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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  
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **MAR 29 2010**  
EAC 08 048 50687

IN RE: Petitioner: [Redacted]

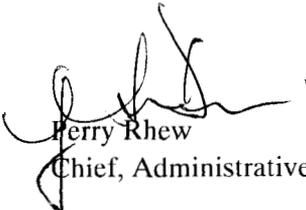
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:  
[Redacted]

**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 appeal will be dismissed. The petition will be denied.

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 June 25, 2009, determining that the petitioner: had not established that she had resided with the United States citizen spouse; had not established that she had been battered or subjected to extreme cruelty by her United States citizen spouse; and had not established that she had entered into the qualifying relationship in good faith.

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:

(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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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 Georgia who entered the United States on December 11, 1998 on a B-2 visa. On March 18, 2004 the petitioner married P-D-<sup>1</sup> a United States citizen. The petitioner noted on the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, that she resided with P-D- from March 2004 to November 2006. The record includes a Form I-130, Petition for Alien Relative, which was filed on April 15, 2004. The petitioner appeared alone for the first Form I-130 interview and told the United States Citizenship and Immigration Services (USCIS) officer that P-D- could not make the interview due to a family emergency. The petitioner and P-D- were interviewed together pursuant to the Form I-130 on December 19, 2005 and March 21, 2006. The Form I-130 petition was denied on April 14, 2006.

#### *Residence*

As observed above, the petitioner on the Form I-360 indicated that she resided with P-D- from March 2004 to November 2006. In her initial statement, the petitioner indicated that shortly after their marriage, P-D- would disappear for days and in April 2004 he left and she did not hear from him for months. The petitioner noted that in June 2004 she hired a private investigator to locate P-D-. The private investigator's report shows that P-D- had numerous addresses but had never listed the claimed marital address on his driver's license or any other traceable document. The petitioner stated that P-D- returned to the claimed marital address in September but does not specify the year. The petitioner noted that she learned that P-D- had filed his taxes by himself and had not included her on the tax forms. The petitioner indicated that they attended a USCIS interview in 2006 but that P-D- again left after the interview. The petitioner indicated that she finally located P-D- through his ex-girlfriend's brother and they attended the third USCIS interview together but that P-D- left after the interview, returned to his work, and did not come home.

The initial record included Western Union receipts showing the petitioner had wired funds to P-D- on February 21, 2005 to a Richmond, Virginia location and again on April 3, 2005 to a Brooklyn, New York location. As referenced above, the private investigator's report, circa November 2004, showed that the private investigator had searched numerous databases but did not find that P-D- had ever listed the claimed marital address on any of his documents. The record also included a July 12, 2006 letter

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<sup>1</sup> Name withheld to protect the individual's identity.

from the Bank of America addressed to P-D- and the petitioner at the claimed marital address which notified P-D- that the account is overdrawn. The record also included photocopies of two checks that list both the petitioner and P-D- as the account holders. The checks are dated June 27, 2005 and August 12, 2005 and are both signed by the petitioner. The record also included documents sent to the petitioner at the claimed marital residence.

In response to the director's RFE, the petitioner provided a second personal statement. She declared in the statement that P-D- had moved into her apartment in Brooklyn, New York after they were married on March 18, 2004. She noted that the lease was in her name, that they did not think about insurance or investments, and that she paid the utility bills. She noted that they opened a joint bank account but did not specify when the account was opened. The petitioner noted that P-D- disappeared again in 2005. The petitioner indicated that P-D- had mail coming to the marital address but that she would give most of the letters to him and throw the others out when she moved. The petitioner provided collection letters dated April and August of 2006 that are addressed to P-D- at the claimed marital address.

Based on the information in the record, the director determined that the petitioner had not established that she resided with P-D-. The director found that the petitioner's testimony was inconsistent as to when P-D- allegedly lived at the petitioner's apartment and that the collection letters addressed to P-D- in 2006 did not establish that he resided at the address.

On appeal, counsel for the petitioner asserts that the petitioner has submitted all the documents she could find to confirm that P-D- resided with the petitioner. Counsel notes that the petitioner no longer lives at the claimed marital address and that she threw away documents that evidenced the joint residence when she moved. Counsel notes further that because she hid her marital problems from her friends she did not invite them to the marital residence. Counsel addresses the private investigator's report that shows P-D- used numerous addresses and speculates that P-D- may have been irresponsible in timely updating his addresses. Counsel asserts that although the petitioner may not have been completely consistent on the dates her spouse abandoned her, her story has always remained consistent.

