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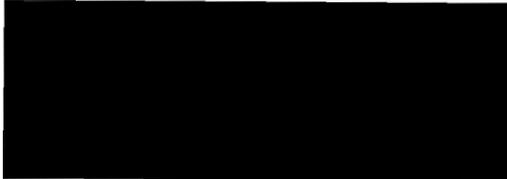
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



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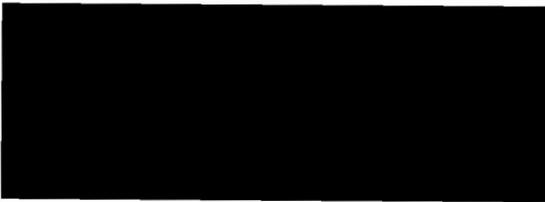
IN RE:

Petitioner:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition on October 10, 2007, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty by her spouse.

On appeal, counsel submits a brief.

We concur with the director's determination that the petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by her spouse, G-S-¹. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are also 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,

¹ Name withheld to protect individual's identity

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

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native of Estonia and citizen of Russia who married G-S-, a United States citizen, on June 6, 2005 in New York. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant, on August 28, 2006. The petitioner indicated on the Form I-360, that G-S- resided with her from May 2005 to July 2006. G-S- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on July 5, 2006. The director in this matter issued a request for further evidence (RFE) on July 16, 2007, informing the petitioner that the evidence submitted to show that she had been subjected to battery or extreme cruelty was deficient. The petitioner provided a response through counsel. Upon review of the evidence submitted, the director denied the petition on October

10, 2007 and counsel timely appealed.

On appeal, counsel asserts that the director erred when determining that the evidence submitted indicated marital discord between the couple and not extreme cruelty on the part of G-S-. Counsel asserts that G-S-'s actions followed a cycle of violence including forced sexual intercourse, oral sex, and anal intercourse. Counsel contends that G-S-'s actions constituted extreme cruelty. Counsel claims that the director erred as a matter of law when finding that the psychological evaluation submitted by the petitioner lacked sufficient weight to establish her claim.

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:

- The petitioner's August 25, 2006 affidavit;
- An August 20, 2006 affidavit signed by [REDACTED];
- An August 20, 2006 affidavit signed by [REDACTED];
- An August 20, 2006 affidavit signed by [REDACTED];
- The petitioner's second affidavit dated August 24, 2007;
- An August 18, 2007 report prepared by [REDACTED] based on the petitioner's interview for an undisclosed amount of time conducted on August 17, 2007.

In her initial August 25, 2006 affidavit, the petitioner reported that G-S- moved into her apartment a month before they married on June 6, 2005. She noted that prior to that time G-S- had been living in a Veterans shelter on Long Island in New York. She declared that in mid-June she and G-S- had their first fight as she asked him not to eat cake because of his diabetes and as a result G-S- yelled at her and told her he would be better off in the shelter and stormed off. The petitioner noted that G-S- called her the next day from the hospital and apologized. The petitioner noted further that G-S- had to remain until some time in September 2005, when he returned to her apartment. The petitioner indicated that in October 2005, G-S- would scream and curse at her when he could not find work and that the neighbors complained to the landlord about the screaming. The petitioner stated that G-S- began withdrawing money from their joint account without telling her. The petitioner indicated that in the middle of December 2005, G-S- disappeared for four days and she later found out he went to New Jersey. The petitioner noted that after his return G-S- started picking fights with her and calling her derogatory names. The petitioner stated that she and G-S- had fights over a cell phone and that G-S- waived his hands in front of her face and scared her. In January 2006, the petitioner reported that G-S- disappeared again and when she contacted him he told her he was in Florida. The petitioner claimed that G-S- deliberately sabotaged their interview with United States Citizenship and Immigration Services (USCIS) on June 29, 2006 by answering the questions wrong and told her that he did that so she would not leave him if she got her green card. The petitioner further claimed that G-S- would torment her by saying that she was stuck with him and had to do whatever he wanted because she would not be able to

get her documents otherwise. The petitioner declared that in July 2006 G-S- behaved “as if he lost his mind” and would call her at work and yell at her. The petitioner reported that by the end of July 2006 the couple had their last fight wherein: G-S- accused her of seeing another man; accused her of not taking good care of him; and left her apartment saying that he wanted to live in New Jersey. The petitioner declared that G-S- continued to call her demanding money and saying that if she does not support him he will report her to the authorities for abandoning him and for being illegal.

In the affidavit of [REDACTED] declared that the petitioner had a fight with G-S- over their cell phone (and the use of the cell phone account by another woman) and that G-S- cursed at the petitioner and that he was so loud the neighbors complained to the landlord. Ms. [REDACTED] declared further that G-S- threw the petitioner out of their apartment and the petitioner came to [REDACTED] house in tears and stayed with her for a week.

