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



U.S. Citizenship  
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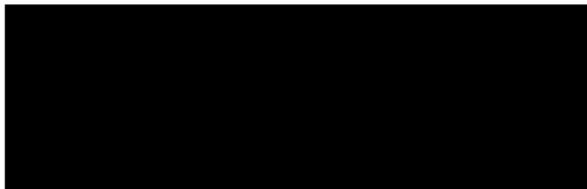


FILE:  Office: VERMONT SERVICE CENTER Date: FEB 07 2011

IN RE: Petitioner: 

PETITION: Petition for Immigrant Abused 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:

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 \$630. 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition remains denied.

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

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 based on his or her relationship to the abusive spouse, 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 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, 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.

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(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 set forth 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.

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(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.

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(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 of the Czech Republic and a citizen of Germany. She entered the United States on or about October 3, 2003 as through the visa waiver program. On December 10, 2006,

the petitioner married T-C<sup>1</sup>, the claimed abusive United States citizen. On June 27, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the initial Form I-360 that she resided with T-C- from June 1995 to May 2007. On a subsequent Form I-360 that was submitted to correct typographical errors, the petitioner indicated that she had resided with T-C- from June 1999 to May 2007. On May 1, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director denied the petition on October 2, 2009. The director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by T-C- and that she had not established that she had entered into the marriage in good faith. The Form I-290B, Notice of Appeal or Motion, and documents were not submitted timely. Thus, the director treated the untimely appeal as a motion and after considering the evidence, denied the petition on July 23, 2010, affirming his prior decision. Counsel for the petitioner then timely submitted a Form I-290B and a brief.

### *Abuse*

In the petitioner's initial statement dated October 7, 2008, she declared that: the couple were in a relationship in Germany for several years; when T-C- returned to the United States she came with him; T-C- had trouble finding and keeping jobs when he returned to the United States; everything was fine for a while but at some point his behavior changed; T-C- began to threaten her and would not send in the immigration application on her behalf because of his military status and tax consequences; T-C- began to steal her money and to sell her personal property without her knowledge; she suspected he used drugs and later discovered T-C- was using drugs; when she confronted T-C- about his use of drugs, he disappeared and she believes he might be homeless or living somewhere in the Los Angeles area; and although he has a cell phone, he refuses to talk to her. The petitioner noted that she had contacted an attorney to file an abused wife petition and for divorce.

In response to the director's RFE, the petitioner provided a second personal statement dated June 30, 2009. The petitioner declared that: she met T-C- in 1980 in Germany; the couple started living together in 1999; in 2003 T-C- decided to return to the United States and asked her to accompany him; the couple traveled around the United States using their savings; in September 2006 they settled in Southern California close to the petitioner's son; on December 10, 2006, T-C- proposed to her in Las Vegas and they married the same day; in January 2007, they received the package to petition for her immigration status but T-C- took the papers from her; one day in February 2007, she came home from work and T-C- was in a bad mood and while she was cooking they talked about money and in the course of the conversation T-C- slapped her; this was the first time that he had hit her; a few days later when she was cleaning their room, she discovered what she suspected to be marijuana and T-C- got mad when she confronted him with the drugs, and ran after her and she dropped the bag of drugs and locked herself in a room; and in March 2007, T-C- left to be with friends and never returned. The petitioner noted that T-C- called her and told her not to worry he would come for dinner with a friend but he never showed

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

up and never called. The petitioner noted further that T-C- still had a key to the residence and that she could tell someone was removing items while she was at work and so she changed the locks and had not missed any items since that time. The petitioner also indicated that about two months ago (April 2009) T-C- called and asked why there was no money in their joint account.

Based on the record, the director determined that the petitioner had not provided sufficient evidence establishing that she had been subjected to battery or extreme cruelty as defined by the statute and regulation.

On appeal, counsel asserts that T-C- dominated the petitioner since 1999 when they started living together in Germany and that when the petitioner asked that T-C- process her immigration papers, he started "acting up." Counsel contends that the petitioner suffered a lifetime of abuse including being slapped by T-C-. Counsel claims that the petitioner was abused when she discovered T-C-'s drug use. Counsel submits an additional statement signed by the petitioner. In the petitioner's statement on appeal, she declares that: everything changed in February 2007 when T-C- slapped her for the first time after she discovered marijuana in his clothes; after this incident it got worse and T-C- turned aggressive and verbally abusive. The petitioner notes that she does not know what happened as T-C- had loved her all those years. The petitioner states that she is still in denial regarding T-C-'s slap and his selling items that he had once purchased for her. The petitioner indicates that T-C- became abusive in the last year of their lives together and he "dumped her" without any security, money, or friends.

Upon review of the record, the petitioner's statements do not provide the detailed, probative evidence that establishes eligibility for this benefit. The petitioner's statement is general and lacks specific information regarding the claimed abuse. Because the petitioner's statements are critical in establishing extreme cruelty or battery, her statement must include sufficient detail of specific events and incidents to establish that she was subjected to abuse. The petitioner alleges that T-C- slapped her on one occasion sometime in February 2007. The petitioner's statement, however, does not provide sufficient information regarding the circumstances of the incident. We note that the petitioner failed to include this information until told by the director that her initial statement was insufficient. The failure to initially reference this incident undermines the petitioner's credibility. The petitioner has not provided sufficient consistent evidence to establish that she was subjected to battery perpetrated by T-C-.