Upon review of the record, the AAO finds that the Western Union receipts do not show that P-D- resided with the petitioner. The petitioner's own private investigator could not confirm that P-D- had ever used the claimed marital address subsequent to the marriage to a point in November 2004, the approximate conclusion of the private investigator's research as denoted on his bill. The bank letter, dated July 2006 and the two checks listing both the petitioner and P-D- as account holders are signed by the petitioner. These documents do not have independent value in establishing that P-D- resided with the petitioner. The AAO acknowledges counsel's claims that the petitioner threw much of her documentation away; however, the petitioner's own testimonial evidence fails to provide the necessary detail showing that she and P-D- resided together. The petitioner does not discuss the details of their claimed joint residence, rather concentrates on her claim that P-D- often did not reside at the house and that she could not locate him. She also indicated that at some point she sublet the apartment and lived with friends. The petitioner does not provide any sort of relevant, consistent timeline to allow a determination that the couple actually established a joint residence, even for a short period of time. Upon review of the totality of the information in the record, the petitioner has not established that she

and P-D- established a joint residence.

*Battery or Extreme Cruelty*

In the petitioner's initial undated statement in support of the Form I-360, the petitioner declared that "problems started to surface after we received a telephone call from P-D-'s ex- girlfriend" who asked him for money. The petitioner noted that she "was aware that P-D- fathered a son" with his ex-girlfriend and that he supported the son. The petitioner indicated that "at that point" P-D- became moody and irritable and would disappear for days without calling or making any contact. The petitioner noted that she tried to find P-D- and even went to his old apartment where she discovered P-D-'s- ex-girlfriend and his son and gave them \$200. The petitioner stated further that in April 2004 P-D- quit his job and told her he was wanted by the police. When she accused him of lying he left and she did not hear from him for months. The petitioner indicated further that she hired a private investigator to find him but the investigator was unsuccessful. The petitioner stated that she had a nervous breakdown, that she sublet their apartment, and lived with her friends. The petitioner indicated that she next heard from P-D- in September and he asked her to send him money so that he could return home, which the petitioner sent; and P-D- returned in late September. The petitioner stated that she noticed that P-D- was taking money from their account more often than usual and in late December 2005, P-D-'s ex-girlfriend started calling her and demanding money, threatening that she would have the petitioner deported if she did not send money. The petitioner claimed that at the beginning of 2006, she and P-D- received another notice<sup>2</sup> from USCIS regarding an interview for the Form I-130, which they both attended. The petitioner noted that after the interview, P-D-'s mood changed drastically, he became insensitive and neglectful, and stopped communicating with her. The petitioner indicated that once when she called P-D-'s cell phone a woman answered and said that she was P-D-'s girlfriend. The petitioner noted that P-D- started to disappear for days without calling. The petitioner stated that she suffered a second breakdown after P-D-'s third disappearance and was still searching for P-D- as the day of their final USCIS interview approached. The petitioner declared that she paid an individual who she believed was P-D-'s ex-girlfriend's brother, for information regarding P-D-'s whereabouts and was able to locate where he worked. She noted that she left her business card and when he contacted her she told him of the upcoming interview and that they met right before the interview in front of the USCIS building. The petitioner indicated that after the interview they went their separate ways.

The record before the director also included an unsigned psychosocial assessment of the petitioner dated October 27, 2007, apparently prepared by [REDACTED] licensed clinical social worker. [REDACTED] described the petitioner's relationship with P-D- as emotional abuse, exploitation, and abandonment. [REDACTED] noted: that the petitioner did not know about P-D-'s ex-girlfriend and son until June 2004 when she visited one of P-D-'s old apartments; that P-D- would call and ask the petitioner for money; and that he abandoned her several times during their three-year relationship. [REDACTED] stated that P-D- was able to control the petitioner by demanding money in return for his

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<sup>2</sup> The petitioner attended the July 2004 interview requested in the first notice, but as she could not locate P-D-, she told the adjudicator that P-D- had a family emergency and requested that the interview be rescheduled.

presence and affection and that the emotional abuse and inherent embarrassment of her situation further isolated the petitioner and subjected her to an array of depressive symptoms, including hypersomnia, social isolation, decreased motivation, anhedonia, crying spells, an inability to leave her home, weight gain, and use of prescription pain medication.

