated and that her spouse did not introduce her to his friends, she clearly describes interacting with his friends. Moreover, the petitioner does not indicate that she was prevented from seeing her friends or family. The claims contained in her personal statement are virtually identical to the ones contained in the affidavit. However, although not mentioned in her affidavit, the petitioner's personal statement contains references to physical abuse perpetrated against her. For instance, the petitioner indicates that her friends "were telling [her] to leave him because he started to get physical" and that she was "fed up with his drinking, [that he] beat [her] black and blue and verbal abuse calling me obscene names."

Despite the petitioner's claim in her personal statement that her friends were aware of physical abuse against the petitioner, neither affiant describes any incident of physical abuse. Instead, [REDACTED] indicates that the petitioner's spouse "has drinking and gambling problems," stays out every night, comes home intoxicated, and is "jobless." While [REDACTED] also indicates that the petitioner's spouse had "an extraordinary sex practice," she does not elaborate on this statement. Similarly, the letter from [REDACTED] indicates that the petitioner's spouse is "always intoxicated" and that he has "gambling problems," but does not mention physical abuse. While [REDACTED] claims that she was a witness to "verbal abuse and emotional torture," she does not provide any details to support her claims.

In the director's Request for Evidence (RFE), issued on February 14, 2006, the director noted discrepancies between the petitioner's claims and those made in the affidavits provided in her behalf by Daisy and Vilma Go.

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\* Name withheld to protect individual's identity.

<sup>1</sup> Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, filed in the petitioner's behalf by her citizen spouse on June 22, 2004 and an a Form I-485, Application to Adjust Status. The Form I-130 appears to remain unadjudicated, however, the Form I-485 was denied on June 6, 2005 for abandonment.

In response to the director's RFE, the petitioner submitted a second personal statement, dated July 5, 2006. In this statement, while the petitioner claims now claims that she was "repeatedly sexually abused" by her spouse, she does not provide any explanation for her failure to allege sexual abuse in either of her previous statements, nor does she provide any description of specific incidents to support her claim of repeated sexual abuse.

In response to the director's Notice of Intent to Deny (NOID), the petitioner submitted another personal statement and two additional affidavits from acquaintances. In the personal statement submitted in response to the NOID, the petitioner describes an act of sexual abuse that occurred during her honeymoon. The petitioner also claims that her spouse "became experimental in using sexual paraphernalia" and on one occasion requested the petitioner to engage in group sex. The statements submitted on the petitioner's behalf indicate that the affiants have witnessed the mental and verbal abuse of the petitioner but do not provide any description of specific incidents. Moreover, contrary to the petitioner's prior claims of physical abuse, the affiants indicate their hope that "it doesn't turn physical" and that the petitioner ends her marriage "before the abuse turns physical."

On appeal, counsel for the petitioner argues that the petitioner's spouse's extreme cruelty is demonstrated by the fact that "he wanted her to perform sexual acts that are contrary to her morals and conservative upbringing." Counsel argues that when the petitioner refused to go along with her spouse's demands he became abusive. Counsel states that although "the abuse was not physical, [sic] it was mental cruelty." Counsel further argues that the petitioner will "experience extreme hardship if she is not allowed to proceed with her I-360 petition. Upon review, as will be discussed, we concur with the finding of the director that the petitioner has failed to establish that she was battered and/or subjected to extreme cruelty by her spouse. We are not persuaded by counsel's arguments on appeal.

Before reviewing the evidence and arguments related to the petitioner's claim of abuse, we will first address counsel's argument that the petitioner will face extreme hardship if deported to the Philippines. On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21. Accordingly, the issue of extreme hardship is no longer a consideration in the Form I-360 determination.