The petitioner has also failed to establish that she was subjected to extreme cruelty perpetrated by her spouse. The petitioner initially stated that T-C- began to threaten her and would not send in her immigration petition and that he began to steal her money and sell her personal property. The petitioner noted that T-C- disappeared when she confronted him about his use of drugs. The petitioner does not provide probative information regarding any alleged threats and fails to describe any confrontations regarding T-C-'s decision to not file immigration papers on her behalf. The petitioner does not provide the requisite detail of the circumstances of T-C-'s stealing her money and selling her property. These acts as described do not constitute extreme cruelty as set out in the statute and regulation. The petitioner's spouse's use of drugs and abandonment are also not acts that constitute extreme cruelty as set out in the statute and

regulation. On appeal, the petitioner's general statement that T-C- turned aggressive and verbally abusive is not substantiated with testimony describing specific incidents of these actions. The petitioner does not provide any probative evidence that T-C-'s behavior consisted of dominating tactics aimed at ensuring control of her and she does not provide descriptive information detailing a "lifetime of abuse." The petitioner does not describe in probative detail any specific threatening or controlling behavior of her spouse. Nor does the petitioner demonstrate that T-C-'s nonviolent actions constituted psychological or sexual abuse or were otherwise part of an overall pattern of violence.

Upon review of the totality of the record, the petitioner has not offered probative testimony or other evidence that demonstrates she was the victim of any act or threatened act of physical violence or extreme cruelty, that T-C-'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. The petitioner's statements lack the probative detail necessary to establish that T-C- subjected her to battery or that his actions constituted extreme cruelty as defined in the statute and regulation. The petitioner fails to establish that her spouse's actions were comparable to the types of 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. Nor has the petitioner established that T-C-'s behavior was part of an overall pattern of violence or coercion. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)).

#### *Good Faith Entry into the Marriage*

In the petitioner's initial statement dated October 7, 2008, she declared that: the couple were in a relationship in Germany for several years; when T-C- returned to the United States she came to the United States to be with him; and after coming to the United States the couple married. The record also included an unsigned letter dated March 17, 2008 from [REDACTED] stated that the petitioner and T-C- were a couple and lived together in Germany; she met T-C- in April toward the end of the 1990s and then lost contact; in 2001 she met T-C- again; and that T-C- lived with the petitioner in Bielefeldstr, Germany until they left in November 2003.

In the petitioner's second personal statement dated June 30, 2009, in response to the director's RFE, the petitioner declared that: she met T-C- in 1980 in Germany; the couple started living together in 1999; in 2003 T-C- decided to return to the United States and asked her to accompany him; the couple traveled around the United States using their savings; in September 2006 they settled in Southern California close to the petitioner's son; on December 10, 2006, T-C- proposed to her in Las Vegas and they married the same day. The record also included: the first page of a bank statement for a period from February 9, 2007 to March 8, 2007, listing the petitioner and T-C- as the joint account holders; blank checks showing the petitioner and T-C- as

the account holders; T-C-'s pay stub issued in June 2006, prior to the couple's marriage; postcards from the petitioner to T-C- in Alabama posted in June 2005; congratulatory cards regarding the couple's wedding; and photographs of the couple on their wedding day and on one or two other occasions.

Based on the above information, the director determined that the petitioner had not established that she had entered into the marriage in good faith. On appeal, counsel for the petitioner asserts that the petitioner and T-C- had been living together since 1999 and this fact alone establishes that they had a long term relationship. Counsel contends that the only reason the petitioner came to the United States was to be with T-C- and to meet his family members. Counsel claims that the petitioner, who left her home country at an older age and not having any support in the United States, satisfies the criteria for establishing a good faith relationship. In the petitioner's statement on appeal, the petitioner added that: she met T-C- in 1990 during the German-American Fair at a U.S. military base in Germany; the following weekend he took her out on their first date; T-C- left for the Middle East but they kept in contact through phone and emails; he returned to Germany in March 1991 and at the end of 1991 left the military and started work for a German company; they saw each other mostly on weekends until December 1999 when they moved in together; they talked about marriage but T-C- did not propose to her; in the summer of 2003, T-C- invited her take a vacation with him in the United States; they traveled in the United States, she cooked and cleaned for them, and he took care of everything else; and while in Las Vegas, T-C- proposed to her and they married the same day. The petitioner also provided a signed letter dated June 29, 2009 from [REDACTED] which included the same information as initially submitted. The petitioner also submitted copies of her Internal Revenue Service (IRS) 1040 Forms, U.S. Individual Income Tax Return, for 2006, 2007, and 2008 showing the petitioner as married filing separately, although there is no evidence that the IRS Forms were properly filed.

Upon review of the totality of the information in the record, the petitioner has not established that she entered into the marriage in good faith. The petitioner's testimony is general and does not set forth her intent in entering into the marriage in probative detail. She describes generally when she met T-C- but does not provide probative information regarding their interactions prior to or during their marriage, except as it related to the claimed abuse. The petitioner indicates that she traveled with T-C- in the United States but also provides post cards that she sent to him in Alabama. The letter of [REDACTED] provides only a general statement that the couple lived together in Germany but she does not provide any probative details regarding her observations of the petitioner's allegedly good faith entry into marriage with her spouse. As the director observed, T-C-'s pay stub is for a time period prior to their marriage and is not relevant in establishing the petitioner's intent in entering into the marriage. The bank statement and checks do not establish that the couple used the joint account for the necessities of a life together. Similarly, the tax returns do not establish the petitioner's intent when entering into the marriage. Contrary to counsel's claim that the petitioner left her home country at an older age and not having any support in the United States, the petitioner testified that she settled in southern California close to her son. The petitioner's marriage certificate confirms the marital relationship, but does not establish the petitioner's own good faith in entering into the marriage.

In this matter, the record does not include sufficient relevant evidence to establish that the petitioner entered into marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

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