

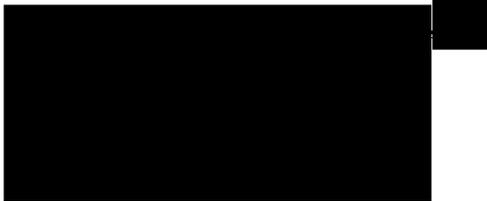
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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FEB 25 2011

FILE:



Office: VERMONT SERVICE CENTER

Date:

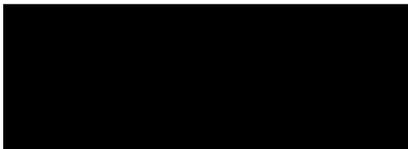
IN RE:

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.

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 sustained. The petition will be approved.

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 a United States citizen.

On July 26, 2010, the director denied the petition, determining that the petitioner had not established that: she had resided with the claimed abusive United States citizen spouse; she had been subjected to battery or extreme cruelty by the United States citizen spouse; and she had a qualifying relationship with the claimed abusive United States citizen spouse.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a brief and documentation in support of the appeal.

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 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.

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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Philippines. She entered the United States on August 5, 2007 on a K-1 visa. She married R-J-<sup>1</sup> the claimed United States citizen spouse on September 30, 2007. On January

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

17, 2008, the petitioner filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which was denied on August 1, 2008. On July 2, 2008, the marriage was terminated. On July 20, 2009, the petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant.

### *Residence*

On the Form I-360 the petitioner claimed that she resided with R-J- from August 2007 to May 2008. The record includes the following in support of the petitioner's claim that she resided with the claimed abusive spouse:

- The petitioner's May 6, 2009 statement submitted in support of a motion to reopen the denial of the Form I-485 decision;
- The petitioner's May 6, 2009 statement submitted in support of the Form I-360;
- The petitioner's March 26, 2010 statement submitted in response to the director's request for further evidence (RFE);
- The petitioner's Form G-325A, Biographical Information Sheet, attached to her Form I-485;
- A letter written by [REDACTED] and
- Photographs of the petitioner and R-J- outside in the snow, a photograph of two children in a room, and a photograph of people sleeping on the floor.

In the petitioner's May 6, 2009 statement in support of her motion to reopen her Form I-485 denial decision, she indicated that: when she arrived in the United States, her former husband took her to live in a dirty, run-down trailer in White River, Arizona; her former husband moved her and his two small children to an unfurnished apartment [REDACTED] in December 2007; and they moved again in March 2008 to an unfurnished house [REDACTED]. In the petitioner's May 6, 2009 statement in support of the Form I-360, the petitioner repeated the information regarding her claimed residences with her former spouse. In the petitioner's March 26, 2010 statement, she indicated again that her former husband took her to live in an old broken down trailer in the woods in White River, Arizona. The petitioner noted that after their marriage in Las Vegas, Nevada on September 30, 2007, the couple continued to live in the small trailer and that after four months in the trailer, the couple moved to Show Low, Arizona into a condo that was not in the wilderness. The petitioner noted that they lived in Show Low for three months before moving to an empty house in Fredonia, Arizona. The petitioner's Form G-325A, submitted with her Form I-485, dated November 19, 2007, lists the petitioner's first address in the United States as in White River, Arizona from August 2007 to September 2007, and her second address in the United States as in Show Low, Arizona from September 2007 to present (November 19, 2007). [REDACTED] in her letter submitted on behalf of the petitioner, does not provide any information indicating that she witnessed the couple's joint residence. The photographs of the couple and of a couple of different rooms without identifying information do not assist in establishing the couple's joint residence.

The director determined that the record was insufficient to establish that the petitioner resided with her former husband and noted that the petitioner had not provided any corroborative evidence to assist in

establishing her joint residence with her former husband.

