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FILE:

Office: VERMONT SERVICE CENTER

Date: JAN 22 2009

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IN RE:

Petitioner:

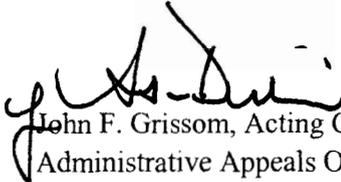
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 classification as an 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 her United States citizen husband.

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).

On August 2, 2006, the director denied the petition, finding that the petitioner failed to establish that she had resided with the claimed abuser and that she had entered into the marriage in good faith. On appeal, counsel for the petitioner attaches a statement to the Form I-290B, Notice of Appeal, requests 90 days to submit further information, indicating that he has been waiting on a response to a Freedom of Information Act (FOIA) request since July 2005. The AAO does not find the request for an additional 90 days to provide further evidence in this matter persuasive. Moreover, to date, more than two years after filing the appeal, counsel has not provided a brief or further evidence. As such, the AAO considers the record complete.

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 also explained 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.

* * *

(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.

* * *

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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 Viet Nam. She claims she married B-T-,¹ a United States citizen, on June 13, 2000, in Viet Nam. The record includes a copy of pages of the petitioner's passport showing a United States visa issued in Ho Chi Minh City to the petitioner on June 15, 2001 for the petitioner's classification as a K-1 fiancé visa holder. The record also includes the petitioner's Form I-94, Departure Record, showing that she entered the United States on June 20, 2001 in a K-1 classification. The record further includes an affidavit signed by B-T- on June 30, 2000 explaining how he initially met the petitioner in Viet Nam and in which B-T- declares that a celebration was held in Viet Nam on June 13, 2000 in honor of their engagement. The record includes the Form I-129F, Petition for Alien Fiancé, filed by B-T- on the petitioner's behalf; B-T-'s Form G-325A, Biographical Information, dated June 29, 2000 showing his address as [REDACTED], Houston, Texas; and his affidavit stating that his mother lost all of the family's vital paperwork during the escape from Viet Nam, including his birth certificate.

The petitioner's administrative record also contains a Form I-130 submitted by [REDACTED] on the petitioner's behalf on October 18, 2001; a marriage certificate showing the marriage of the petitioner and [REDACTED] on September 4, 2001 in Harris County, Texas; the G-325A of [REDACTED] dated October 4, 2001 showing an address at [REDACTED], Houston, Texas; the petitioner's G-325A dated October 4, 2001 showing her address as [REDACTED], Houston, Texas from June 2001 to present and her prior address in Binh Dinh, Viet Nam from January 1990 to June 2001. The record includes a denial of the Form I-130 on July 13, 2004 as the petitioner, Tony Pham, passed

¹ Name withheld to protect individual's identity.

away on December 2, 2003. On October 21, 2004, a Notice to Appear in Removal Proceedings was issued to the petitioner.

The petitioner filed the instant Form I-360 on December 14, 2004. Counsel for the petitioner submitted further information on January 5, 2005. On May 12, 2005, the director issued a request for further evidence (RFE). On September 7, 2005, counsel for the petitioner requested additional time to submit a response and on November 8, 2005 the director granted an additional 60-day period to respond. On May 22, 2006, the director issued a Notice of Intent to Deny (NOID) the petition indicating that the record did not establish that the petitioner had resided with B-T-, the alleged abuser in this matter and had not established that she had married B-T- in good faith. Upon review of the June 19, 2006 response, the director denied the petition for the reasons cited in the NOID.

Residence

On the Form I-360, the petitioner indicates that she lived with B-T- from June 2000 to July 2001. In the December 9, 2004 cover letter presented by counsel, counsel states: “[the petitioner] entered the USA as a K-1 status on June 20, 2001 now seeks to self-petition based on severe and continual abuse she suffered at the hands of her fiancé, B-T.” In an undated personal statement, the petitioner indicates: that she met B-T- in Viet Nam when he came to visit beginning in the year 2000; that B-T- expressed his intention of marrying her and she agreed; and that they registered for the marriage locally and the ceremony was celebrated on June 13, 2000 in front of family, neighbors, and friends. The petitioner also indicates that she came to the United States on June 21, 2001 and implies that she resided with B-T- and his mother until the end of July and then again until August 2001. The record also contains a second statement signed by the petitioner under oath on June 19, 2006. In the June 19, 2006 statement, the petitioner declares that she is unable to produce evidence of her relationship with B-T- because he did not allow her to have access to any joint accounts, documents, leases, bills, tax records, or agreements.

The record also contains statements from: (1) [REDACTED] who indicates that friends told him about the petitioner who “arrived to America through a Fiancé Visa” and was having trouble with her husband, that he ran into the petitioner at a friend’s [REDACTED] and [REDACTED] house in July 2001 where she was staying, and thought she had returned to her husband’s house after July 2001 until she was forced out again; (2) [REDACTED] who indicates that he met the petitioner at Quang’s house in July 2001; that she arrived in the United States with a fiancé visa and united with her husband, and was kicked out of her home after a short time; and (3) [REDACTED] the petitioner’s nephew residing in Viet Nam, who states “After the engagement ceremony with uncle [B-T-] (on June 13, 2000) both of them had paid a visit to Danang city” and during this time “for the relatives relationship so [B-T- and the petitioner] had come to live in my house at about 5 to 6 days.”

