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FILE: EAC 06 155 51370 Office: VERMONT SERVICE CENTER Date: DEC 02 2008

IN RE: Petitioner:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).


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 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 United States citizen.

On March 8, 2007, the director denied the petition for failure to establish that the petitioner was subjected to battery or extreme cruelty by her spouse.

On appeal, counsel submits a brief and additional documents.

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 explained 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 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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Georgia. She entered the United States on a B-1 visitor visa in 1998 and again on advance parole in September 2002. She married J-V-,¹ a United States citizen in New York on January 15, 2002. The petitioner filed the instant Form I-360 on April 17, 2006. On September 22, 2006, the director issued a Request for Evidence (RFE) on the issues of the battery or extreme cruelty perpetrated against the petitioner by J-V-, the petitioner's residence with J-V-, and the petitioner's entry into the marriage in good faith. The petitioner submitted a request for additional time to respond to the RFE on November 10, 2006. On January 11, 2007, the director issued a Notice of Intent to Deny (NOID) the petition, notifying the petitioner of the deficiencies in the record as outlined in the RFE. The petitioner submitted further evidence. Upon review of the evidence submitted, the director determined that the petitioner had established that she had entered into the marriage in good faith and that she had resided with J-V-. The director determined, however, that the petitioner had not submitted sufficient evidence to establish that she was battered or subjected to extreme cruelty by J-V- during their marriage. The AAO concurs with the finding of the director that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage.

¹ Name withheld to protect individual's identity.

The petitioner initially submitted an undated statement wherein she declared that she had married J-V- on January 15, 2002, one day after the marriage of her foreign first marriage had been dissolved. The petitioner stated: “[a]fter the marriage we moved to Brooklyn. Place of residence change was the alleged reason of my husband dismissal. . . . When six months have passed and [J-V-] failed to find a job I delicately implied to [J-V-] that he pays insufficient attention to the matter of his employment.” The petitioner further indicated: “[u]ltimately, I got completely dissatisfied by such behavioral pattern and expressed an unambiguous protest. [J-V-] reacted immediately: he started slapping, calling me bad names and screaming. His leading argument referred to the fact that I had to respect [him] regardless of any circumstances and events.” The petitioner noted that following this argument she left the premises so as not to get hurt and met with her friend [REDACTED] and told her about the argument. According to the petitioner [REDACTED] urged her to return home to talk with her husband. The petitioner indicated that upon returning home her husband was not there but came home the next day drunk and went to bed. When the petitioner again spoke to her husband she noted “his aggressiveness and ‘pushing’ manner.” The petitioner further noted that her husband accused her of infidelity, always contradicted her opinion, used her immigration status as a trump card in all disputes, and gave up on finding a job at all. The petitioner reported that her husband started to disregard her, wasted the money she had earned, and started commanding her and punished her if she did not obey. The petitioner indicated her husband “did not provide me with moral support but also abused me both morally and physically.”

The petitioner reported that in January 2003, J-V- attempted to choke her when she did not buy him liquor. She indicated that he grabbed her neck and started squeezing until she could not breathe. She kicked him in the leg and he left with money from her handbag. The petitioner reported that the next day, after she came home, she started to pack her things and when she attempted to leave, J-V- stopped her, threw her belongings on the floor, started cursing her, took her key, threatened her, and slapped her two or three times. The petitioner stated that she had no opportunity to leave. On the next day, she went to her friend’s, [REDACTED], and shared her problems and [REDACTED] invited her to stay with her for two weeks. The petitioner noted that when she talked with J-V- he accused her of having a boyfriend and she told him she did not but could not tolerate violence and moral abuse. The petitioner indicated that she returned to her husband after he admitted “that it was an awful mistake.” The petitioner reported that J-V- did not change his behavior and told her he had full control over her and could deport her back to Georgia and that she had no right to deny his requests for intimacy. The petitioner stated that in spring 2004, when J-V- did not come home for two nights she confronted him and he started choking her again as it had happened the first time. The petitioner concluded her statement by reporting that in June 2004, she needed to return to Georgia after the death of a dear uncle and although she asked J-V- to go with her, he refused. The petitioner noted that when she returned from Georgia, J-V- was in jail and she was told he had been arrested for unlawful possession of firearms. At that point, the petitioner stated she decided to break off all relations with her husband.

