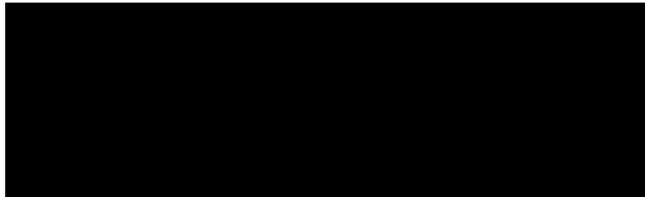


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



Bq

FILE:  Office: VERMONT SERVICE CENTER

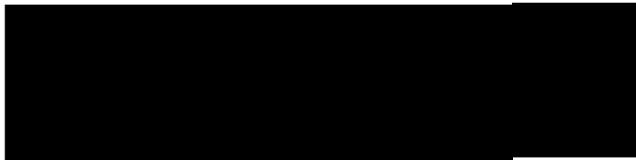
Date:

FEB 22 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:

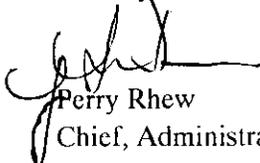


INSTRUCTIONS:

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.

The director denied the petition, determining that the petitioner had not established that she had jointly resided with the United States citizen, that she had been subjected to battery or extreme cruelty perpetrated by the United States citizen, and that she had entered into the marriage 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 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:

(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 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.

* * *

(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 Germany. She entered the United States on or about December 21, 2002 as a B-2 visitor. On January 19, 2005, the petitioner married [REDACTED] the claimed abusive United States citizen. On February 10, 2006, the petitioner filed a Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant which was denied on March 21, 2007. A subsequent untimely appeal was treated as a motion by the director and the motion was dismissed on August 29, 2007. On June 9, 2008, the petitioner filed the instant Form I-360. The record includes a default decree of divorce dissolving the marriage on December 24, 2008. On October 16, 2009, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had jointly resided with [REDACTED] that she had been subjected to battery or extreme cruelty perpetrated by [REDACTED] and that she had entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides a statement on the Form I-360 in support of the appeal. Although counsel indicated on the Form I-290B that additional evidence would be submitted within 30 days, or by September 30, 2010, the record does not contain any supplemental evidence.

Residence

The petitioner in this matter indicates on the Form I-360 that she jointly resided with [REDACTED] from January 2005 to June 2005. The petitioner indicated in an undated personal statement that when the couple first married they lived in a small apartment but a few months after her marriage she and [REDACTED] moved to a bigger apartment. The petitioner reported to [REDACTED] a licensed clinical psychologist, on or about February 14, 2008, that she and F-M- moved in together in November 2004, [REDACTED] proposed in December 2004, and they married a short time later. In a second undated personal statement, the petitioner indicated that [REDACTED] asked her to move in with him about a month prior to his proposal and the couple lived in a room in the apartment complex that [REDACTED] owned and in which he rented out rooms. The petitioner noted that after their marriage they decided to move out of the complex and move into another apartment for more privacy.

The record included a copy of a lease entered into on March 7, 2005 listing only [REDACTED] as the tenant on the first page but showing that both [REDACTED] and the petitioner signed the lease on the signature page. The record also included photocopies of receipts showing that [REDACTED] had deliveries made to

¹ Name withheld to protect the individual's identity.

an apartment at [REDACTED] and that the petitioner received one piece of mail at the same address. The record also included utility bills addressed to [REDACTED] at the [REDACTED] address.

The director determined that the evidence submitted did not establish that the petitioner had established a joint residence with [REDACTED]. On appeal, counsel for the petitioner contends that the petitioner's spouse controlled all the records and prevented her from obtaining evidence of the joint residence.