The record also included an October 4, 2007 letter prepared by [REDACTED], who indicated that the petitioner had been under her treatment since August 30, 2007 for a diagnosis of Major Depressive Disorder severe without psychotic features. [REDACTED] noted that the petitioner had a history of one psychiatric hospitalization secondary to spousal abuse as the petitioner reported “that her depression was brought up by severe marital difficulties (her husband abandoned her, took all there [sic] money and failed to appear to a[n] appointment at the Immigration office).” The record includes an explanation of benefits from the petitioner’s insurance company showing that the petitioner was treated at an emergency department on March 29, 2006.

The record also included a statement from [REDACTED] notarized on July 20, 2007, who indicated that he saw a drastic change in the petitioner’s appearance and well being after her marriage began to deteriorate. [REDACTED] reported that the petitioner told him that P-D- had left her unsupported, cleared their joint bank account of all funds, and left her with the responsibility of numerous bills.

In response to the director’s RFE, the petitioner provided a second personal statement, notarized April 29, 2009. In regards to the claim of abuse, the petitioner stated: that she and P-D- had a huge fight in April because P-D- had quit his job without telling her; that she accused him of lying and he disappeared and never really came home for good; that he only came home to take some things like a computer, camera, personal belongings, and money; that P-D- returned in September but when she confronted him with spending money behind her back “[t]hings got ugly” and he disappeared again in 2005; and that she spent two years of her life hoping he would return and things would get better. The petitioner also declared: “[h]e shouted and yelled and accused [her] of being dishonest and unfaithful, threatening that he would leave [her] forever if [she] did not give him money” and “he would lovingly make promises of [them] starting anew and [she] would wake up [the] next day and he would be gone with half of the bank account.” The petitioner also indicated that P-D- degraded her, humiliated her and taunted her and made her fear him and his mood swings.

Based on the information in the record, the director denied the petition, determining that the petitioner had not been subjected to abuse but that P-D-’s behavior was behavior associated with a deteriorating marriage.

On appeal counsel for the petitioner acknowledges that the report prepared by [REDACTED] was unsigned and submits a signed copy. Counsel asserts that the petitioner’s spouse attempted to control her through emotional blackmail and that such attempts constituted extreme cruelty. Counsel also contends that P-D- attempted to control the petitioner: by introducing his ex-girlfriend and his son into the petitioner’s life and by insisting that the petitioner pay for his son’s upkeep; by failing to attend her immigration interview; and by causing her worry over his disappearances, over the state of her marriage, about her financial situation, and from the harassment she received at work from his

ex-girlfriend. Counsel notes that this worry resulted in the petitioner's nervous breakdowns which required medical treatment on at least two occasions. Counsel asserts that these effects were not the result of a simple marital breakdown but of extreme cruelty perpetrated by the petitioner's spouse.

The AAO disagrees with counsel's assessment. The record in this matter does not support the petitioner's claim that she was subjected to battery or extreme cruelty. The AAO observes that counsel's statements do not include personal observations of abuse, but rather rely upon the petitioner's perception of the circumstances of her relationship. Although the limited number of events in the petitioner's story is fairly consistent, the petitioner does not provide much information that would establish a timeline of her spouse's abandonment. More importantly, the petitioner does not provide any evidence that P-D's behavior rose 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. Rather, P-D- disappeared, asked the petitioner for money which she gave him, and he also took money from their joint bank account. Although these acts may have resulted in the heartache the petitioner claims she suffered, such marital discord that results in separation does not constitute extreme cruelty as that criteria is defined for this benefit.

The petitioner's allegation of extreme cruelty is based upon her claims that her spouse abandoned her, was insensitive and neglectful, and stopped communicating with her, and that "[h]e shouted and yelled and accused [her] of being dishonest and unfaithful, threatening that he would leave [her] forever if [she] did not give him money, and that he degraded her, humiliated her and taunted her and made her fear him and his mood swings. The AAO concurs with the director's determination that these general statements, even if true, reflect a deteriorating marriage. The petitioner does not provide evidence that she was controlled by her spouse or that she had reason to fear him. The AAO notes that the petitioner actively searched for her spouse when she was faced with an immigration interview and apparently wired him money to come back to attend the interview. The circumstances and events the petitioner generally describes do not provide examples of any specific threatening or controlling behavior of her spouse. The petitioner has not demonstrated that her spouse's non-violent actions constituted psychological abuse or were otherwise part of an overall pattern of violence. In addition, while we acknowledge the petitioner's claim that P-D's ex-girlfriend threatened to have her deported, the petitioner does not indicate that P-D- made similar threats.

