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



U.S. Citizenship
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FILE: [Redacted] Office: VERMONT SERVICE CENTER

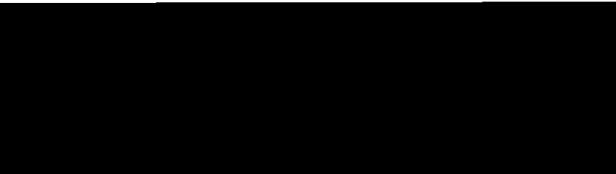
Date:

SEP 17 2010

IN RE: Petitioner: [Redacted]

PETITION: Petition for Immigrant Battered 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an immigrant 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 her United States lawful permanent resident spouse.

The director denied the petition because the petitioner did not establish that her husband subjected her to battery or extreme cruelty during their marriage, and that she married him in good faith.

On appeal, counsel submits a brief and additional evidence, including: an undated statement from the petitioner; a statement from [REDACTED] dated May 12, 2010; a statement from [REDACTED] dated May 15, 2010; a letter from [REDACTED] dated May 21, 2010; and copies of documentation previously submitted.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if he or she demonstrates that the marriage to the lawful permanent resident spouse was entered into in good faith and that during the marriage, the alien or the alien's child 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 a spouse of an alien lawfully admitted for permanent residence under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act further 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 explicated 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.

* * *

(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 are further explicated 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.

* * *

(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 case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of China who entered the United States on September 18, 2002, as a nonimmigrant F-1 student. On September 22, 2007, the petitioner married R-N-¹, a U.S. lawful permanent resident, in Las Vegas, Nevada. On November 9, 2007, R-N- filed a Form I-130, Petition for Alien relative, on behalf of the petitioner, and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status, both of which remain pending.

The petitioner filed this Form I-360 on October 1, 2008. On October 9, 2008, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good moral character and good-faith entry into the marriage. On January 12, 2009, the petitioner, through former counsel, responded with additional evidence. On December 9, 2009, the director issued a second RFE of, *inter alia*, the requisite abuse, joint residence, and good-faith entry into the marriage. On March 4, 2010, the petitioner, through former counsel, responded with additional evidence. On April 7, 2010, the director denied the petition for lack of, *inter alia*, the requisite abuse and good-faith entry into the marriage.

On appeal, counsel states, in part, that the petitioner “has been tortured and subjected to extreme cruelty by [R-N-].” Counsel also states that the petitioner “entered into the qualifying relationship in good faith, whether or not she has many joint documents.”

Battery or Extreme Cruelty

In addition to the documentation submitted on motion, 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:

- An undated statement from the petitioner submitted on appeal, a statement dated August 18, 2008, submitted at the time of filing, and a supplemental declaration dated February 4, 2010, submitted in response to the director’s RFE;
- A statement from [REDACTED], dated September 27, 2008 and re-dated March 1, 2010;
- An email message from [REDACTED] dated September 28, 2008;
- A statement from [REDACTED], dated March 2, 2010; and
- A Comprehensive Psychological Evaluation from [REDACTED] dated November 3, 2008.

In her undated statement submitted on appeal, the petitioner states, in part, that she disagrees with the director’s finding that her two statements are inconsistent. The petitioner states that she “felt too much shame” to mention the sexual abuse in her first statement, though she revealed it in her second statement because her attorney “asked [her] to explain the abuse.” The petitioner also states that she “was tortured by [her] husband physically and mentally” and that they “entered [their] marriage in good faith.”

¹ Name withheld to protect individual’s identity.

In her statement dated August 18, 2008, submitted at the time of filing, the petitioner states, in part, that she married R-N- on September 22, 2007, and in December 2007, R-N- wanted her to move to Los Angeles, where he would join her after visiting his ill grandfather in Florida. The petitioner states that after she moved to Los Angeles, she did not hear from R-N- and did not know where he was until she received the monthly phone bill, which contained numerous phone calls made from Las Vegas. The petitioner explains that when she finally reached him, R-N- told her that their marriage would be dissolved because he had reconciled with his ex-girlfriend. The petitioner explains that she “suffered an immediate breakdown” due to his lies, which also included “the non-disclosure of his children.” The petitioner also states, “Not one day goes by without the reminder of his abandonment.”

