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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 07 149 51887

Office: VERMONT SERVICE CENTER

Date: JAN 23 2009

IN RE: Petitioner: [REDACTED]

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

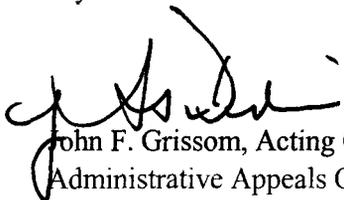
ON BEHALF OF PETITIONER:



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. The matter is now before the Administration Appeals Office (AAO) on certification. The director's decision will be affirmed. The petition will be denied.

The petitioner seeks immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act ("the Act"), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a United States lawful permanent resident.

On December 12, 2008, the director denied the petition, finding that the petitioner failed to establish a qualifying relationship with a lawful permanent resident of the United States and her eligibility for preference immigrant classification based on such a relationship. Counsel does not provide a brief or additional documentation on certification.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security]:

- (aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and
- (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

The petitioner in this matter is a native and citizen of the Dominican Republic. The petitioner married P-R-¹ in the Dominican Republic on December 18, 1988. At the time of their marriage P-R- claimed to be a lawful permanent resident of the United States. In an August 20, 2002 affidavit, submitted in support of the petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, the petitioner declares that she has been separated from her husband since 1998 and as far as she knows her husband is living in the Dominican Republic. The record does not provide evidence of the petitioner's first entry into the United States or whether the entry was without inspection. According to United States Citizenship and Immigration Services' (USCIS) records, on January 18, 2005 P-R- was

¹ Name withheld to protect the individual's identity.

ordered removed from the United States based on a conviction for attempted criminal sale of a controlled substance. The petitioner filed this Form I-360² on April 16, 2007, more than eight years after she separated from her husband and more than two years after her husband was ordered removed from the United States.

On February 25, 2008, the director issued a Notice of Intent to Deny (NOID) the petition, noting deficiencies in the record and affording the petitioner the opportunity to submit further evidence to establish that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States and corresponding eligibility for preference classification. In a March 21, 2008 response to the NOID, counsel asserted: (1) that the Form I-130, Petition for Alien Relative was approved on April 6, 1994, when the petitioner's spouse was still in lawful permanent resident status; and (2) that the previously denied April 3, 2006 petition was filed one year after the petitioner's husband was ordered removed from the United States. Counsel contended that the petitioner's petition must be considered valid because it was filed within two years before her spouse's removal order and that if a widow can file a self-petition within two years of the spouse's death, a battered spouse should be allowed to file a petition within two years of the spouse's removal. Counsel further contended that if a battered spouse may file a self-petition within two years of a divorce from an abusive spouse, then the petitioner in this matter should be afforded the same rights as the first Form I-360 was filed on April 3, 2006. Counsel also noted that the petitioner did not file a Form I-360 because the district adjudications officers told her that her Form I-485 petition to adjust status could be adjudicated without her husband and without the need for a Form I-360.

On December 12, 2008, the director denied the petition, finding that the petition could not be approved as a qualifying relationship did not exist within two years of filing the petition as required by statute. The director certified his decision to the AAO. Counsel has not provided additional argument or evidence on certification.

The AAO finds that section 204(a)(1)(B)(ii) of the Act requires that the petitioner establish that she is married to a permanent resident at the time of the filing of the Form I-360 petition unless he or she establishes that the loss of the spouse's lawful permanent resident status during the two-year period prior to filing the Form I-360 was due to an incident of domestic violence. *See* section 204(a)(1)(B)(ii)(II)(aa)(CC)(aaa) of the Act. In this matter, the record shows that the petitioner's spouse was ordered removed on January 18, 2005 from the United States; thus when the petition in the instant matter was filed April 16, 2007, the petitioner was not married to a lawful permanent resident and was not the spouse of a lawful permanent resident. There is no exception in the statute for filing a petition more than two-years after a petitioner is no longer a spouse of a lawful permanent resident. In this matter, the petitioner's husband lost his lawful permanent resident status on January 18, 2005 and the petition³ that is the subject of this certification was not filed until April 16, 2007,

² The petitioner also filed a Form I-360 on April 3, 2006 that was denied by the director on December 20, 2006. The AAO subsequently dismissed an appeal of the matter.

³ Counsel's references and assertions regarding a previously filed Form I-360 are not relevant to the

more than two years subsequent to the petitioner's spouse's loss of his lawful permanent resident status.