Upon review of the October 27, 2007 report prepared by [REDACTED] based upon one interview of unspecified length with the petitioner, the AAO does not find [REDACTED] analysis sufficient. [REDACTED] fails to provide specific examples of the causal relationship of abuse that is consistently detailed to the petitioner's depressive symptoms that exist over one or two years after the claimed relationship ended. The AAO reiterates that abandonment is not consistent with abuse as defined in the regulation for this benefit. The AAO questions whether the petitioner's breakdowns are related to the actual breakup of the claimed marital relationship rather than the petitioner's lack of legal status in the United States and her inability to obtain P-D's cooperation in obtaining her legal status. The AAO finds that [REDACTED] conclusion that P-D- used his abandonment of the petitioner as a manipulative tool to control the petitioner is unsupported in the record. The evaluation prepared by [REDACTED] lacks probative value as it does not include a

reasoned opinion based on specific facts and clinical observations of the petitioner's behavior and affect during the evaluation that support a conclusion that the petitioner presented with symptoms and characteristics of an abused spouse. The AAO observes that the petitioner continued to work, to exercise her free will to move from the claimed marital residence, and to hire a private investigator to find P-D-, actions that do not demonstrate that P-D- controlled the petitioner or otherwise subjected her to extreme cruelty. The AAO has also reviewed the October 4, 2007 letter prepared by [REDACTED]. [REDACTED] comments that the petitioner self-reported that her depression was brought about by "severe marital difficulties" that included abandonment, the spouse taking all of the petitioner's money and failing to attend an appointment with immigration. [REDACTED] herself, does not identify the underlying trauma or provide any information indicating that the petitioner's major depressive disorder was caused by the petitioner's spouse's behavior. The AAO does not find that either [REDACTED] evaluation or [REDACTED] letter supports a conclusion that the petitioner suffered extreme cruelty perpetrated by P-D-.

#### *Good Faith Entry into Marriage*

In her initial statement, the petitioner indicated that she met P-D- in December 2003 at a friend's birthday party and they started dating shortly thereafter. The petitioner noted that she and P-D- decided to move in together and make the relationship legal in March 2004. The remainder of the petitioner's statement is devoted to the petitioner's difficulties with P-D- and his abandonment. In the petitioner's second statement she indicated that it is very painful for her to remember events and details of the relationship she has tried so hard to forget.

Based on the information in the record, the director found that the record did not include evidence of the emotional ties, commingling of resources, and shared financial responsibilities often associated with a *bona fide* marriage. The director determined that the petitioner had not demonstrated her qualification under the good faith marriage requirement.

On appeal, counsel for the petitioner asserts that the petitioner has repeatedly described the emotional ties that she felt for P-D- and has consistently described the same series of events and the emotional impact that they had upon her. Counsel contends that the petitioner's statements, the joint bank account information and mail addressed to P-D- at the couple's claimed marital address supports a finding that the petitioner entered into the marriage in good faith.

The record in this matter provides no details regarding the couple's courtship, their interactions prior to marriage, or their interactions subsequent to the marriage except as it relates to P-D-'s abandonment, the petitioner's payment for P-D-'s presence at immigration interviews, and the petitioner's claim that P-D- cleared out the joint bank account. The petitioner does not provide any details that suffice to establish that her intent upon entering the marriage was to establish a life together. The AAO observes that the petitioner has not provided any probative testimonial or documentary evidence that would assist in establishing that she entered into the marriage in good faith. The petitioner's marriage certificate confirms their marital relationship, but does not establish the petitioner's own good faith in entering the marriage. The AAO notes that the petitioner provided

two checks she wrote on a bank account, but these checks do not substantiate that the couple each used the account and thus commingled their assets. There is no evidence that P-D- cleared out the bank account. The July 6, 2006 Bank of America letter is addressed to both she and P-D- and is a notification to the account holders that the account is overdrawn. The AAO observes that this letter is dated almost three months after the couple's last immigration interview, on March 21, 2006, which in the petitioner's own testimony she indicates that she and P-D- went their separate ways.

As noted in the regulation 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. The AAO acknowledges that while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the one affidavit submitted on her behalf also fail to support a finding that she entered into this marriage in good faith. It is the generality and bareness of detail included in the petitioner's statement and the lack of specifics noted by [REDACTED] and [REDACTED] regarding the petitioner's actual relationship with P-D- that fail to establish that the petitioner entered into the marriage in good faith. Accordingly, the AAO finds that the record is insufficient to establish that the petitioner entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) 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. The petition is denied.