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**APR 30 2009**

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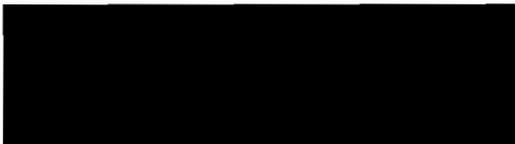
IN RE:

Petitioner:



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.

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 June 24, 2008, determining that the petitioner had not established that she had been battered or subjected to extreme cruelty by her spouse.

On appeal, counsel submits the petitioner's additional statement and a July 15, 2008 report prepared by

We concur with the director's determination that the petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by her spouse, I-R-<sup>1</sup>. The AAO finds beyond the decision of the director that the petitioner also failed to establish that she entered into the marriage in good faith and that she had a qualifying relationship with I-R-. Nonetheless, the matter must be remanded 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).

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:

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<sup>1</sup> 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 the Ukraine who entered the United States on January 17, 2000 as a nonimmigrant visitor. The record includes a copy of a divorce certificate issued to the petitioner on May 7, 2002 terminating her marriage to her first husband. On August 6, 2002, the petitioner married I-R-, a United States citizen. The petitioner's son entered the United States in June 2005. The petitioner filed the instant Form I-360 on February 5, 2007.

#### *Battery or Extreme Cruelty*

In the petitioner's February 1, 2007 personal statement she stated: that I-R- concealed his drug addiction, criminal history, and his affair with another woman; that once she found out about I-R-'s criminal history she was afraid to live with him in the same apartment; that he started disappearing and coming back drunk and started threatening her saying that if she did not stay with him he would destroy her immigration case. The petitioner indicated that she just left their family place leaving a note saying that if I-R- tried to find her she would call the police.

In a February 13, 2008 psychiatric treatment report prepared by [REDACTED] presented the petitioner as a widow who came to the United States to take care of her husband who had been involved in an attack while in the United States; that the petitioner's first husband recovered from the attack but left the petitioner for another woman; that the petitioner liked living in the United States so pursued legal means to remain in the United States; that months later the petitioner's first husband died and sometime later, the petitioner met another man and her son then immigrated to the United States. [REDACTED] reported that the petitioner lived with I-R- and her son until she learned of I-R-'s extensive legal history with the Bridgeport Police Department and his involvement with another woman. [REDACTED] does not provide a diagnosis in the report and does not provide examples of the causal relationship of specific abuse that is directly related to petitioner's mental health condition.

In the petitioner's April 11, 2008 personal statement, the petitioner stated that from August 2002 until November 2006, her ex-husband, I-R- was unfaithful to her, belittled her and verbally abused her. The petitioner noted that I-R- also started asking for money, would yell at her, and a few times grabbed her by the hands and pushed her to the wall and called her bad names. The petitioner indicated that after I-R- came home from the rehabilitation center he seemed okay but then reverted to his old ways. The petitioner reported: that I-R- was very possessive and would forbid her to meet her friends; that I-R- called her names; that a couple of times she ran away from home and stayed with her friends, that in one instance after her son arrived in the United States, I-R- called her names in front of her son; and that once she found out that I-R- had many arrests at the January 6, 2006 immigration interview, she became deeply depressed. The petitioner indicated that once she sought help she applied for a divorce.

The affidavits signed by [REDACTED], and [REDACTED] and [REDACTED] as the director noted, do not provide evidence indicating that they witnessed abuse perpetrated by I-R- on the petitioner. As the director also observed, [REDACTED] and [REDACTED], although noting that the petitioner had bruises on her arms, do not provide any further information regarding the bruises. Additionally, as the director noted, the petitioner did not provide information regarding specific episodes of battery that would correlate to injuries resulting in bruising.

Also as the director noted in his decision, the petitioner did not provide evidence that I-R-'s incarceration and subsequent treatment for drug abuse and anger management related to her.

On appeal, the petitioner provides a third personal statement. In the third personal statement, the petitioner adds that at some point the arguments with I-R- became more heated on his part and "often it looked like he was ready to hit me, and a few times he did" and after his release from the rehabilitation center everything seemed great but by the time of the immigration interview on January 19, 2006 the relationship started to be tense again. The petitioner noted that she regularly had bruises on her arms and sometimes her neck because of the few times I-R- tried to choke and strangle her.

The petitioner also provides a July 15, 2008 report prepared by [REDACTED] who repeats the petitioner's statement made on appeal and finds that the petitioner is suffering from the symptoms of depression developed secondary to prolonged emotional and mental abuse. [REDACTED] does not indicate the number of times he saw the petitioner and does not provide information regarding specific events that are directly related to specific episodes of abuse.

The AAO concurs with the director's determination. The petitioner in this matter has provided general statements regarding the claimed abuse. The AAO observes that the petitioner's first statement relates to the despair that she felt because of I-R-'s affair and her knowledge that he was involved in criminal behavior. She does not describe specific instances of abuse directed at her by I-R-. In the petitioner's second statement she describes social isolation, his verbal abuse, and provides a general statement that a few times I-R- grabbed her and pushed her against a wall and called her bad names. In the petitioner's statement on appeal, the petitioner adds statements regarding battery but does not provide any detail regarding the alleged abuse and does not provide a timeframe for the claimed abuse. It

appears that the petitioner has created episodes of abuse after United States Citizenship and Immigration Services (USCIS) has pointed out the deficiencies in the record. The AAO observes that the petitioner apparently did not provide her therapist, [REDACTED] in over 50 individual sessions, information that she was subjected to battery or extreme cruelty. The petitioner's emotional turmoil regarding I-R-'s infidelity, the only consistent event in the petitioner's statements, is not consistent with the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

Upon review of the totality of the record, the AAO concurs with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. Again, the claims made by the petitioner and the general statements submitted on her behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that I-R-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. The psychological reports do not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's mental health condition. The record is simply insufficient in this regard.

#### *Good Faith Marriage*

Beyond the decision of the director, the AAO finds that the record is insufficient to establish the petitioner's intent upon entering the marriage and that the marriage was entered into in good faith. The petitioner provides general statements regarding her courtship and interactions with I-R-. In the petitioner's statement offered on appeal, the petitioner indicates that I-R- asked her to move in with him in July 2002. At that time according to the Internal Revenue Service (IRS) Forms 1099, Miscellaneous Income, for I-R- he lived on [REDACTED] in Bridgeport, Connecticut. The marriage certificate indicates that I-R- lived on [REDACTED] in Bridgeport, Connecticut, the address of his old girlfriend's apartment. The marriage certificate shows that the petitioner lived on [REDACTED] in Stamford, Connecticut. Thus, the record is inconsistent with the petitioner's testimony that she moved in with I-R- in July 2002. Although the record includes a lease entered into in February 2003 for a term beginning March 1, 2003 signed by both parties, the record does not include information substantiating the actual residence of the couple from July 2002 to March 1, 2003. The AAO acknowledges that the record includes photographs of the couple and bank statements issued to both parties at the [REDACTED] address; however, photographs only establish that the couple was together on different occasions and the bank statements are not accompanied by any evidence that I-R- actually had access to and used the account. The lack of detailed probative information regarding the circumstances and interactions of the couple and the inconsistent information in the petitioner's statement raise questions regarding the petitioner's good faith in entering into the marriage.

#### *Qualifying Relationship*

The AAO observes that the petitioner claims that she has divorced the alleged abuser but the current record does not include copies of the divorce decree. Thus, the record does not establish that the petitioner had a qualifying relationship with a United States citizen when the petition was filed.

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). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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 reasons 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.