In this matter, although the petitioner claims that she did not have access to any records to demonstrate that she jointly resided with her spouse, she also fails to provide probative testimony of their claimed joint residence. The petitioner fails to offer any testimony regarding the joint residence, such as a description of the actual space, their neighbors, their jointly-owned belongings, or any of their daily routines within the residence. The limited documentary evidence submitted, while not a prerequisite to establishing a joint residence, also fails to demonstrate that the couple actually resided together. Receiving mail at a particular location does not establish that the individual actually lives in the residence. It is not the lack of documentary evidence in this matter that is controlling, but rather it is the petitioner's failure to provide probative testimony regarding the claimed joint residence which precludes a determination that she jointly resided with [REDACTED]. Upon review of the totality of the evidence in the record, including the petitioner's limited testimony, the petitioner fails to establish that she jointly resided with [REDACTED] during the marriage.

Abuse

The petitioner initially provided a personal statement alleging that after a few months of marriage [REDACTED] slowly started to change. The petitioner declared that: [REDACTED] began to exercise control over her friends and routines; he would not assist her with her immigration papers; he put private pictures of her on his website, which he took down after she insisted; and when she found his divorce decree terminating his prior marriage in 1978 based on cruel and inhuman treatment and confronted him, [REDACTED] got angry and screamed at her with a closed fist. The petitioner noted that although he never hit her she was afraid that he would lose control. The petitioner noted that a few days after an argument, [REDACTED] left and moved into his office and told their landlord that he was moving to a different state. The petitioner indicated that she spoke to [REDACTED] about not having a job or an apartment and [REDACTED] told her she could move in with him but she had to do what he wanted her to do, but she said no and she would ask a friend of hers for help.

The record also included an additional personal statement in which the petitioner declared that: [REDACTED] made verbal threats about her friend's safety; he eventually disconnected the home phone and internet and told her where he wanted her to work so he could keep an eye on her; he would yell for no reason, hit the wall and kick the dog and say that he would do the same to her; he forced himself on her sexually; and he wanted to buy life insurance on her naming himself as the beneficiary. The petitioner indicated that she was scared and told [REDACTED] she was thinking of getting a divorce and going back to Germany. The petitioner also added that: [REDACTED] took the apartment keys but when she asked him to give her a key he did so but reminded her that he had friends watching her; he started to stay more and more in his office; once she moved to Phoenix

she contacted him via electronic mail but would not tell him where she had relocated and stopped any further contact with him.

In the psychological report prepared by [REDACTED] a licensed clinical psychologist, on February 14, 2008, the petitioner provided similar information. [REDACTED] found that the petitioner "presented a clinical profile indicative of a Mild Depression which may be mostly related to her distress about her present legal status in the US." [REDACTED] also found that the petitioner reported symptoms consistent with post traumatic stress disorder including re-experiencing intrusive and distressing recollections of traumatic events lived with [REDACTED] recommended that the petitioner seek a psychiatric evaluation for possible medication and psychological support.

In an undated statement written by [REDACTED] reported that the petitioner sort of panicked when she received an email from [REDACTED] wanting to get back together with her and he told her that she should not give her location to [REDACTED] and to tell him she was in the process of getting a divorce. The record also included a January 16, 2006 statement signed by [REDACTED] wherein [REDACTED] indicated that the petitioner told him through electronic mail that about three months into the marriage, [REDACTED] changed and started to become very controlling, she had to stop seeing her friends, he would yell at her, and force himself on her.

The record further included a behavioral health evaluation written June 15, 2006 by [REDACTED] and presented in support of the petitioner's first filed Form I-360. In [REDACTED] report he noted that the petitioner reported that: a month and a half after the petitioner's marriage, [REDACTED] started to change and became very possessive and jealous; he disconnected the internet and the phone; he severely criticized the petitioner for walking the dog; he separated her from her friends; he watched her every move and enlisted others to watch her also; and he attempted to determine which jobs she should have; and the petitioner's description of [REDACTED] was similar to the description of an individual with an explosive anger disorder. [REDACTED] Orlando did not offer a specific diagnosis.

On appeal, counsel for the petitioner asserts that United States Citizenship and Immigration Services (USCIS) found the petitioner credible on the one hand but failed to find the petitioner's evidence credible on the other. Counsel contends that the director failed to provide specific examples of contradictions in the petitioner's testimony.