The initial record included copies of ConEdison utility bills issued in the name of the petitioner and her husband for a premises on Ocean Parkway, Brooklyn, New York for February, March, April, May, June, July, August, September, November, and December 2004 and for April, August, September, November, and December 2005. The record also included copies of KeySpan utility bills issued only in the name of the petitioner for the same premises for the months of July, 2004, July 2005, and September 2005. The record

further included copies of Internal Revenue Service (IRS) Forms 1040, U.S. Individual Income Tax Return for 2002 and 2003 jointly filed by the petitioner and J-V- showing an address on [REDACTED] in Brooklyn, New York. The record also included photocopies of photographs.

In response to the director's RFE/NOID, the petitioner provided a copy of the first page of a lease agreement for the premises located on [REDACTED] and noted that the utilities were included in the rental of these premises. The petitioner pointed out that the IRS Forms 1040 for 2002, 2003, and 2004 also listed the couple's address at the premises located on [REDACTED]. The petitioner included printouts from the IRS showing that joint returns were filed in 2002 and 2003 with the address for the premises located on [REDACTED] and that she filed an individual return, without her husband listed as a joint wage earner in both 2004 and 2005 with an address on [REDACTED] for 2004 and an address on [REDACTED] in 2005.

The petitioner also included:

- An affidavit signed January 3, 2007 by [REDACTED] who declares that she has known the couple since May 2000 and that although the couple started to experience difficulties in their relations after they got married, the petitioner continued living with J-V- until the summer of 2004 when the affiant was told that J-V- was arrested.
- An affidavit signed on January 9, 2007 by [REDACTED] who declares that the petitioner told her that J-V- lost his job after they were married, that the petitioner suffered a lot during the time she lived with J-V- until mid 2004, and that the petitioner did not like to share her relations with the affiant so it was not until September 2004, that the affiant learned what the petitioner had been through.
- An affidavit signed January 11, 2006 [sic] by [REDACTED] who declares that she has known the petitioner for a number of years and that in the fall of 2002 the petitioner called her and asked to meet with her. [REDACTED] reports that she learned on that day that the petitioner's husband had abused her physically during a quarrel. Ms. [REDACTED] further states that the petitioner told her about the many times J-V- had abused her physically and morally.
- An affidavit signed January 16, 2007 by [REDACTED] who declares that she has known the petitioner since December 2000 and that in January 2003, the petitioner visited her and told her she could not go back home because of the unsafe environment. The affiant declares further that the petitioner stayed with her about two weeks and during that time the petitioner's husband called many times every day and spoke with the petitioner aggressively and complained that the petitioner was living with another man.

The record also included an October 19, 2006 letter submitted by [REDACTED], Psychiatrist, who reported that the petitioner is a 36-year old female, home attendant, separated mother of two kids² who emigrated from Georgia eight years ago. [REDACTED] reported:

² The petitioner has two children from her previous marriage who were born in 1985 and in 1987 and whose immigration status is unknown.

She started having her problems about 3 years ago when her husband became [sic] acting weird, abusing her both physically and morally without any reasons and causing her continuous moral sufferings. Her husband often groundlessly accused her in having affairs and used it for justification of his physical violence. He was placed in prison in 2004.

diagnosed depressive disorder, prescribed medication, and reported two follow-up visits in November and December of 2006.

The director denied the petition on March 8, 2007, determining that the affidavits submitted from [REDACTED] and [REDACTED] did not indicate that the affiants witnessed any incidents of physical abuse and that [REDACTED] did not provide details regarding any of the incidents that the petitioner reported. The director noted that the petitioner's allegations were based only on her testimony more than two years after the petitioner and her spouse separated and lacked sufficient weight to substantiate her claim. The director found that the record did not demonstrate the petitioner's eligibility under this requirement.

