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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



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Date: MAR 08 2011

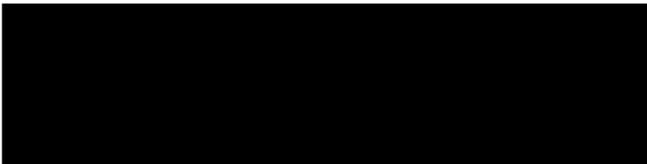
IN RE:

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 former United States citizen spouse.

The director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by a United States citizen or that she had entered into the marriage in good faith.

*Applicable Law and Regulations*

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.

\* \* \*

(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.

\* \* \*

(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 native of the Ukraine and a citizen of Canada. She entered the United States on or about August 12, 2005. On November 4, 2006, the petitioner married R-V-<sup>1</sup>, the claimed abusive United States citizen. On June 27, 2007, R-V- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf and the petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Form I-130 was denied on July 17, 2008 and the petitioner's June 27, 2007 Form I-1485, was denied on July 18, 2008. On August 2, 2007, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. She claimed on the Form I-360 that she had jointly resided with R-V-, on and off, from November 1, 2006 to June 2007. The record includes a divorce decree dissolving the marriage on May 23, 2009. On May 12, 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 been subjected to battery or extreme cruelty perpetrated by R-V-, or that she had entered into the marriage in good faith. The petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and provides her statement and the statements of two others in support of the appeal.

### *Abuse*

The petitioner in her initial statement indicated that from January 2007, R-V- came home late and his eyes were red and when she asked him about it he became angry. The petitioner stated that R-V- was short-tempered and would not accept their friends' invitations to visit. She stated that she noticed some of her money missing and when she confronted R-V- he admitted that he had taken the money and then he left. The petitioner reported that after several days, R-V- returned and apologized but told her that he was addicted to drugs. The petitioner recalled an incident when R-V- argued with one of his friends and his friend called R-V- a "cretin" and told her that R-V- had been in jail. The petitioner indicated that she learned that R-V- had not worked for a long time and had been involved in drugs and she started to become afraid of him. The petitioner stated that R-V- became aggressive and stubborn, he hurt her feelings and offended her with his behavior, and he would not help her with her immigration documents. The petitioner also submitted a copy of R-V-'s criminal history.

In response to the director's RFE, the petitioner provided a second statement. She indicated that there were two times that she noticed her money disappearing and after the second time, she confronted R-V- about it and he responded by calling her names, grabbing things and throwing them on the floor, and throwing dishes in her direction, whereupon she locked herself in the bathroom until he left. The petitioner noted that R-V- confirmed that he was addicted to drugs and that he kept disappearing. She indicated that R-V- would explode over trivial questions and would call her names and on one occasion, he grabbed and pushed her and she stayed in the bathroom and she could hear him throwing things.

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

The petitioner also provided statements made by others regarding the claimed abuse. In the July 24, 2009 statement of [REDACTED] [REDACTED] stated that some time after the petitioner's marriage, R-V- became rude and impolite and she did not feel welcome in the house. Ms. [REDACTED] stated that the petitioner told her how R-V- had changed and did not notice her anymore and one day when the petitioner came home, R-V- had put her belongings on the doorstep and the petitioner had no place to go so stayed with the declarant for a few weeks. In the statement of [REDACTED], Ms. [REDACTED] noted that at first the marriage between the petitioner and R-V- was wonderful but then R-V- began to act in ways she did not understand. In the statement of [REDACTED] stated that she had known the petitioner and R-V- since they married and that at the beginning the petitioner was happy with R-V- but after some time they argued often and R-V- was rude and vulgar until the petitioner could not take it anymore and filed for divorce.

Based on the information in the record, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty as defined in the statute and regulation.

On appeal, the petitioner provides a third personal statement in which she declares that she covered unexplained physical injuries with heavy makeup, she realized too late that R-V- is a violent, angry, manipulative man with a drug and mental problem, and she has received death threats from him after she left him. The petitioner states that on January 12, she asked R-V- about money he had taken from her purse and he started yelling at her and she ran into the bathroom and closed the door and this was the first time that she feared for her life. The petitioner also references an incident occurring on December 23, in which R-V- and his friend got into an argument which prompted her to investigate R-V-'s past and she learned that he had a criminal history. The petitioner states that "[t]hese incidences happened about 2 times a week," but that she cannot specify dates because her life turned into a constant hell. The petitioner indicated that when her son visited from Canada, he and R-V- got into a fight and R-V- left the house and that she then realized it would be impossible to live with R-V-.

The petitioner also submits a second statement dated August 14, 2010 signed by [REDACTED] [REDACTED] who declares that she saw the petitioner three times with a black eye and once with a split lip and although she told the petitioner to go to the police, the petitioner would not. [REDACTED] also declares that she saw R-V- screaming and kicking the petitioner during an Easter party until they threatened to call the police. [REDACTED] further declares that she saw two fights between the petitioner and R-V- that occurred when R-V- claimed that the petitioner had acted seductively and the next day the petitioner's face appeared bruised and covered with heavy makeup.

In an August 10, 2010 statement signed by [REDACTED] [REDACTED] declares that she has known the petitioner since the end of 2006 and in 2008 she visited the petitioner in Los Angeles and saw her with a black eye covered with heavy makeup. [REDACTED] states that when she asked the petitioner about the black eye, the petitioner said that R-V- was getting frustrated because they did not have enough money and she could not find a job. [REDACTED] indicates that she received a phone call the next night and the petitioner asked if [REDACTED] could come

and get her as the petitioner was afraid that R-V- would find her if she asked for help from the neighbors.