On appeal, counsel for the petitioner asserts that this matter is analogous to an asylum seeker fleeing from persecution with only the barest of necessities and lacking personal documentation. Counsel references the petitioner's explanation that she hurriedly left her former husband in May 2008 after he left the home. Counsel contends that in abusive situations, the self-petitioner should not be required to produce corroborative evidence. In the petitioner's statement on appeal, she indicates that she cannot produce evidence that she does not have and notes that she was not allowed to meet friends and to get to know neighbors while married to R-J-. Counsel also contends that United States Citizenship and Immigration Services (USCIS) failed to consider evidence in its own file that the petitioner's former spouse claimed to reside with the petitioner on a Form I-864, Affidavit of Support Under Section 213A of the Act, signed under penalty of perjury.

Preliminarily, the AAO withdraws the director's comment that the petitioner's statement alone, without corroborating evidence, does not establish residency. A self-petitioner is not required to submit primary evidence or corroborative documentation. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

The petitioner's statements, alone, if credible, detailed and consistent may establish joint residency. The record includes sufficient information to reflect that she resided with her former husband after the marriage on September 30, 2007 to November 2007. The petitioner has not established that she continued to reside with her former husband subsequent to November 2007. Nevertheless as the petitioner must establish only that she resided with the claimed abuser even if for only a short time, the director's decision on this issue is withdrawn. The petitioner has provided sufficient evidence to establish the requisite joint residence from September 30, 2007 to November 2007.

#### *Abuse*

The record includes the following in support of the petitioner's claim that she was subjected to battery or extreme cruelty perpetrated by her former spouse:

- The petitioner's May 6, 2009 statement submitted in support of a motion to reopen her Form I-485 denial decision;
- The petitioner's May 6, 2009 statement submitted in support of the Form I-360;
- The petitioner's March 26, 2010 statement submitted in response to the director's request for further evidence (RFE);
- A letter written by [REDACTED] and
- Photographs of the petitioner and R-J- outside in the snow, a photograph of two children in a room, and a photograph of people sleeping on the floor.

In the petitioner's May 6, 2009 statement in support of a motion to reopen the denial of her Form I-485, the petitioner declared that: there was no Internet or cell phone signal at the White River, Arizona location and there were no nearby neighbors; her former husband left her alone from 5:00

am to 7:00 or 8:00 pm in a small trailer with his two children, ages 3 and 6; he wanted a lot of sex (both oral and anal) during the night hours and he would not shower regularly; he had a bad temper and would say things that scared her; he forced her to be a babysitter to the small children who were unruly; when they moved to Fredonia, Arizona, she, her former husband, and his two small children had to sleep on the floor because there was no furniture; and her former husband took in a boarder who slept in the other room.

In the petitioner's May 6, 2009 statement in support of the Form I-360, the petitioner added that: her former husband practiced poor hygiene as he did not bathe regularly; that he forced her to take part in oral and anal sex which she was opposed to; when she suggested that he shower or told him that she did not want anal sex, he became violently mad and started yelling at her; he called her derogatory names and said that he could get her deported anytime he wanted; they did not have fresh food; he treated her like property; when she asked him about her immigration papers, he told her to be a good wife and that nothing would happen to her, and he finally filed papers for her in January 2008; she was uncomfortable with and scared of the male roommate in Fredonia, Arizona; her former husband forced her to drive with the small kids in the car to his work, even though she did not have a driver's license; and he controlled everything and kept her isolated. The petitioner indicated that she fled to San Diego in May 2008 and that if she had known that she would be subjected to this kind of treatment, she would not have come to the United States to marry R-J-. The petitioner noted that she was totally dependent on R-J- for everything and that he controlled everything and kept her isolated.

