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Date: **JAN 22 2009**

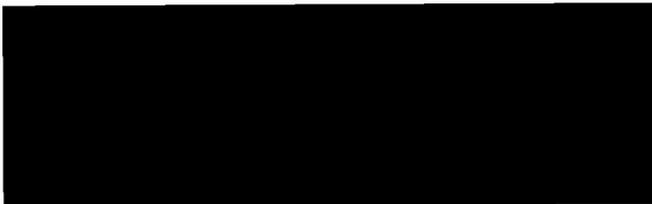
IN RE:

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)

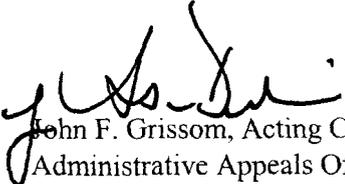
ON BEHALF OF PETITIONER:



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.

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 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 August 23, 2006, determining that the petitioner had not established that she had been battered or subjected to extreme cruelty by her spouse and that she is a person of good moral character.

On appeal, counsel submits a brief.

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:

(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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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.

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(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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Romania who entered the United States in 1991 as a nonimmigrant visitor (B-1). On May 18, 1996, the petitioner married R-R-¹, a naturalized U.S. citizen, in Cook County, Illinois. The petitioner left the United States pursuant to an order of voluntary departure in November 1996 and entered the United States again, apparently without inspection, in November 1996. R-R- filed a Form I-130, Petition for Alien Relative, on December 31, 1996 that was withdrawn December 19, 1997. The record also contains a notice that a Form I-130 was approved February 23, 1998 with a priority date of December 31, 1996. The petitioner filed the instant Form I-360 on December 7, 2002.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that her husband subjected her to battery or extreme cruelty during their marriage:

- A psychosocial assessment prepared October 4, 2002 by _____ Licensed Clinical Social Worker;
- Two reports of telephone threats that occurred September 8, 2002 and September 14, 2002; Statements from _____ and an

¹ Name withheld to protect individual's identity.

individual whose signature is illegible;

- The petitioner's March 22, 2006 personal statement;
- Two affidavits from [REDACTED];
- A March 4, 2003 Petition for Order of Protection filed by the petitioner against R-R-; and
- A March 7, 2003 order from the Circuit Court of Cook County, Illinois enjoining R-R- from contact with the petitioner and enjoining the petitioner from contact with R-R-.

In the October 4, 2002 psychosocial assessment prepared by [REDACTED], Ms. [REDACTED] noted that she had seen the petitioner for a total of three evaluation sessions lasting one and one-half hours each on August 28, 2002, September 3, 2002, and September 24, 2002. [REDACTED] indicated that the petitioner told her that her husband had attempted to hit her on two occasions but that most of the alleged abuse was verbal; that her husband threatened to have her deported; insulted her; accused her of cheating on him; and would go through her things. [REDACTED] reported that the petitioner indicated that her husband "enjoyed torturing [her] psychologically;" made her feel guilty; told her he wanted to destroy her ego and rebuild it into a better one; verbally abused her if she refused to have sex with him; and although he did not directly threaten to kill her, strongly implied that they should commit suicide together. The petitioner also told [REDACTED] that she had called the police, during the course of the evaluations with [REDACTED] to report her husband's threatening phone calls. [REDACTED] concluded that the petitioner exhibited a pattern of psychological and behavioral symptoms found in individuals who are involved in abusive relationships. [REDACTED] diagnosed the petitioner with a major depressive disorder, single episode, and post traumatic stress disorder noting that the petitioner experienced severe marital conflict and separation, immigration problems, car accidents, health problems, and alleged verbal and emotional abuse. [REDACTED] recommended that the petitioner be seen for regular, individual psychotherapy sessions on an ongoing basis; receive an evaluation from a psychiatrist to assess the need for medication to treat her anxiety and depressive symptoms; be placed under the supervision of her primary care physician to monitor her diabetes and blood pressure problems; and be referred to a women's support group.

