

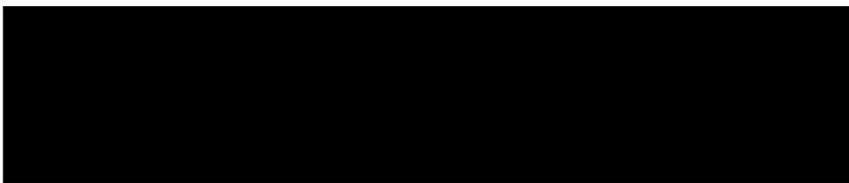
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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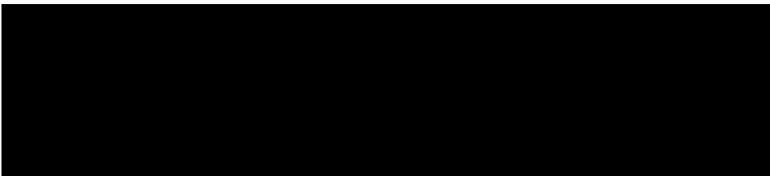


EAC 07 087 50161

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 service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal because the petitioner failed to submit any additional documentation in support of the appeal. The matter is again before the AAO on motion to reconsider. The motion will be granted. The previous decision of the AAO, dated November 23, 2010, will be affirmed and the petition will remain denied.

At the outset, the AAO acknowledges counsel's assertion on motion that the AAO's November 23, 2010 decision was improper because a brief and/or additional evidence was timely filed on June 28, 2010. The regulation at 8 C.F.R. § 103.3(a)(2)(viii) and the instructions to Form I-290B, however, require the affected party to submit the brief or evidence directly to the AAO, not to the Vermont Service Center or any other federal office. In this matter, counsel improperly submitted the brief and/or additional evidence to the Vermont Service Center. Accordingly, the AAO's November 23, 2010 decision to summarily dismiss the appeal was proper.

The petitioner seeks immigrant classification under 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.

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, 8 U.S.C. § 1154(a)(1)(J) 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 for a self-petition filed under section 204(a)(1)(A)(iii) of the Act 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.

### *Facts and Procedural History*

The petitioner is a citizen of Cambodia who entered the United States as a nonimmigrant visitor in 2001. On August 14, 2003, the petitioner married a U.S. citizen in Pennsylvania. The petitioner's spouse subsequently filed a Form I-130, Petition for Alien Relative, on behalf of the petitioner, and ultimately withdrew the petition. On October 16, 2002, the petitioner was served with a Notice to Appear for removal proceedings and was granted voluntary departure by an immigration judge on March 16, 2005.

The petitioner filed the instant Form I-360 self-petition on February 5, 2007. The director subsequently issued a request for additional evidence (RFE) that the petitioner had resided with her spouse, that she was a person of good moral character, and that she had married her spouse in good faith. The petitioner, through counsel, submitted additional evidence. The director issued a second RFE that the petitioner's spouse subjected her to battery or extreme cruelty during their marriage and that the petitioner entered into the marriage in good faith. In response, counsel requested that the petition be adjudicated based on the evidence already submitted. The director found the petitioner's response to the RFE insufficient and denied the petition for failure to establish the requisite abuse and good-faith entry into the marriage.

On motion, counsel submits a brief and states, in part, that the petitioner has submitted extensive evidence that she was subjected to battery and extreme cruelty by her spouse. As supporting documentation, counsel submits only the referenced brief.

### *Battery or Extreme Cruelty*

In her January 23, 2007 statement submitted at the time of filing, the petitioner stated, in part, that: about a year after she and her husband were married, their marital problems began and her husband was distant to her and often angry at her; sometimes she avoided her husband because he smoked cigarettes and smelled terrible; when the interview for her "green card" was scheduled, her husband yelled at her, told her he would not attend the interview, and left the house for a week or more; her husband attended the immigration interview but he lied to the officer by stating that their relationship was not real and they had never "made love"; and her husband no longer lived with her after the immigration interview and instead went to live with his mother.

In her June 5, 2007 statement submitted in response to the RFE, the petitioner stated, in part, that she did not understand why her husband treated her the way he did and abandoned her.

In his July 7, 2006 psychiatric evaluation submitted at the time of filing, Dr. [REDACTED] stated, in part, that he conducted a two-hour clinical interview with the petitioner on May 5, 2006. Dr. [REDACTED] reiterated

the petitioner's marital history and included excerpts from the petitioner's January 23, 2007 statement. Dr. [REDACTED] also stated that the petitioner did not spontaneously share any information outside of her January 23, 2007 statement but she did answer all of his questions. Dr. [REDACTED] reported that the petitioner indicated that she was frightened to be alone and that she had suffered from panic episodes since childhood. Dr. [REDACTED] suspected that the petitioner's anxiety was due to psychological trauma that she experienced in childhood, and indicated that he was unable to obtain sufficient information from the petitioner to give her a definitive diagnosis of Posttraumatic Stress Disorder. Dr. [REDACTED] diagnosed the petitioner as having "dependent and avoidant traits" and recommended psychotherapy with a native-speaking Cambodian psychotherapist.

