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U.S. Department of Homeland Security  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE:

EAC 06 187 52404

Office: VERMONT SERVICE CENTER

Date:

JAN 13 2009

IN RE:

[REDACTED]

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)

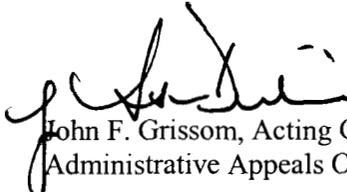
ON BEHALF OF PETITIONER:

[REDACTED]

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 on the basis of his determination that the petitioner had failed to establish that her husband subjected her to battery and/or extreme cruelty.

A timely appeal was submitted on June 11, 2007. Although additional information in support of the appeal was submitted, Part 2 of the Form I-290B was marked to indicate that a brief and/or additional evidence would be sent to the AAO within 30 days. However, the AAO never received this brief and/or additional evidence. As such, the AAO faxed a follow-up letter to counsel on December 4, 2008, requesting that the brief and/or additional evidence be sent within five business days. However, counsel did not respond to the AAO's facsimile and, as such, the AAO deems the record complete and ready for adjudication.

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

\* \* \*

- (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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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 of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Brazil who entered the United States with a B-2 visa on April 17, 2001. She married C-P-<sup>1</sup> a United States citizen, on October 20, 2004 in Woonsocket, Rhode Island. C-P- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on January 21, 2005. The petitioner

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<sup>1</sup> Name withheld to protect individual's identity.

filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date. The Form I-130 was denied on August 23, 2005, on the basis of the failure to appear for a permanent residency interview.

The petitioner filed the instant Form I-360 on June 2, 2006. On February 14, 2007, the director issued a notice of intent to deny (NOID) the petition. In his NOID, the director notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish that she was subjected to battery and/or extreme cruelty by C-P-. The petitioner responded on April 16, 2007, and submitted additional evidence. The director denied the petition on May 8, 2007.

### **Battery and/or Extreme Cruelty**

The sole issue on appeal is whether the petitioner has established that she was subjected to battery and/or extreme cruelty by C-P-. In finding the evidence of record insufficient to establish this criterion, the director stated that the results of the July 11, 2005 hearing on the continuation of the petitioner's June 20, 2005 temporary protective order were material to the disposition of the Form I-360. The director stated that the Family Court of the State of Rhode Island had had the opportunity to hear the petitioner's complaint and make an informed decision on its credibility and that, in the absence of documentation from this hearing, U.S. Citizenship and Immigration Services (USCIS) has "an incomplete picture of the basis of your claim of abuse." The director reminded the petitioner that he had requested information as to the outcome of this hearing, but that the petitioner had failed to provide such documentation or even state the outcome of the hearing.

On appeal, the petitioner states that she does not understand why USCIS has chosen to deny her case, and submits two letters, both dated June 1, 2007: (1) a self-affidavit; and (2) a letter asking for oral argument before the AAO.

Upon review, the AAO agrees with the director's conclusion that the record does not establish that the petitioner was subjected to battery and/or extreme cruelty by C-P-.

At the time the petition was filed the petitioner submitted an October 15, 2005 affidavit in which she stated, with regard to battery and/or extreme cruelty that, although things initially went well after their October 20, 2004 wedding, things "started to go wrong" in December 2004. The petitioner had invited family to the house for Christmas dinner, but C-P- asked her to cancel the dinner, which she did. On Christmas day, C-P- told the petitioner that we would pick her up after he visited an aunt, but he did not come home until the next morning. When the petitioner asked where he had been, C-P- lied and became angry and aggressive, so she did not say anything. They opened their presents, and C-P- left the residence after 15 minutes.

On December 31, in spite of the couple's plans to spend the New Year together, C-P- instead went gambling without the petitioner. When the petitioner asked what was wrong, C-P- called her "stupid" and "a fool." C-P- then began telling the petitioner not to invite friends to the residence "and things like that," and that he started making threats to her immigration status.

The petitioner states that she decided to leave the marriage on February 18, after she came home to find the residence smelling of marijuana. She discovered that C-P- had gone through her personal items, and she called a friend. While she was on the telephone with this friend, C-P- entered the room and threatened her, telling her that he owned a gun, could kill her at any time, and that no one would ever find her body. She blocked the door with a chair, but was unable to sleep. She left the following day. A week later, she spoke with C-P- again, and told him that she needed to leave, as she did not like his drugs and lying. She stated that C-P- told her that if she told anyone about his abuse, that his friends would say that she had cheated on him.

The petitioner also submitted a psychological evaluation from [REDACTED] at the time the petition was filed. In his evaluation, [REDACTED] stated that the couple's marriage had become "hostile and exploitive," and that C-P- had become a drug dealer. [REDACTED] also stated that the petitioner has symptoms of "vegetative depression."

In her April 17, 2006 affidavit, [REDACTED] stated that C-P- became violent toward the petitioner when she did not provide him money, and that after the petitioner came home to discover that C-P- had been looking for money in her personal belongings, the petitioner "became more and more afraid" of C-P-, especially after she discovered he owned a gun.

The other affidavits submitted at the time the petition was filed did not address the issue of battery and/or extreme hardship inflicted upon the petitioner by C-P-.