In her statement dated February 4, 2010, submitted in response to the director’s RFE, the petitioner provides a more detailed account of the alleged abuse. The petitioner states, in part, that around November 2007, R-N- started acting differently after he was fired from his job. The petitioner states that R-N- started going out drinking at night, and became so upset when she asked him about “any news from the jobs” and when she advised him not to go out drinking that he pulled her hair, “proceeded to strangle [her] neck,” and called her names. The petitioner also states that “[t]here were times” when R-N- would “suddenly grab [her] breasts while driving and refused to loosen his grip despite pleading with him,” and that “he forced [her] to have sex with him day and night.” The petitioner states that in December 2007, R-N- insisted that they move to Los Angeles in order for him to find a job, and that after less than a month in their new apartment, R-N- disappeared with his personal belongings and the cash in the piggy bank. The petitioner explains that she discovered that R-N- had children only after receiving a letter from the Department of State indicating that his passport application had been denied due to unpaid child support. The petitioner also states that when she called an unidentified number that appeared on the monthly telephone bill, she discovered that R-N- had an ex-wife, who threatened to call the police and the immigration authorities if the petitioner made any further contact with [R-N-]. The petitioner states that due to the emotional stress, she developed hives, a painful cyst in her ovary, and Bell’s palsy, which paralyzed the left side of her face. The petitioner explains that her family doctor did not help her, though acupuncture treatment enabled her to close her eyes.

In a statement dated May 12, 2010, [REDACTED] states, in part, that the petitioner told her that “she had problems with [R-N-]” after they were married, and that R-N- cheated on her with his ex-girlfriend. [REDACTED] also states that the petitioner told her that R-N- stayed in Las Vegas with his ex-girlfriend after telling her that he was visiting his sick grandfather in Florida. [REDACTED] states that one time the petitioner cried uncontrollably and told her how R-N- hurt her mentally and physically, and that she “felt very embarrassed to tell someone about this abuse.” [REDACTED] also states that the petitioner went to see a Chinese herb doctor who “told her that she was sick due to excessive stress.”

In a statement dated May 15, 2010, [REDACTED] states, in part, that the petitioner and R-N- started having problems “a few months after they were married,” and that the petitioner “told [her] she felt very ashamed to talk about how her husband sexually abused her.” [REDACTED] also states, “From our

discussions, I could tell [the petitioner] suffered intense mental injury.”

In a statement dated September 27, 2008 and re-dated March 1, 2010, [REDACTED] states, in part, that she has “personally witnessed [the petitioner] suffering from sporadic nervous breakdowns with cries that can only be described as eerily heartbreaking.” [REDACTED] also states that the petitioner’s “erratic behavior” was from the underlying trauma of abandonment by her spouse.

In an email message dated September 28, 2008, [REDACTED] states, in part, that a couple of months after the petitioner’s marriage, she started to notice that the petitioner seemed depressed and kept to herself. [REDACTED] also states that the petitioner told her that she discovered from the phone bill that her husband was actually in town when he told her that he was going out of town. [REDACTED] states that she called the petitioner to see if she was okay because she knew that the petitioner “was depress[ed] and going out of her mind with the problem of her marriage.”

In a statement dated March 2, 2010, [REDACTED] states, in part, that the petitioner was always happy and joking during their lunch break until she noticed a change in the petitioner’s personality, namely that was quiet and stayed to herself. [REDACTED] also states that the petitioner told her that she had not heard from her husband. [REDACTED] states that she suggested that the petitioner go to an acupuncturist because her face was “twisted to the left side.”

In his May 21, 2010 letter, [REDACTED] states, in part, that the petitioner “has been suffering from Bells palsy since 04-29-2008” and that “[s]he has left sided facial paresis.”