In a statement dated June 5, 2007 submitted in response to the RFE, Noy Vong stated, in part, that he/she was surprised to hear from the petitioner that her husband had begun to treat her so badly and ultimately abandoned her.

On motion, counsel asserts that the petitioner submitted extensive documentation to prove that she was subjected to battery and extreme cruelty by her spouse.

At the outset, although counsel asserts that the record contains extensive documentation to prove that the petitioner was subjected to battery and extreme cruelty, the petitioner never mentioned any incidents of battery in her own testimony. Moreover, Dr. [REDACTED] stated in his evaluation that the petitioner denied any episodes of physical abuse from her husband. Thus, counsel's assertion that the record contains extensive evidence that the petitioner was subjected to battery conflicts with all of the supporting documentation.

Dr. [REDACTED] evaluation does not establish that the petitioner was subjected to battery or extreme cruelty by her husband during their marriage. Again, Dr. [REDACTED] specifically stated that the petitioner denied any episodes of physical abuse from her husband. Moreover, Dr. [REDACTED] diagnosed the petitioner with "dependent and avoidant traits" and specifically attributed the petitioner's anxiety to trauma experienced by the petitioner during her childhood. Dr. [REDACTED] did not indicate that the alleged abuse by the petitioner's husband was a causative or contributing factor to the petitioner's mental health condition. In sum, Dr. [REDACTED] did not provide any indication that the petitioner was subjected to actual threats, controlling actions or other abusive behavior by her husband that was part of a cycle of psychological or sexual violence.

We find no error in the director's assessment of the relevant evidence. The petitioner did not indicate that her husband subjected her to battery. The petitioner's statements and the statement submitted on her behalf also do not demonstrate that the petitioner's husband'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 her husband'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)). The relevant evidence in this case fails to demonstrate that, during their marriage, the petitioner’s spouse subjected her to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### *Good Faith Entry into Marriage*

In her January 23, 2007 statement submitted at the time of filing, the petitioner stated, in part, that: she met her husband through a mutual friend, they fell in love quickly, and spent a lot of time together; she was surprised and elated when her husband proposed to her; they were married in a civil ceremony before a Justice of the Peace; after their marriage, they moved into her house, always went out together, and visited his family often; and due to the expense, they had to cancel their plans to hold a religious wedding ceremony in Cambodia.

In her June 5, 2007 statement submitted in response to the RFE, the petitioner stated, in part, that she loved her husband and always treated him with respect.

In a statement dated June 5, 2007 submitted in response to the RFE, [REDACTED] stated, in part, that he/she knew with certainty that the petitioner loved her husband and had hopes for a long and happy life with him. [REDACTED] also stated that he/she attended the petitioner’s wedding and the petitioner was excited and happy.

The petitioner also submitted the following documentation as evidence that she entered into the marriage in good faith: a joint savings account statement for the period from July 13, 2004 – October 12, 2004, listing the petitioner and her husband; a partial copy of a four-year lease made on September 1, 2004; and copies of photographs of the petitioner with her husband.

The director found that the record contained insufficient evidence to support a finding that the petitioner married her husband in good faith. On motion, counsel does not address the issue of good-faith marriage.

The AAO acknowledges the documentation, listed above, which was submitted by the petitioner as evidence of her entry into the marriage in good faith. The statements submitted by the petitioner on her behalf, however, provide only general and vague information and do not provide probative, consistent details about the petitioner’s relationship with her husband. In addition, as stated by the director, the lease is not signed. Moreover, the address on the four-year lease – [REDACTED] – is inconsistent with the address listed on the petition for the last address that the petitioner and her husband resided together – [REDACTED]

The record contains no explanation for this inconsistency. In addition, the record contains no evidence that both the petitioner and her husband used the joint savings account. Similarly, the photographs submitted showing the couple together do not establish the petitioner’s intent at the time of her marriage. The documents, when considered in the aggregate, do not include the necessary and

fundamental information to establish that the petitioner entered into the marriage in good faith. While the lack of documentation is not necessarily disqualifying, in this matter, the petitioner provides little information regarding her courtship with her husband, their discussions of marriage, their plans to marry, and the interactions subsequent to the marriage except as they relate to the claims of abuse. Simply stating that she entered into her marriage in good faith is insufficient. In addition, the inconsistencies and/or deficiencies discussed above significantly detract from the credibility of her claim. The petitioner fails to provide probative testimony that contributes to an understanding of her intent when entering into the marriage. Upon review, the record in this matter does not include sufficient probative evidence establishing that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

Upon review of totality of the evidence, the petitioner has not demonstrated that she was battered or subjected to extreme cruelty by her spouse during their marriage and that she entered into their marriage in good faith. Moreover, the unresolved inconsistencies and/or deficiencies, discussed herein, significantly detract from the credibility of her claim. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must remain 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 previous decision of the AAO, dated November 23, 2010, will be affirmed and the petition will remain denied.

**ORDER:** The decision of the AAO, dated November 23, 2010, is affirmed. The petition remains denied.