In his February 14, 2007 NOID, the director noted deficiencies in [REDACTED]'s report, including his statement that the C-P- was a drug dealer. The director noted that this statement differed from the petitioner's portrayal of C-P- in her affidavit, which did not mention that C-P- had dealt drugs, and asked the petitioner to explain the discrepancy. The director also noted that, although Ms. [REDACTED] stated in her affidavit that C-P- was "very violent," she had not indicated the basis of her knowledge or described specific instances where she witnessed C-P- acting in such a manner. Finally, the director stated that although the petitioner had submitted evidence that a temporary order of protection had been issued on June 20, 2005, a hearing on the continuation of that order was held on July 11, 2005. The director requested that the petitioner submit the final order issued by the court, as well as a copy of the transcript from the court hearing, if available.

In her April 16, 2007 response to the director's NOID, counsel stated that [REDACTED] did not witness any acts of abuse or extreme cruelty, but that she knew of C-P-'s behavior and actions based on what the petitioner had told her. With regard to [REDACTED]'s evaluation, counsel stated that he and the petitioner were giving different aspects of the same situation, but that the two affidavits do not contradict one another. With regard to a transcript of the July 11, 2005 hearing on the continuation of the temporary order of protection, counsel stated that the petitioner tried to obtain a copy of the transcript, but was told that it would take several weeks to obtain and would cost \$100. Counsel did not address the outcome of the hearing.

In her April 11, 2007 affidavit, submitted in response to the NOID, the petitioner stated that she has no proof C-P- was dealing drugs, as she is “not educated in drug dealing,” but that she knows he was smoking marijuana because she smelled the odor. She did not address the director’s request for further information regarding the outcome of the July 11, 2005 hearing.

On appeal, the petitioner submits a third affidavit, dated June 1, 2007. As noted previously, in spite of being placed on notice by the director in his denial that evidence regarding the outcome of the July 11, 2005 was material to the outcome of her petition, and that without such information USCIS has an incomplete picture of the basis of her claim of abuse, the petitioner states nonetheless that she does not understand why the director “chooses to deny my case.” Although she states that the judge suggested the couple divorce, the petitioner fails, once again, to submit any evidence regarding the outcome of the July 11, 2005 hearing. She also states that she lived each day in fear for her life, and that C-P- reminded her constantly that he had a gun.

Section 204(a)(1)(J) of the Act requires USCIS to “consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of” USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, “All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner’s burden of proof. While USCIS must consider all credible evidence relevant to a petitioner’s claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner’s burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

In this particular case, while the AAO finds the petitioner’s evidence credible, it does not find it sufficient to satisfy her burden of proof. First, and most importantly, the petitioner has now been afforded two opportunities to submit documentary evidence regarding the outcome of the July 11, 2005 hearing, yet has failed to do so. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The AAO concurs with the director’s determination that the outcome of the July 11, 2005 hearing is material to the determination of the credibility of her claim, and her repeated failure to submit the requested evidence regarding the outcome of that hearing, or to even discuss the outcome of that hearing, detracts from the credibility of her claim.

Further, the AAO finds deficient the explanations of the discrepancy between the testimony of the applicant and [REDACTED] regarding C-P-’s status of a drug dealer. As noted previously,

██████████ testified that C-P- was a drug dealer, but the petitioner made no such assertion. When asked to explain this discrepancy, the petitioner stated that she was “not educated in drug dealing,” and that she had no proof C-P- was dealing drugs. Given that ██████████’s testimony was apparently based upon interviews with the applicant, it is unclear to the AAO why he would have made this statement had the applicant not told him that C-P- was dealing drugs. The petitioner failed to explain this discrepancy, and counsel’s statement that ██████████ and the applicant were simply “giving different aspects of the same situation” is insufficient. 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). 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. *Id.*

Finally, the AAO notes an additional discrepancy in the evidence of record. As noted previously, the petitioner states on appeal that she feared for her life every day, and that C-P- reminded her constantly that he had a gun. However, the petitioner’s June 1, 2007 statement that C-P- “constantly reminded me that he had a gun” conflicts with her October 15, 2005 affidavit, where the applicant makes no statement, and indicates that C-P- told her he had a gun for the first time on February 18, 2005, which was the night before she left the marital residence. 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. 582, 591-92 (BIA 1988). 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. *Id.* The inconsistencies in the petitioner’s testimony undermine the credibility of that testimony.

The unresolved discrepancies and inconsistencies regarding significant portions of the petitioner’s testimony detract from the credibility of her description of the alleged abuse, and the brief statements of the petitioner’s friends are insufficient to establish the petitioner’s claim. Moreover, the lack of any evidence in the record regarding the outcome of the July 11, 2005 hearing detracts further from the claim. The petitioner has failed to establish that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### **Conclusion**

The petitioner has failed to establish that her husband subjected her to battery or extreme cruelty. She is, therefore, ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

Finally, the AAO notes that the petitioner has requested oral argument before the AAO. The regulations provide that the requesting party must explain in writing why oral argument is

necessary. Furthermore, USCIS has the sole authority to grant or deny a request for oral argument, and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved. In fact, the petitioner set forth no specific reasons why oral argument should be held, other than to state that “[a] written document is cold,” and that she has “always done business face to face.” Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.