In his Comprehensive Psychological Evaluation dated November 3, 2008 [REDACTED] states that the petitioner went to his office for a psychological evaluation on October 16 and 31, 2008. [REDACTED] reiterates the petitioner’s history with her husband and diagnoses her with major depression as a result of mental and sexual abuse by her husband. [REDACTED] states that “psychological and psychiatric treatments are strongly recommended.

On appeal, counsel reiterates the petitioner’s alleged abuse, and states further that the abuse by the petitioner’s husband “caused [her] face to become paralyzed on the left side and affected her eyes.”

In this case, we do not find the relevant evidence sufficient to meet the petitioner’s burden of proof. The petitioner’s own testimony and the statements submitted on the petitioner’s behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that R-N’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. While the petitioner asserts on appeal that her statements are inconsistent because she “felt too much shame” to mention the sexual abuse in her first statement, the record still contains numerous inconsistencies and deficiencies. For example, in her first statement, the petitioner asserts that [R-N-] “decided he would move to L.A. after he returned from visiting his gravely ill grandfather in Florida” and that before R-N- left on his trip, she “was compelled to move [her] belongings back to L.A.” and was fortunate “to find a new apartment at such short notice.” The petitioner explains that she “felt extreme concern and anxiety as

he did not call [her] and [she] did not know where he was.” This information conflicts with the petitioner’s second statement, in which she does not mention any trip by R-N- to visit his ill grandfather. Instead, the petitioner indicates that she and R-N- moved together to Los Angeles and that R-N- “vanished” in less than a month after moving into their new apartment. The petitioner’s inconsistencies diminish the credibility of her testimony. In addition, the statements submitted on the petitioner’s behalf are general and vague and provide minimal information pertinent to the circumstances of the alleged abuse. For example, [REDACTED] all state that the petitioner told them about her marital problems, though they do not indicate that they ever witnessed the petitioner and [R-N-] together after their marriage. Likewise, even though [REDACTED] claims in her statement that, after the petitioner and [R-N-] were married, “sometimes [they] gathered together for a party,” she does not provide any details of such gatherings or provide any details of the petitioner’s interactions with her husband. Moreover, some of the information in [REDACTED] statement is inconsistent with the petitioner’s testimony. For example, [REDACTED] asserts that the petitioner called her before she moved back to Los Angeles and they got together, whereupon the petitioner confided in her about the sexual abuse she suffered from her husband. This information conflicts with the petitioner’s second statement, in which she states that she had no friends in Las Vegas and [R-N-] “wouldn’t permit [her] to go [out] unless he went with [her].”

The letter from [REDACTED] and the psychological evaluation from [REDACTED] also fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that R-N-’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. Although [REDACTED] states that the petitioner has been suffering from Bells palsy since April 29, 2008, he does not indicate that the alleged abuse by the petitioner’s husband was a causative or contributing factor to the petitioner’s physical health condition. Thus, counsel’s assertion on appeal that the petitioner’s alleged abuse by R-N- caused her face to become paralyzed is not corroborated by [REDACTED]

While [REDACTED] states that the petitioner went to his office for a psychological evaluation on October 16 and 31, 2008, he does not specify the length of his evaluation sessions with the petitioner. [REDACTED] reiterates the petitioner’s history, and also states that, after the petitioner developed a rash and a cyst in her ovary due to stress, her family doctor suggested that she seek psychological treatment. This information, however, is inconsistent with the petitioner’s own testimony. Specifically, in her second statement, the petitioner states that when her physical health began to deteriorate from hives, a cyst in her ovary, and Bell’s palsy, her family doctor was “oblivious,” and told her that that she could “only strive for self-help.” The petitioner states further that, she underwent acupuncture “through a chanced recommendation by an acquaintance to a Chinese physician.” Again, the record contains no explanation for this inconsistency. Moreover, although [REDACTED] diagnoses the petitioner with major depression as a result of mental and sexual abuse by her husband, and strongly recommends psychological and psychiatric treatments, he does not indicate that he treated or recommended any specific treatment for the petitioner.