Upon review of the petitioner's statements and the statements submitted on her behalf, the petitioner has not provided consistent, probative evidence that she was subjected to battery perpetrated by R-V-. The petitioner's first statement does not mention any form of battery but reveals that the petitioner started to become afraid once she learned of R-V-'s criminal history. Neither does the petitioner reveal any behavior on the part of R-V- that constitutes extreme cruelty. Although the petitioner reported that she noticed some of her money disappear, she also stated that when she confronted R-V- he admitted he had taken it and he left. The petitioner does not provide further information on this incident. Her main complaint in her first statement is that R-V- was aggressive and stubborn, he hurt her feelings and offended her with his behavior, and he would not help her with her immigration documents. There is nothing in the petitioner's first statement that supports a determination that the petitioner was subjected to battery or extreme cruelty as defined in the statute and regulation.

In the petitioner's second statement she adds that when she confronted R-V- about missing money, he responded by calling her names, grabbing things and throwing them in her direction causing her to seek refuge in the bathroom. She also refers generally to R-V-'s exploding over trivial questions and on one occasion grabbing and pushing her but she does not refer to any physical injuries resulting from R-V-'s actions. The actions she described are not consistent with her first statement and additionally do not provide the probative information necessary to establish that she was subjected to battery or extreme cruelty perpetrated by R-V-. Similarly, the statements of [REDACTED], and [REDACTED] do not include any probative information demonstrating that R-V-'s actions constituted battery or extreme cruelty.

In the petitioner's third statement on appeal, she references covering unexplained physical injuries with heavy makeup, adds that she has received a death threat from R-V- subsequent to their separation, and adds a date to the incident initially described when she confronted R-V- about taking her money. The petitioner refers to "[t]hese incidences happened about 2 times a week," but does not describe what occurred when "these incidents" happen. The record does not include consistent, probative detail describing specific incidents of battery or extreme cruelty perpetrated by R-V-. The petitioner's testimony is insufficient in this regard.

The two statements signed by [REDACTED] and submitted on appeal provide no credible information regarding specific instances of battery or extreme cruelty. [REDACTED], although declaring that she saw the petitioner with a black eye and a split lip, saw R-V- kicking the petitioner, and saw the petitioner with a bruised face after she had an argument with R-V-, does not explain why she was not forthcoming regarding these observations in her first statement. [REDACTED] two divergent statements do not provide a credible and consistent account of R-V-'s alleged behavior and thus have no probative value. [REDACTED] statement refers to seeing the petitioner in 2008 when she visited the petitioner; however, the petitioner noted that she resided with R-V- from November 2006 to July 2007. Thus, [REDACTED] statement contradicts the petitioner's information regarding her alleged residence with and subsequent separation from R-V-.

Upon review of the petitioner's testimony and the testimony of the individuals who submitted statements on her behalf, the petitioner's testimony does not present a consistent and credible account of her relationship and interactions with R-V-. The petitioner's initial testimony and her statement in response to the director's RFE do not provide probative information regarding battery or extreme cruelty as defined in the statute and regulation, perpetrated by R-V-. In her third statement on appeal, as well as the statement of [REDACTED] the affiants escalate the type and severity of the claimed abuse. As noted above, [REDACTED] statement contradicts the petitioner's testimony regarding her residence with R-V-. The AAO finds that the testimony submitted on appeal is not credible. In this matter, the record presented does not include consistent credible evidence sufficient to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her former spouse.

### *Good Faith Entry Into Marriage*

In the petitioner's initial statement, she indicated that she met R-V- when her blacksmith referred her to R-V- to help fix her electricity. The petitioner noted that they started dating, she met his parents, and they decided to live together in her house and on November 4, they got married. The initial record included a statement from the petitioner's blacksmith who indicated that he and his wife visited the petitioner and R-V- for the holidays. In response to the director's RFE, the petitioner did not provide further probative detail regarding her introduction to or subsequent interactions with R-V- prior to marriage. As noted above, the petitioner submitted the statements of [REDACTED] and [REDACTED] who each generally stated that the marriage between the petitioner and R-V- initially appeared very happy and indicated that initially they went out with the couple. In an August 3, 2009 statement signed by [REDACTED] [REDACTED] indicated that she had known the petitioner a long time and that her family and the petitioner and R-V- celebrated birthdays and other holidays together. As the director noted, the phone bills and bank statement indicate the petitioner and R-V- received mail at the same address but the accounts were not shared or joint accounts. Similarly, a card submitted is not addressed to anyone and does not identify the recipient. The photographs show the petitioner and R-V- together on one or more occasions.

The petitioner does not address the issue of her intent when entering into the marriage on appeal.

Upon review of the petitioner's statements, the petitioner fails to provide substantive information regarding her courtship with and eventual marriage to R-V-. The petitioner does not describe the couple's mutual interests; she does not describe their dating in detail, and she does not provide any information for the record that assists in determining her intent when entering into the marriage. Similarly, the statements of the individuals who testified on the petitioner's behalf fail to provide substantive information regarding the interactions of the couple. The declarants do not offer probative information regarding any particular incidents or events where they witnessed the alleged bona fides of the couple's marital relationship. The photographs submitted show that the petitioner and R-V- were together on one or more occasions but do not provide evidence of the petitioner's intent when 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 probative detail in a statement to USCIS. Neither has the petitioner provided other evidence that would demonstrate that her intent in entering into the marriage was in good faith.

Upon review of the totality of the record, 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 R-V- 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.