As the director noted, the two reports of telephone threats do not identify the caller or the threats made. The statements from [REDACTED], and the individual whose signature is illegible, all note generally that the petitioner is a good person. [REDACTED] in her November 19, 2002 statement, indicated that she had noticed that the petitioner had emotionally and physically deteriorated because of "marital problem," that R-R- was verbally abusive toward the petitioner, and that the petitioner was crying in the lobby of their building because her husband "had slapped her very hard on her body and face." [REDACTED] in her November 20, 2002 statement, indicated that one day when she got out of the elevator at the building where they lived, the petitioner was crying in the lobby and said that she was waiting for the police because her husband hit her, was abusive to her, and that she was afraid of him because he threatened to kill her. [REDACTED] in his November 15, 2002 statement, indicated that the petitioner "was crying in the elevator while financially her husband confiscated all her money leaving her with nothing." The unidentified

individual in an undated statement indicated that R-R- was having an affair with another woman.

in a May 23, 1996 affidavit declared that he has known the petitioner since 1993, that he saw the petitioner and R-R- on a social basis beginning in January 1995, saw them together about eight times, and knew that R-R- had demonstrated his love for the petitioner by buying her mother's airfare to the United States. In a second affidavit, dated March 22, 2006

declared that he lost contact with the petitioner once she was married to R-R- but after the petitioner and R-R- separated, the petitioner talked to him about the problems she experienced in her marriage.

The petitioner in her personal statement, dated March 22, 2006, indicated her husband became more controlling and less trusting in 1997 and had showed her a report of hiring a detective to see if she was doing anything suspicious; in 1998 he started to limit her use of the telephone; in 1999 he accused her of having affairs; and he became very critical of her appearance, dress, her speech, demeanor and conduct outside the home, as well as demeaning their intimate relations. The petitioner indicated that in January 2002, her husband's complaints regarding their finances rose to a new level and that he suggested that they commit suicide together. The petitioner reported that she did not understand his concern over their finances as they owned an apartment building, commercial spaces, and parking lots; however, there was no money to pay the mortgage or condominium assessment. The petitioner indicated that her husband directed his anger at her, threatened to call immigration to have her deported, threatened to hit her and that as a result of her husband's actions, the petitioner became jumpy and a nervous wreck. The petitioner also reported that in August 2002 while driving her husband kept yelling at her and as a result of his conduct she had a wreck and lost her front teeth. Shortly thereafter, on August 22, 2002, her husband moved out of their home into another apartment in the same building. The petitioner reported that although they owned three residential units and one commercial unit in the building, her husband is refusing to account for the money attributable to their real estate transactions. The petitioner noted that her husband continued to threaten her in the hallway or elevator and by calling her and telling her he would have her killed.

The director determined that the petitioner did not establish that she had been subjected to battery or extreme cruelty perpetrated by R-R- against her. The director found that the petitioner had not provided additional information that had been requested in the NOID clarifying discrepancies in her personal statement, explaining why she filed an order of protection three months after she had filed the Form I-360 with United States Citizenship and Immigration Services (USCIS), and had not explained the pertinence of the victim information sheet relating to telephone threats. The director found that the petitioner had not provided sufficient evidence to establish the requisite element of battery or extreme cruelty.

On appeal, counsel for the petitioner asserts that the information in the record, when considered as a whole, supports the conclusion that the petitioner's spouse did embark upon a course of conduct intended, designed and implemented to cause distress, stress, emotional abuse and control over the petitioner. Counsel contends that R-R-'s actions of concealing his theft of marital property, engaging in

criminal activity and an extra-marital affair were to the petitioner's detriment. Counsel takes issue with the director's characterization that the petitioner's personal statement contained discrepancies and the characterization of the handwritten testimonials as questionable. Counsel asserts that the emotional impact assessment prepared by [REDACTED] was not considered by the director and that a court order requested after the filing of the petition does not diminish the prior existing circumstances relating to the petitioner.

Upon review of the totality of the record, the AAO affirms the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The petitioner has described the general circumstances of marital discord between two individuals especially as the financial misbehavior of one party comes to light. The AAO notes the petitioner's statements that her husband became more controlling and less trusting, started to limit her use of the telephone, accusations of affairs, as well as the derogatory statements regarding her appearance, dress, speech, demeanor, conduct outside the home, and demeaning intimate relations. However, these actions, while disgusting, do not establish that R-R- subjected the petitioner to psychological, sexual abuse or exploitation, or that his actions were part of an overall pattern of violence. The AAO finds that not all forms of marital discord rise to the level of battery or extreme cruelty as set forth in the regulation. Again, as described, R-R-'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 R-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 record is simply insufficient in this regard.