Counsel, in response to the NOID, asserts that the petitioner and B-T- were married for over a year before the petitioner entered the United States and that B-T- visited the petitioner in Viet Nam during that time. Counsel also asserts that the petitioner and B-T- lived together in the United States for a

short time until the claimed physical and mental abuse became unbearable.

The director determined that the record was insufficient to establish that the petitioner and B-T- had resided together as required. On appeal, counsel for the petitioner asserts that the petitioner and B-T- resided together in Viet Nam. Counsel contends that the adjudicating officer erred when not considering the time the petitioner and B-T- spent together in Viet Nam as just “visits” and further “erred when not considering the fact that Applicant was residing with her mother-in-law before consular process was granted by the US Consulate.”

Counsel assertions are not persuasive. In this matter, the record provides conflicting information regarding the petitioner’s residence while in the United States. The Form G-325A, signed by the petitioner on October 4, 2001, in support of the Form I-130 filed by Tony Pham shows that the petitioner resided in Viet Nam until June 2001 and then resided at the address of Tony Pham upon entering the United States. The individuals who indicate that they saw the petitioner at their friends’ house never saw the petitioner at the claimed residence of B-T-. The petitioner does not specifically identify her residence with B-T- while in the United States. While the short duration of the petitioner and B-T-’s claimed joint residence and B-T-’s claimed failure to allow the petitioner access to any joint accounts, documents, leases, bills, tax records, or agreements, may explain the petitioner’s lack of joint documentation, the petitioner’s conflicting statements regarding her residence with B-T- and lack of probative detail regarding the joint residence fail to credibly establish a joint residence in the United States. Moreover, as the director found, the statements of third parties do not include evidence that the declarants had personal knowledge that the petitioner resided with B-T- while in the United States. Neither the petitioner nor any of her declarants discusses the petitioner’s residence with her claimed spouse, such as a description of the apartment and its location, their shared belongings or other information which demonstrates a joint residence.

Likewise, the record is deficient in establishing that the petitioner resided with B-T- while in Viet Nam. The statement of [REDACTED], the petitioner’s nephew residing in Viet Nam, indicates only that the engaged couple came to visit his house for five or six days. The statement does not indicate the petitioner and B-T- were married or that they were residing together. The AAO acknowledges counsel’s assertion that B-T- came to visit the petitioner on different occasions and “resided” with the petitioner in Viet Nam and counsel’s assertion that the petitioner resided with her mother-in-law while waiting on consular processing. However, the record does not include information that B-T- visited the petitioner in Viet Nam after his June 2000 visit. In addition, B-T- indicates in his affidavit in support of the K-1 visa that his mother lived with him in the United States since at least 1999 assisting him in caring for his children after his wife passed away. The record does not include any documentary evidence substantiating that the petitioner and B-T- resided together prior to the petitioner entering the United States. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Upon review of the totality of the record, the AAO finds that the petitioner has not established that she resided with B-T-. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she jointly resided with B-T-, as required by 8 C.F.R. § 204.2(c)(1)(v).

Good Faith

The petitioner, in her undated personal statement indicates that through one of her cousins (Tuyet) who was visiting Viet Nam from America, she met B-T- in the beginning of 2000 and showed him around during a two-month time frame. The petitioner states that she started to feel for B-T- emotionally and when he asked, she agreed to marry him. The petitioner notes that her father was confirmed missing in 1972 when she was just six-years-old, that she came from a family of girls, and she imagined B-T- as a male figure in the family to make up for the absence of her father. The petitioner states that she was very happy to marry the man she loved.

The record in this matter includes several pictures of the petitioner with B-T- in some sort of ceremony (the petitioner is wearing a red dress) and at a reception and one picture of the petitioner in a Western styled wedding gown with an unidentifiable individual (his back is toward the camera) in front of a calendar showing the number "13." The record does not include other documentary information demonstrating the petitioner's good faith in entering her relationship with B-T-. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf also fails to support a finding that she entered into the relationship with B-T- in good faith. The petitioner does not provide the necessary detail of their claimed courtship and the dates and times she saw B-T- while she lived in Viet Nam. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her relationship with B-T- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Although the director's decision is based only upon the two grounds noted above, the AAO observes significant discrepancies in the record that cast doubt on the petitioner's credibility and should be taken into consideration when adjudicating any future petitions or applications. 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). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