On appeal, counsel for the petitioner asserts that the director applied an improper standard of proof and cites an unpublished matter in support of the assertion. Counsel complains that the director did not give any weight to the consistency of the evidence submitted and has not considered that in domestic violence matters, a petitioner's testimony may be the only evidence available. Counsel contends that the affiant [REDACTED] statement regarding how the petitioner's husband called her many times and the affiant [REDACTED] statement that the petitioner tried to avoid discussing her family life confirm the petitioner's statement. Counsel asserts that [REDACTED]'s general description is similar in scope to the description in an unpublished decision that was dismissed but did not address the insufficiency of the description. Counsel notes the basic rule of confidentiality between doctors and patients. Counsel claims that the director's determination regarding the remoteness of the petitioner's claim from the date of abuse is without merit as there is no statutory or precedent support for such consideration.

The petitioner, through counsel, provides two additional affidavits. In the May 5, 2007 affidavit of [REDACTED], Mr. [REDACTED] declares that he received a phone call from the petitioner in January 2003 and that she was upset because her husband tried to choke her and "locked her on the next day in the apartment." In an undated affidavit signed by [REDACTED] the affiant declares that the petitioner contacted her in the fall of 2002 seeking advice on solving the problems in her marriage and that the petitioner's husband treated her in a possessive way mixed with moral abuse. [REDACTED] noted that during that same year she invited the petitioner to attend social functions but that the invitations were not accepted because the petitioner's husband would not let her go. The petitioner also provides an undated letter from [REDACTED] who states that she is not allowed to provide confidential information about a patient's private life and can only indicate that the petitioner "is suffering from depression due to the ongoing abused relationship from her husband."

The petitioner's statement regarding the timing of the alleged incidents of abuse is unclear. The petitioner states that after her marriage to J-V-, they moved to Brooklyn and her husband failed to find a job. The AAO has reviewed the petitioner's statement and the tax returns in the record. The petitioner and her husband

claimed to live on [REDACTED] in Brooklyn and the tax returns for 2002 and 2003 show the couple's address as on [REDACTED] in Brooklyn. The tax returns also show that the petitioner's husband contributed to the household income in both 2002 and 2003. The petitioner indicated in her statement that the first abuse began sometime after her marriage when she suggested that her husband get a job and that "[u]ltimately, [she] got completely dissatisfied by such behavioral pattern and expressed an unambiguous protest," whereupon "[J-V-] reacted immediately: he started slapping, calling me bad names and screaming. His leading argument referred to the fact that I had to respect [him] regardless of any circumstances and events." The time period of this incident is not expressly stated and thus it is unclear when this event took place. The only other information in the record regarding the husband's loss of job and this incident is: (1) in the affidavit of [REDACTED] who indicates that the petitioner told her that J-V- lost his job after the couple was married and the petitioner told her she suffered a lot during the marriage; (2) in the affidavit of [REDACTED] who states that in the fall of 2002 the petitioner asked to meet with her and the affiant learned that the petitioner's husband had abused the petitioner physically during a quarrel; and (3) in the affidavit of [REDACTED] who declares that the petitioner contacted her in the fall of 2002 seeking advice on solving the problems in her marriage and noting that the petitioner's husband treated her in a possessive way mixed with moral abuse. The three affiants in this matter did not witness the claimed incident of abuse or describe in more specific detail the timing of the abuse, noting only that it happened in the fall of 2002. The affiants do not describe the type of physical or emotional abuse and do not provide any detail that includes the petitioner's husband choking, slapping, and/or pushing the petitioner. The affidavits are devoid of any pertinent and consistent details regarding the incident in the fall of 2002. The record does not provide sufficient consistent information from the petitioner regarding the circumstances of the claimed abuse in 2002 and the affiants do not provide probative detailed information sufficient to establish that the petitioner suffered battery or extreme cruelty in the fall of 2002. In addition, the petitioner's statement that her husband lost his job after their marriage and upon their move to premises on [REDACTED] does not correspond to the information in the couple's tax returns in 2002 and 2003. 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).