The AAO has considered the statements made by [REDACTED] and the individual whose signature is illegible. These statements appear to relate to one incident that occurred in the lobby of the building where this family lived. The statements are not consistent and are not substantiated with sufficient detail to determine whether the declarants actually saw any acts of violence or abusive behavior or only saw the petitioner crying in the lobby because of the circumstances of her deteriorating marriage. Due to the inconsistencies in the statements, the failure to identify specifically the time frame, and the failure of the declarants to sufficiently detail their personal knowledge of specific acts of abuse or violent behavior of R-R-, the AAO does not find these statements probative. Similarly, the affidavits of [REDACTED] do not include any statements demonstrating that the affiant had personal knowledge of specific acts of abusive behavior perpetrated by R-R- against the petitioner.

The AAO has also reviewed the psychosocial assessment of [REDACTED] wherein [REDACTED] concludes generally that the petitioner exhibited a pattern of psychological and behavioral symptoms found in individuals who are involved in abusive relationships and diagnosed the petitioner with a single episode of major depressive disorder and post traumatic stress disorder. However, [REDACTED] does not directly attribute the petitioner's ailments to the petitioner's husband's violence or abusive

behavior; rather, [REDACTED] only notes that the petitioner experienced severe marital conflict and separation, immigration problems, car accidents, health problems, and alleged verbal and emotional abuse. The AAO finds that the report does not provide examples of the causal relationship between specific consistently detailed abuse and the petitioner's single episode of major depression disorder/post traumatic stress disorder. The AAO notes as well that, although [REDACTED] recommended that the petitioner seek regular, individual psychotherapy sessions on an ongoing basis, receive an evaluation from a psychiatrist to assess the need for medication to treat her anxiety and depressive symptoms, be placed under the supervision of her primary care physician to monitor her diabetes and blood pressure problems, and be referred to a women's support group, the record does not indicate that the petitioner has sought psychiatric help or group support or received medication for depression or anxiety.²

The AAO has also reviewed the two reports of telephone threats that occurred September 8, 2002 and September 14, 2002 and even if the reports specifically identified the petitioner as the victim and the caller as R-R-, which they do not, there is no specific information in the reports regarding the threats. Thus, the AAO is without sufficient information to analyze the claimed behavior of R-R-. Moreover, the petitioner's request for a protection order on March 4, 2003 apparently resulted in a mutual order of protection for both the petitioner and R-R- against each other. The record does not include information indicating that the petitioner sought to extend the protection order further or to request further protection orders.

The AAO acknowledges that the petitioner's marriage involved turmoil, emotional upset, and financial misconduct, however, her testimony and the information submitted in support of her claims do not demonstrate that her husband's behavior rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The record includes only general information regarding threats and no probative evidence that the applicant actually feared for her life or physical injury. The record does not evidence that any threats resulted in the petitioner's psychological trauma any more than that of any broken marriage between two different individuals with different moral codes. Nor did the petitioner demonstrate that R-R-'s actions constituted psychological or sexual abuse or were otherwise part of an overall pattern of violence. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the

² The record does include a diagnosis written on the prescription pad of [REDACTED] dated February 17, 2006, showing the petitioner had been diagnosed with Type II diabetes, depression, anxiety and did not have (undecipherable), TB or contagious disease. There is no prescription for any medication or follow-up.

three-year period immediately preceding the filing of the self-petition. The record contains the petitioner's police clearances from the Chicago Police Department dated October 30, 2002 for the petitioner's maiden name and from the Chicago Police Department dated September 17, 2003 for the petitioner's married name when married to R-R-. In the NOID, issued April 28, 2006, the director requested that the petitioner provide police clearances for two other aliases used, one including a variation of the spelling of the petitioner's name and one using the married name of her first husband. The petitioner did not provide the requested information and the director found that the petitioner had not submitted evidence of her good moral character as required. On appeal, counsel for the petitioner asserts that the petitioner did not use the married name of her first husband and that the petitioner was fingerprinted during the process of seeking asylum, thus USCIS is in possession of the most accurate identification of the petitioner .

The AAO finds that the record does not include evidence that the petitioner used the married name of her first husband; however, the petitioner has not provided her statement of good moral character. Moreover, the record before the AAO does not include recent evidence establishing the petitioner's good moral character. As the petitioner failed to submit a personal statement and the requested clearance for all spellings of her name, the AAO is precluded from finding that the petitioner has established good moral character. Accordingly, the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The record does not demonstrate that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied. The record also does not demonstrate that the petitioner has established good moral character pursuant to section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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.