As it relates to the petitioner's claim of abuse, we find the testimonial evidence to be insufficient and to lack credibility. In the statements submitted at the time of filing, while the petitioner referred to "black and blue" marks in her personal statement, she failed to make any claim of physical abuse in her affidavit. While the petitioner indicated that her friends witnessed the alleged physical abuse, the affidavits submitted at the time of filing contained no allegation of physical abuse. In the statement submitted in response to the director's RFE, the petitioner claimed that "the pain and physical evidence of my bruises will vanish." However, the statements from [REDACTED]s and [REDACTED] submitted in response to the NOID indicate that the petitioner's relationship had not yet reached the point of physical abuse. The petitioner fails to describe any incident of physical abuse in detail and the testimonial evidence submitted on her behalf contradicts her claim that any physical abuse took place. We note that on appeal, both the petitioner and counsel now claim that there was no physical abuse.

The petitioner's claims regarding the alleged sexual abuse perpetrated against her are equally unpersuasive.

First, the petitioner failed to mention any claim of sexual abuse in either her initial affidavit or her personal statement. In her second statement, the petitioner claimed that she was “repeatedly sexually abused,” yet provides no specific details regarding incidents, times or places. Further, while the petitioner explains why she could not tell the “whole story” to her friend Daisy, the petitioner offers no explanation for her failure to allege a claim of sexual abuse in either statement submitted at the time of filing. In the statement submitted in response to the director’s NOID (the petitioner’s *fourth* statement), the petitioner describes sexual acts that occurred during her honeymoon that were against the petitioner’s “cultural and religious background.” Additionally, the petitioner claimed that her spouse used “paraphernalia” and on one occasion requested the petitioner to engage in group sex. As previously discussed, we find the testimonial evidence in this case to lack credibility. This lack of credibility is further evidenced by the petitioner’s escalating claims of sexual abuse beginning with no claim in her initial two statements to the claims contained in the fourth statement.

On appeal, the petitioner reiterates the claims made regarding the alleged sexual abuse. In addition, the petitioner submits a letter from her psychotherapist, [REDACTED]. In her letter, [REDACTED] indicates that the petitioner began psychotherapy in August 2006 and that she has been experiencing “flashbacks of spousal abuse, both sexual and physical, typical of post traumatic abuse.” The petitioner does not explain why this information was not submitted in response to the NOID. Regardless, the general statement that the petitioner was a victim of spousal abuse, is not sufficient to establish the petitioner’s claim. [REDACTED] does not offer any description of what the petitioner told her in order for [REDACTED] to determine that the petitioner was sexually and physically abused. Further, the fact that [REDACTED] alleges that the petitioner was a victim of physical abuse simply raises further questions regarding the petitioner’s veracity.

The remaining claims, that the petitioner’s spouse was a gambler, liked to drink, called the petitioner names, and took money without her knowledge are not sufficient to establish that she was battered by or subjected to extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Accordingly, as discussed above, we concur with the determination of the director that the petitioner has failed to establish that she was battered by or subjected to extreme cruelty during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The petitioner has failed to overcome this finding on appeal.

Beyond the decision of the director, we also find that the petitioner failed to establish that she resided with her spouse. On the Form I-360, the petitioner failed to indicate where she resided with her spouse and to list how long they lived together. The petitioner submitted no evidence of joint residence at the time of filing. While the record contains copies of statements and documents addressed to the petitioner at a post office box and at “[REDACTED] Las Vegas, NV,” the sole documentary evidence of the petitioner’s spouse’s residence with the petitioner consists of three bank statements from Community Federal Credit Union.<sup>2</sup> While the absence of documentary evidence such as a lease or mortgage statement, utility bills, or correspondence is not necessarily disqualifying, the petitioner fails to provide any probative testimonial evidence regarding her residence with her spouse. As noted above, the petitioner fails to indicate the dates during which she resided with her spouse. As such, there is no temporal context within which to evaluate the bank statements submitted by the petitioner. Further, neither the petitioner nor any of her affiants describes the petitioner’s residence, whether they lived in only one home during their marriage, whether their home was rented or owned, or any other details about the residence itself. The petitioner failed to describe their general daily or weekly schedules and routines at the

<sup>2</sup> Although the record also contains various immigration documents listing a joint address, we do not find these documents to be persuasive evidence of their joint residence.

residence and any of her spouse's or the former couple's jointly owned belongings and shared activities at the home. Accordingly, we withdraw the director's affirmative determination on this issue and 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.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.