In the affidavit of [REDACTED] declared that the petitioner told her: that in December 2005, G-S- disappeared for two days and turned up three days after they started looking for him; and that in mid-January G-S- disappeared again and did not turn up until it was time for the petitioner’s scheduled immigration interview.

In the affidavit of [REDACTED] the petitioner’s neighbor, [REDACTED] declared that she heard G-S- screaming after G-S- returned from the hospital in September (year undisclosed) and she would hear the petitioner trying to calm him down. Ms. [REDACTED] noted that she asked the petitioner about the screaming and the petitioner apologized. Ms. [REDACTED] further declared that several days later, the screaming began again and she was forced to complain to the landlord.

The record also includes a letter dated January 14, 2006 from the petitioner’s landlord, [REDACTED] noted that she rented an apartment to the petitioner and that since June 2005 the petitioner and G-S- lived in the apartment. Ms. [REDACTED] indicated that the petitioner and G-S- “were good and quite [sic] tenants” and kept their room in order and paid their rent on time.

In response to the RFE, the petitioner provided a second affidavit, dated August 24, 2007, in which the petitioner reiterated: that G-S- would yell at her; that he would take his anger out on her by screaming and cursing at her; that he would verbally abuse her just to make her feel miserable; that he would mock her accent; and that he needed someone to push around both physically and mentally. The petitioner declared that G-S- decided she could no longer invite her girlfriends over to the apartment. The petitioner indicated that G-S- did not have respect for her but purposefully continued hurting her to the point where she could no longer function normally and became a nervous wreck. The petitioner indicated further that this was much worse than being incompatible or wrong for each other. The petitioner noted the anguish she felt when G-S- left her and how he damaged her feelings of self-worth.

In the evaluation report prepared by [REDACTED] reiterates the statements the petitioner made regarding the difficulties in her marriage. Dr. [REDACTED] also states:

During their marriage, G-S- abused [the petitioner] verbally, physically, sexually and psychologically. He consistently called her [derogatory names]. He slapped her, pulled her hair, grabbed her and pushed her. He repeatedly forced her to have sexual intercourse when she clearly told him she was not interested in sex at that time. He forced her to perform oral sex on him, unwillingly, and anally penetrated her, causing her severe pain.

The doctor's report is dated August 18, 2007 and is based on an interview that took place on August 17, 2007, and yet the petitioner does not provide any information regarding physical or sexual abuse in her affidavit dated August 24, 2007. She continued to claim only that G-W- yelled at her, cursed at her, took money from their joint account, accused her of having an affair, and disappeared on occasion. Thus, the doctor's evaluation is not based on factual and substantiated evidence in the record. The doctor's evaluation is without merit and will be given no weight.

Upon review of the record, including the petitioner's statements and the statements submitted on her behalf, the AAO finds that the record contains inconsistencies. For example, the petitioner indicates that the neighbors complained to the landlord regarding G-W-'s screaming; however, the landlord indicates in her January 6, 2006 letter that G-W- and the petitioner were good and "quite" tenants and does not acknowledge the complaints. 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). In addition, [REDACTED] declared in her affidavit that G-S- threw the petitioner out of their apartment and the petitioner came to [REDACTED] house in tears and stayed with her for a week. As the director noted, the petitioner does not mention this alleged incident. Upon review of the totality of the record, the petitioner has provided information that is inconsistent and unsubstantiated. Other than the petitioner's neighbor's claim that she heard G-W- screaming on more than one occasion, a fact that appears inconsistent with the landlord's letter of January 2006, the record does not include any evidence that the petitioner's friends witnessed any abuse.

In addition, the AAO finds that the petitioner's statements, even if accepted as true, do not describe incidents of abuse that demonstrate that G-W-'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), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The acts of the petitioner's spouse, as she described them although hurtful and unkind, do not rise to the level of extreme cruelty as those acts are described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The record only demonstrates that G-W- may have been verbally abusive; it does not demonstrate that G-W- engaged in any actions involving physical abuse, or any specific threatening or controlling behavior of the petitioner that includes forced detention, psychological or sexual abuse or exploitation. The record does not include any evidence that the petitioner perceived any threats or other actions against her as serious enough to involve the actions of the police. The AAO does not find that G-W-'s outbursts subjected the petitioner to behavior that was part of an overall pattern of violence.

Although the petitioner claims that G-W-'s actions were much worse than being incompatible or wrong for each other, she fails to provide any substantive, detailed, and credible examples of actions that demonstrate extreme cruelty and show an overall pattern of violence.

The record does not include any substantiated or claimed evidence of battery and does not include any examples of behavior that constitutes extreme cruelty. As discussed above, the testimony regarding the petitioner's former spouse's non-physical behavior does not indicate that his actions were coercive, threatened actual harm, or were aimed at ensuring dominance or control over the petitioner. The record is thus insufficient to establish that the petitioner suffered battery or extreme cruelty perpetrated by her spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The relevant probative evidence fails to demonstrate that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.