While we do not question the expertise of [REDACTED] their testimony fails to establish that the behavior of the petitioner’s husband rose to the level of battery or extreme cruelty, as defined in the

regulation at 8 C.F.R. § 204.2(c)(1)(vi). As discussed above, [REDACTED] does not discuss the alleged abuse in his May 21, 2010 letter. While [REDACTED] does provide a discussion of the alleged abuse in his November 3, 2008 psychological evaluation, such discussion is inconsistent with the petitioner's August 18, 2008 testimony, written only two months prior, in which she mentions no abuse. In view of the foregoing, neither [REDACTED] provides substantive, probative information indicating that the petitioner's husband's behavior included actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

Upon review of the record in its entirety, the preponderance of the relevant evidence does not establish that R-N- subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

Good Faith Entry into Marriage

In addition to the documentation listed above, the record contains the following evidence relevant to the petitioner's claim that she married her husband in good faith:

- Photocopies of visa cards for the petitioner and R-N-;
- Two bank statements addressed to the petitioner, dated from October 16, 2007 – December 15, 2007;
- A bank statement containing R-N-'s name, dated January 22, 2008; and
- Photographs.

In her undated statement submitted on appeal, the petitioner states, in part, that she and R-N- both entered into their marriage in good faith.

In her statement dated August 18, 2008, submitted at the time of filing, the petitioner states, in part, that she and R-N- met in Las Vegas in December 2006, through a mutual friend, and that their "relationship quickly developed into something special," whereupon she quit her job and moved in with R-N- in April 2007.

In her statement dated February 4, 2010, submitted in response to the director's RFE, the petitioner states, in part, that in December 2006, she went to Las Vegas to visit a friend during the Christmas holiday, and her friend introduced her to R-N-. The petitioner also states that within a month, they started dating and on March 13, 2007, R-N- proposed to her during his birthday dinner. The petitioner states that in April 2007, she resigned from her job, moved in with him, and began to prepare for their wedding.

In a statement dated May 12, 2010 [REDACTED] states, in part, that she, the petitioner, and some other friends went on vacation together during the Christmas holiday in 2006, where they met with friends from Las Vegas, including R-N-. [REDACTED] states that R-N- was attracted to the petitioner and they started dating. [REDACTED] also states that one day the petitioner told her that she was moving to Las Vegas to be closer to R-N-.

In a statement dated May 15, 2010, [REDACTED] states, in part, that in 2007, the petitioner told her about her boyfriend, R-N-, and that she later “learned that they lived together and were married in September 2007.” [REDACTED] also states that after the petitioner and [R-N-] were married, “sometimes [they] gathered together for a party” and that she “visited them in their home.”

In an email message dated September 28, 2008, [REDACTED] states, in part, that she has known the petitioner for five years, and that she was happy for the petitioner when she told her that she was getting married.

On appeal, counsel states, in part, that the petitioner and R-N- had a good relationship for only two months, which is why they have few joint documents.

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The petitioner, however, has submitted scant testimonial evidence to support a finding that she entered into her marriage in good faith. The statements from the petitioner and on her behalf are general and vague and provide minimal information pertinent to the circumstances of the courtship and marriage of the petitioner and R-N-. The AAO also acknowledges the visa cards for the petitioner and R-N-. The record, however, contains no evidence that both the petitioner and R-N- used the account. In addition, the bank statements do not contain the names of both the petitioner and R-N-. The photographs confirm that the petitioner and R-N- were married and pictured together, but these documents alone do not establish the petitioner’s good-faith entry into the marriage. Moreover, the lack of information in the record regarding how the petitioner met her husband, their courtship, decision to marry, and shared experiences, significantly detract from the credibility of her claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

The petitioner has not demonstrated that her husband subjected her to battery or extreme cruelty during their marriage, and that she married him in good faith. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

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.