Upon review of the record, the petitioner does not provide the detailed, probative evidence that establishes that she has been subjected to battery or extreme cruelty as set out in the statute and regulation. Because the petitioner's statements are critical in establishing extreme cruelty or battery, her statement must include sufficient consistent detail of specific events and incidents to result in a conclusion that she suffered such abuse. The petitioner initially indicated to [REDACTED] in June 2006 that [REDACTED] behavior began to change one and one half months after the marriage; however, she reported to [REDACTED] that [REDACTED] behavior began to change three months after the marriage as [REDACTED] noted in his January 16, 2006 statement. The petitioner in her initial statement in support of the instant Form I-360 did not provide a timeline regarding the change in [REDACTED] behavior. In her second statement she noted that the beginning

month in the new apartment (the lease begins on March 7, 2005) everything was fine but then his behavior began to change. The lack of consistency regarding the timing of the changes in behavior in the petitioner's six-month marriage undermines the credibility of the petitioner's statements. Moreover, the petitioner does not provide the requisite detail regarding specific events that would constitute battery or extreme cruelty. The petitioner states generally that - did not want her going out with friends and that he threatened that he or someone on his behalf was always watching her. The petitioner does not elaborate on behavior and does not provide information that demonstrates actual behavior constituted battery or extreme cruelty as set out in the statute and regulation. The petitioner vaguely referred to forced intimacy and name calling but does not describe in detail the circumstances of these events. The petitioner does not include any probative information that indicates that actions were accompanied by violence or threats of physical or mental injury.

Upon review of the evaluations of neither doctor offers a specific diagnosis that is causally connected to specific behavior enacted by notes the petitioner's general statements and the jealousy and possessiveness of P-M- but does not offer a specific diagnosis of the petitioner's mental health condition and further notes that based on the petitioner's statement it appears that may be an individual with an explosive anger disorder. does not find, however, that the petitioner was subjected to domestic abuse perpetrated by. Similarly, though finding that the petitioner "presented a clinical profile indicative of a Mild Depression" connected the petitioner's mental health condition to distress regarding the petitioner's legal status in the United States. noted that the petitioner also reported symptoms consistent with post traumatic stress disorder but did not identify any traumatic events that constitute battery or extreme cruelty as described in the statute and regulation. The evaluations do not provide substantive, probative information describing behavior that includes actual threats, controlling actions or other abusive behavior that was part of a cycle of psychological or sexual violence.

Upon review of the petitioner's testimony, the psychological evaluations submitted, and the statements of the record does not provide sufficient evidence that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that 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 and the statements she made to others lack the consistent detail necessary to establish that subjected her to battery or that his actions constitute extreme cruelty as defined in the statute and regulation. The petitioner has failed to establish that 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 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 (9th Cir. 2003) (interpreting the

definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). In this matter, the record presented lacks sufficient, consistent information to establish eligibility for this benefit.

Good Faith Entry Into Marriage

The petitioner has not provided any probative information regarding her courtship with and eventual marriage to [REDACTED]. She stated generally that: she met [REDACTED] at an event held at the Mississippi Riverside when he asked to take some pictures of her; they exchanged phone numbers and called each for a while; a few weeks later they went out for dinner; they went out for about a month; in December 2004 he asked to marry her; and they married in January 2005. In a second undated statement, the petitioner added that she told [REDACTED] that she was in the United States without legal documentation but he indicated that he did not care because he loved her and she was happy because she loved him too. In the statements of [REDACTED] he noted that the petitioner told him via electronic mail that she had met someone who was a real gentleman and who treated her with respect and they were getting married in January 2005. Other than the documents mentioned in the residence section, the record does not include further information regarding the petitioner's intent in entering into the marriage.

The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). In this matter the petitioner has not set forth her intent in consistent and probative detail in a statement to USCIS. In addition, the petitioner does not provide documentation that would assist in evaluating whether she intended to establish a life together with P-M- when she entered the marriage. Although documentation is not required to establish good faith intent, the petitioner in this matter has not provided any testimony that would assist in analyzing her intent when she entered the marriage. The record is bare of the essential detail necessary to demonstrate that the petitioner's intent to enter into the marriage was in good faith. The record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with P-M- 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.