Similarly, the petitioner provides only a general statement regarding the January 2003 incident when she claims that J-V- tried to choke her until she kicked him in the leg and he left. The petitioner indicates that she could not sleep, cried all night long, and when she came home the next day, she started to pack her things but on her way to the door her husband started cursing her, took her key, threatened her, and slapped her two or three times. The petitioner states that she had no opportunity to leave the premises until the next day when she went to her friend's [REDACTED]. In support of the petitioner's statement, the petitioner provided the affidavit of [REDACTED] who indicates the petitioner visited her in January 2003 and during the visit, the petitioner's husband called many times and spoke with the petitioner aggressively and complained that the petitioner was living with another man. Although [REDACTED] confirms the general time frame of this incident, [REDACTED] did not witness the incident. Moreover, [REDACTED] does not describe how she knew the petitioner's husband spoke with the petitioner aggressively and complained that the petitioner was living with another man. The affiant does not provide the necessary details regarding J-V-'s communications with the petitioner to establish the truth of the allegations therein. Further, the statement of [REDACTED] submitted on appeal appears to conflict

with the petitioner's claim that she left her apartment after the incident and when she came home the next day her husband took her key, threatened her, and slapped her two or three times and she had no opportunity to leave the premises until the next day. Although the inconsistencies in the petitioner's statement and that of Mr. [REDACTED] are minor, it is the generality and lack of detail included in the affidavits submitted to corroborate the petitioner's statement that fail to establish these affiants had actual knowledge of battery or physical or emotional abuse.

The petitioner, in her statement, reports that after she stayed with her friend for a couple of weeks she returned to her husband but that his behavior did not change. She reports that she confronted her husband after he did not come home for two nights and he started choking her again as it had happened the first time. The petitioner does not provide further details, affidavits, or other evidence to support this claimed incident of abuse.

The record does not include probative details of the petitioner's claims of physical or psychological abuse. As noted above, the affidavits provided by the petitioner's friends do not indicate that the affiants witnessed particular incidents of abuse and do not provide probative and consistent details of the petitioner's emotional and psychological demeanor sufficient to support a finding that the petitioner suffered extreme cruelty at the hands of her husband. Further, the petitioner failed to describe in probative detail any specific threatening or controlling behavior of her husband. Nor does the petitioner provide sufficient probative detail to demonstrate that her husband subjected her to psychological, sexual abuse or exploitation, or that his actions were part of an overall pattern of violence.

The AAO has reviewed the two letters provided by [REDACTED]. The AAO notes [REDACTED]'s concern as regards revealing confidential details of a patient's private life; however, the AAO finds that a petitioner may waive confidentiality and has apparently chosen not to do so. [REDACTED] has provided no chronological, clinical, or substantive details of the abuser's alleged abuse and its effects on the petitioner. A general statement that the petitioner started having problems three years ago when her husband abused her physically and morally is insufficient to support a finding that the petitioner suffered abuse or that the petitioner's depression is directly related to the alleged abuse. Although [REDACTED] diagnoses the petitioner with depressive disorder, [REDACTED] initially does not directly relate the petitioner's depression to specific incidents of abuse. In addition, the AAO observes that [REDACTED], in an undated follow-up letter submitted on appeal, states that the petitioner is suffering from depression due to the ongoing abusive relationship with her husband; although the petitioner declares that her husband was in prison in 2004 and that she has broken off all relations with her husband since 2004. [REDACTED] conclusion in the letter submitted on appeal regarding "ongoing" abuse detracts from the credibility of the doctor's opinion. Again, 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. at 591. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner in this matter has provided inconsistent accounts of the alleged emotional abuse and has not

provided evidence of physical abuse. As discussed above, the documentary evidence contained in the record is insufficient to establish the petitioner's claim of abuse. The petitioner's failure to describe in probative detail the verbal and physical abuse diminishes the petitioner's claim. Further, the petitioner offers no specific testimonial evidence regarding any alleged extreme cruelty perpetrated against her by J-V- which demonstrates that his behavior rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Accordingly, the petitioner failed to establish that she was battered or subjected to extreme cruelty by J-V- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The AAO acknowledges counsel's reference to unpublished decisions; however, counsel has not furnished evidence establishing that the facts of the instant petition are analogous to those in the unpublished decisions. Moreover, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. The AAO observes, contrary to counsel's claim, there are inconsistencies in the record regarding the petitioner's claim as noted above. Further, the consistency of the information submitted, while an important factor in establishing the credibility of the petitioner and others who support the claim, alone cannot confirm the elements of battery or extreme cruelty. The petitioner must provide sufficient probative details of the alleged abuse to enable Citizenship and Immigration Services (CIS) to ascertain the nature and extent of the claimed abuse. In this matter, the petitioner has failed to provide such evidence.

The petition will be denied for the above stated reason. 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.