Qualifying Relationship

Beyond the director's decision, the AAO finds that the petitioner has not established that she had a qualifying relationship with B-T-. The AAO notes that in response to the director's NOID, the petitioner presented a photocopy of marriage certificate certifying the marriage of B-T- and the petitioner on June 14, 2000 and presented declarations from several individuals who declared that they attended the wedding of B-T- and the petitioner at a hotel in Viet Nam on June 13, 2000. This information conflicts with other information indicating that the petitioner and B-T entered into an engagement and only had an engagement ceremony in Viet Nam. In addition, the petitioner entered into the United States in K-1 status, based on a Form I-129F petition. Several individuals offering statements on her behalf, her attorney in his December 9, 2004 letter, and her nephew all indicate that the petitioner was the fiancé of B-T- not his spouse. The petitioner, herself felt free to marry **another individual**, [REDACTED], shortly after entering the United States. The alleged marriage certificate of the petitioner and B-T- is dated June 14, 2000 when the marriage allegedly took place June 13, 2000. Moreover, the petitioner submitted the claimed marriage certificate along with the claimed birth certificate of B-T-. The AAO observes that B-T- swore that his birth certificate was lost when his mother fled Viet Nam, yet the petitioner was able to produce B-T-'s birth certificate when submitting further information in support of the petition on January 5, 2005. The AAO further notes that the style of the marriage certificate is similar to the style of B-T-'s birth certificate presented by the petitioner. The evidence in the record is inconsistent and the documents submitted do not appear legitimate. 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). The petitioner has not established she entered into a qualifying relationship with B-T-, the alleged abuser in this matter.

Eligibility for Immigrant Classification

Also beyond the director's decision, the AAO finds that the petitioner has failed to demonstrate the requisite eligibility for immigrant classification as an immediate relative based on her claimed marriage to B-T-. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive U.S. citizen spouse. As discussed in the preceding sections, the petitioner has failed to establish a qualifying relationship with B-T-, as well as her joint residence with B-T- and good faith in entering into a relationship with B-T-. Accordingly, the petitioner has failed to demonstrate her eligibility for immigrant classification, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Battery or Extreme Cruelty

Beyond the director's decision further, the AAO finds that the evidence in the record is insufficient to establish the requisite battery or extreme cruelty perpetrated by B-T- against the petitioner. The AAO has reviewed the petitioner's personal statement in which she alleges that B-T-'s mother degraded her and told her son (B-T-) that she wanted the petitioner out of the house. The petitioner also indicates

that B-T- told her to stay at home and perform household duties and was harsh with her and once told her: "You go wherever you want, don't let me see your face here anymore or else I can't hold myself back and there'll be a murder case in this house!" The petitioner further indicates that B-T- and his mother wanted her to obtain money for them, so she had to borrow money from friends and relatives.

The record also includes a December 1, 2004 report prepared by [REDACTED], an adult counselor at the Houston Area Women's Center. [REDACTED] indicates that the petitioner attended counseling sessions beginning September 10, 2004 and for seven additional sessions. [REDACTED] reports that the petitioner told her that she had suffered emotional and economic abuse by B-T-. [REDACTED] states her belief, based on her 72 hours of training on domestic violence and sexual assault and her observations of the petitioner, that the petitioner is suffering the effects of domestic violence.

[REDACTED] and [REDACTED], in their declarations also indicate that their friends had told them of the treatment the petitioner had received from B-T- and his mother.

In this matter, the petitioner has provided general statements that in and of themselves do not establish credibility and are sufficiently vague as to not lend themselves to evaluations regarding credibility. In addition to the generality of most of the information in the record regarding the claimed abuse, the AAO finds the record lacks definitive information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The AAO declines to accept generic information with little chronological timeline, no medical evaluations, and inherent inconsistencies to establish eligibility for this benefit. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that she has been subjected to battery or extreme cruelty perpetrated by the claimed spouse in order to meet her burden of proof. In this matter, she has failed to do so.

As generally described, B-T-'s actions, while unkind and inconsiderate, do not rise to 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. 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 B-T-'s non-physical behavior was accompanied by any coercive actions or serious threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. Moreover, although the petitioner alleges that B-T-'s mother degraded her and demanded money, the petitioner has not established that B-T- instigated or was otherwise a proximate cause of the alleged abuse by his mother. Both the statute and the regulation require that the abuse be perpetrated against the petitioner *by his or her spouse*, not a third party. See Section 204(a)(1)(A)(iii)(I)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I)(bb), 8 C.F.R. § 204(c)(1)(vi). In this matter, the petitioner has failed to provide sufficient detailed information to establish that she was subjected to battery or extreme cruelty perpetrated by B-T-.

The AAO has also reviewed the report submitted by [REDACTED] on behalf of the petitioner. The AAO first questions the 72 hours of training received by [REDACTED] as adequate to diagnose the petitioner as suffering from the effects of domestic violence. The AAO also observes that [REDACTED] does not provide any chronological, clinical, or substantive detail of the abuser's alleged abuse and its effects on the petitioner. Finally, the report submitted does not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's claimed suffering. The statements of [REDACTED] and [REDACTED] also provide general hearsay information and do not describe personal knowledge of specific incidents of abuse perpetrated by B-T- against the petitioner.

The petitioner has not established that she suffered acts against her by B-T- that rise to 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.

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.