In the petitioner's March 26, 2010 statement in response to the director's RFE, the petitioner added further information that occurred while living in the trailer prior to her marriage. She also indicated that after the couple married, sex with her husband was terrible and if she had had a choice she would not have had sex with him but that she was so depressed she didn't care anymore and just wanted it to be over. The petitioner noted that by the time her husband filed for her green card in January 2008, she did not care but hoped when he told her that they were moving to Fredonia, Arizona that she would get close to people she could talk to. The petitioner indicated that when they moved to Fredonia, she realized that the house was far away from anyone and it was just another place for him to keep her, but she realized that this would be the best opportunity to escape. The petitioner noted further that: once she had her work permit, she asked if she could work but her husband told her no; the house in Fredonia was completely empty and she and the children had to sleep on the floor; her husband brought home a co-worker who also worked in construction and she was scared of the co-worker who lived in the house for three months; her husband made her drive to his work to bring him lunch even though she was scared she would be arrested; and she felt that her husband was "careless with [her] life because [she] was only his property." The petitioner indicated that the final incident with her husband occurred because of her communication with a friend in the Philippines she had contacted through the Internet who told her to just stay in her situation until she got her green card. The petitioner indicated that: her husband discovered that she had emailed someone in the Philippines and got very angry and left; she tried to hide the information with her friend's email address because she was afraid of her husband; when her husband returned he tried to find the email address of the person she had communicated with and when he found that she had altered the email address he became very angry and yelled at her; she went to another room and

locked the door; and when her husband left with his son and she was alone, she “threw [her] few clothes in a bag, and walked about a half a mile to a street” and hitched a ride. The couple who picked her up dropped her off at a bus station and she called her aunt in San Diego who told her she would help her come to San Diego. The petitioner noted further that her husband sent an email to her aunt’s house and asked that she come back and indicated that the children missed her but that she thought it was a trap and did not answer him. The petitioner also stated her belief that her husband never really cared for her and only wanted a worker that he could control in every way.

In the letter written by [REDACTED] the petitioner’s aunt, [REDACTED] indicates that the petitioner told her that her husband had moved her to several different places, that her husband did not want her to work but to watch his children, and the life he had promised the petitioner was not taking place. [REDACTED] noted further that one day when the petitioner’s spouse took his kids, the petitioner decided that this was not the life for her and she left by hitching a ride to the bus station where she called the declarant.

The director determined that although the petitioner may have been in an unhealthy relationship and her husband was unkind and may have manipulated her, the marital difficulties described by the petitioner did not constitute battery or extreme cruelty sufficient to demonstrate her qualification under section 204(a)(1)(A)(iii) of the Act.

On appeal, counsel for the petitioner notes that the petitioner’s husband, a man thirty years her senior, took the petitioner to live in remote isolated places and moved her around preventing her from making friends and socializing with the outside world. Counsel further notes the petitioner’s terror at being left alone with an unknown man who the petitioner’s former husband took in as a boarder. Counsel notes that the director failed to reference the petitioner’s former husband’s threats and the forced anal sex. Counsel asserts that the petitioner’s failure to provide corroborating evidence results from “her abuser’s calculated plan to keep her an isolated and ignorant new-comer to his country so as to allow his continued domination of her as his sex slave, babysitter and subservient servant under the guise of a ‘lawful wife.’”

Upon review of the totality of the record, the AAO finds that the petitioner has presented sufficient evidence to demonstrate that she was subjected to extreme cruelty perpetrated by her former spouse. The petitioner has established that R-J’s actions are comparable to the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The director’s decision to the contrary is withdrawn.

### *Qualifying Relationship*

Pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC) of the Act, an alien who has divorced an abusive United States citizen may still self-petition for immigrant classification under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates that he or she is a person who was a bona fide spouse of a United States citizen within the past 2 years and who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Even though the petitioner divorced R-J- one year prior to filing the Form I-360, she has established that the abuse she endured was connected to the legal termination of her marriage. Thus, she has established that she remained eligible for classification despite no longer being married to a United States citizen, as she was the bona fide spouse of a United States citizen “within the past two years” and she demonstrated a connection between the abuse and the legal termination of the marriage. 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). The director’s decision to the contrary is withdrawn.

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 been met.

**ORDER:** The appeal is sustained. The petition is approved.