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



U.S. Citizenship and Immigration Services

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**MAR 12 2010**

FILE: [Redacted]  
EAC 06 139 51923

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]

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)

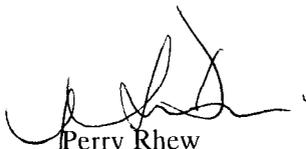
ON BEHALF OF PETITIONER:



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).

  
Perry Rhew  
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.

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).

The Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant was filed March 30, 2006. The director issued a request for further evidence (RFE) on January 14, 2008. Upon review of the evidence in the record including the petitioner's response to the RFE, the director denied the petition on June 23, 2008 because the petitioner failed to establish that she had resided with the United States citizen, that she is a person of good moral character, and that she had entered into the marriage in good faith. The AAO concurs with the director's determination that the petitioner has not established these essential elements and thus has not satisfied the criteria for eligibility for this benefit. In addition, beyond the decision of the director, the AAO finds that the record does not include sufficient evidence to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her spouse. 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) that was in effect at the time the petition was filed.

Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal. Counsel also submits a two-page brief and evidence previously submitted and reviewed by the director. Counsel further provides a Delaware State clearance and a request for a police clearance from the petitioner's second residential location in Pennsylvania. The record does not include a response from Pennsylvania. Counsel asserts that the evidence submitted "tends to show that the petitioner was isolated from the community by her U.S. citizen abuser spouse" and that an undue evidentiary burden should not be placed on the petitioner. Counsel contends that the petitioner's testimonial evidence regarding the shared residence and the marital *bona fides* should be considered.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Neither counsel nor the petitioner has identified specifically any erroneous conclusion of law or statement of fact for the appeal. The record in this matter is limited. The Form I-360 in the file is incomplete. The record includes the petitioner's brief statement dated March 30, 2008, a February 10, 2006 psychiatric evaluation that contains limited information regarding the petitioner, an undated statement from [REDACTED] who indicates his belief that the petitioner is suicidal but does not state why, and an April 4, 2008 statement from [REDACTED] who indicates that she has known the petitioner for about five years, a time period that begins subsequent to the time the petitioner's claimed relationship with her spouse ended. The petitioner has not provided any new evidence on appeal, other than a state clearance from one of the localities where she resided prior to filing the petition.

The AAO has considered counsel's contention that the testimony of the petitioner should be considered and observes that the director properly considered the petitioner's limited testimony along with the other limited information in the record. The AAO also acknowledges that section 204(a)(1)(J) of the Act requires United States Citizenship and Immigration Services (USCIS) to "consider any credible evidence relevant to the petition." Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of" USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claims, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless. In this matter, the limited information provided, including the petitioner's general statement and the psychiatric evaluation, is insufficient to establish: that the petitioner resided with the alleged United States citizen spouse; that the petitioner is a person of good moral character; and that the petitioner entered into the marriage in good faith.

As noted above, beyond the decision of the director, the AAO does not find that the petitioner was the victim of abuse perpetrated by her United States citizen spouse. The petitioner, in her brief statement dated March 30, 2008, indicated that her relationship with her spouse was "torturous, it started subtly with demeaning remarks about [her] culture, way of life, how awful [she does] things, to pushing [her], ignoring [her] and the [sic] hitting [her]." The petitioner also noted that she did not call the police or consult with a social worker but tried to change herself to please her husband. The petitioner referenced the two friends who submitted statements on her behalf and a copy of the psychiatric report prepared by [REDACTED]. As also noted above, [REDACTED] in his undated statement indicated his belief that the petitioner is suicidal but also indicated he did not know why. In the April 4, 2008 statement from [REDACTED], Ms. [REDACTED] indicated that she had known the petitioner for five years and implied that she had known the petitioner while she was involved in the

claimed relationship with her spouse; however, the petitioner indicated that she had moved out of the claimed joint residence with her spouse in April 2003, a time apparently prior to meeting Ms. [REDACTED]. Ms. [REDACTED] acknowledged that the petitioner refused to discuss her problems with her and acknowledged that she did not witness any abuse but then speculated that something bad happened to the petitioner during the course of her relationship with her spouse. The information provided by the petitioner and her two witnesses does not provide the necessary detail to establish that the petitioner was a victim of abuse. Although the petitioner claims that her spouse's demeaning remarks escalated to hitting her, she does not describe specific incidents of abuse. She fails to describe in probative detail any specific threatening or controlling behavior of her husband. The petitioner has provided a general statement that in and of itself does not establish credibility and is sufficiently vague as to not lend it to evaluations regarding credibility. Neither of the petitioner's friends who submit statements on her behalf describes any specific incidents of abuse. Speculation is insufficient to establish that the petitioner's husband subjected the petitioner to abuse.

The AAO has also reviewed the February 10, 2006 psychiatric evaluation prepared by [REDACTED]. Dr. [REDACTED] noted that the petitioner had been referred by her attorney for the evaluation because of reported physical and emotional spousal abuse. [REDACTED] does not indicate when the evaluation occurred, the length of time spent with the petitioner, or whether the evaluation was based on one or more consultations. [REDACTED] noted that two months after the marriage, the petitioner's husband started acting out, becoming upset over any little problem and punishing the petitioner as he saw fit. [REDACTED] reported that the petitioner's husband would yell at the petitioner and push her and that sometimes she got a beating for no reason. [REDACTED] further reported that the petitioner's spouse would force her to remain outside for one to two hours in the cold without the appropriate attire. [REDACTED] stated that in March 2003 the petitioner's husband "struck her and threw her on the living room floor and straddled her while banging her head repeatedly on the floor." Subsequent to this incident, the petitioner packed up and left her husband in April 2003 moving in with a relative. [REDACTED] indicated that the petitioner denied suicidal plans but admitted to frequent suicidal thoughts when she had flashbacks of the husband's abuses. [REDACTED] diagnosed the petitioner with post traumatic stress disorder and major depression, a new stomach ulcer, and domestic violence issues. She advised the petitioner to seek and maintain psychiatric treatments and to contact the domestic violence hotline for support.

Although the AAO accepts [REDACTED]'s professional training and experience, the record is not sufficiently detailed to correlate the petitioner's generally described incidents of abuse apparently told to [REDACTED] in one session of unspecified length to the petitioner's current mental illness. The AAO accepts that [REDACTED] diagnosis was based, not simply on the petitioner's statements, but on clinical observations of the petitioner's behavior and affect during the evaluation. The AAO finds, however, that the reports do not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's depression/post traumatic stress disorder/stomach ulcer. The AAO notes that the petitioner's session with [REDACTED] occurred almost three years after she had left her husband. The AAO also finds that the information provided to [REDACTED] includes information not mentioned in the petitioner's general statement and thus questions the authenticity of the evaluation. There is insufficient probative information in the

evaluation as well as in the totality of the record to conclude that the petitioner's current mental illness is related to the claimed abuse. Upon review of the psychiatric evaluation, the AAO does not find it probative in establishing that the petitioner was a victim of abuse.

Although the petitioner has failed to identify specifically an erroneous conclusion of law or a statement of fact in this proceeding and the petitioner is ineligible for this relief 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. The petitioner has not sustained that burden.

**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.