Counsel's assertions regarding a Form I-130, Petition for Alien Relative, filed on the petitioner's behalf that was approved when the petitioner's spouse was still in lawful permanent resident status and the petitioner's failure to file a Form I-360 earlier because district adjudications officers told her that her Form I-485 petition to adjust status could be adjudicated without her husband and without the need for a Form I-360 are also not persuasive. 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). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984). The petitioner has not provided evidence that she had a qualifying relationship as the spouse of a lawful permanent resident of the United States and corresponding eligibility for preference classification when the petition was filed. Thus the petitioner has not satisfied the requirements of 204(a)(1)(B)(ii) of the Act and thus is not eligible for this benefit.

Beyond the decision of the director, the petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by her spouse. The regulation at 8 C.F.R. § 204.2(c)(2), in pertinent part, states:

(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 record includes the petitioner's personal statement dated October 25, 2006 submitted in support of the petitioner's previously filed Form I-360. The petitioner indicated that at some point P-R- began to verbally offend her, humiliate her, and would not let her go out and work or receive any visitors at home. The petitioner further indicated that P-R- would call her names, tell her she was undocumented and say "remember, your mother is already death [sic], I can do whatever I want with you." The petitioner indicated that she was home alone, ignored all the time, and could not talk on the phone. The

petitioner reported that once she was talking on the phone, P-R- took the phone and hit her on the head, telling her she was not allowed to use the phone. The petitioner reported a second incident when her family invited her to go to a baby shower, but after her family left, P-R- took his belt and hit her with it repeatedly, leaving marks on her body. The petitioner further reported that in December 1998, P-R- left for Santo Domingo to visit his ill mother and that he never returned. The petitioner stated her belief that P-R- left with another woman and she became very depressed.

The petitioner also provided her sister's, [REDACTED], a, October 25, 2006 affidavit. In the affidavit, [REDACTED] stated that the petitioner came to live with her after P-R- left because she was very depressed that her husband had left her and their children for another woman. [REDACTED] stated that she used to visit the petitioner and P-R- and witnessed the physical and verbal mistreatment of her sister, and on several occasions saw him "pushing her when passing on her side," ignoring her, and calling her derogatory names. The petitioner also provided an October 26, 2006 affidavit from [REDACTED] P-R-'s uncle, who declared that "[the petitioner] was verbally abused any time I was visiting them." The petitioner further submitted an October 25, 2006 affidavit from [REDACTED] the petitioner's neighbor, who declared that he saw P-R- push the petitioner in the elevator and call her stupid and slow, as well as heard P-R- calling the petitioner names. The record further includes the affidavit of [REDACTED], dated October 26, 2006, who declares that she lost touch with the petitioner for about three years but met the petitioner again in April 1999, when the petitioner told her about the petitioner's terrible marital situation.

Although the petitioner did not resubmit the psychosocial assessment prepared by [REDACTED], clinical social worker, who reported on a June 8, 2000 assessment of the petitioner, the AAO has also considered the information provided by [REDACTED]. Ms. [REDACTED] noted that the petitioner reported symptoms of depression, including sleep disturbance, with insomnia, loss of appetite, low self-esteem, and feelings of helplessness since her husband had left her in late 1998. [REDACTED] further noted that the petitioner reported that her relationship with her husband was characterized by verbal aggression, emotional abuse, and lack of support.

Upon review of the petitioner's statements and the affidavits submitted on her behalf, the AAO finds that these statements are general in nature and lack probative detail. The petitioner in her statement reported that her husband verbally abused her, kept her isolated, and on two occasions hit her. The petitioner however, did not report these incidents to the police and the record does not include any other information referencing these incidents. The petitioner, apparently, did not report these incidents to [REDACTED]. The petitioner has not provided the timing of these incidents. The record is insufficient to establish that the petitioner's husband subjected her to battery. Similarly, the petitioner has not established that P-R-'s behavior rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

The affidavits submitted do not include detailed information establishing that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. The affiants provide general

statements and do not describe when the verbal abuse occurred or otherwise describe in detail the circumstances surrounding the alleged abuse. Similarly, the assessment prepared by [REDACTED] included vague statements and did not identify any particular incidents of abuse. The AAO finds further that [REDACTED] does not provide examples of any causal relationship of specific abuse to the petitioner's depression; rather it appears that the petitioner's depression was caused by the petitioner's husband leaving her.

As discussed above, the documentary evidence contained in the record is insufficient to establish the petitioner's claim of abuse. Accordingly, the petitioner failed to establish that she was battered or subjected to extreme cruelty by P-R- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Beyond the decision of the director further, the petitioner has not supplied the necessary documentation to establish that she is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2), in pertinent part, states:

(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 does not include evidence regarding clearances from the State of New York where the petitioner resided. 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.

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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.