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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**



By

DATE: **JAN 24 2012** Office: VERMONT SERVICE CENTER

FILE: 

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:

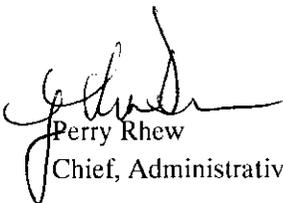
SELF-REPRESENTED

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 will remain denied.

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.

The director determined that the petitioner had not established: she had been subjected to battery or extreme cruelty perpetrated by the United States citizen; or she had entered into the marriage in good faith. On appeal, the petitioner submits a Form I-290B, Notice of Appeal or Motion, a supplemental statement, and additional photographs.

#### *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 and citizen of the Philippines. She entered the United States on November 27, 2002 as a nonimmigrant B-2 visitor with temporary authorization to remain in the United States until August 26, 2003. On October 5, 2005, she married R-R-<sup>1</sup> the claimed abusive United States citizen. On March 26, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner claimed on the Form I-360 that she resided with R-R- from December 2005 until June 2008.<sup>2</sup> On January 19, 2010, 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 or that she had entered into the marriage in good faith. The petitioner timely submits a Form I-290B, a supplemental statement, and additional photographs.

*Battery and/or Extreme Cruelty*

In the petitioner's initial statement accompanying the Form I-360, the petitioner stated that she had been the victim of extreme mental and emotional abuse and cruelty inflicted by her husband. She noted that he had subjected her to verbal abuse and humiliation, referred to her as his illegal alien wife, threatened to have her deported, and took action with United States Citizenship and Immigration Services (USCIS) to have her deported. The petitioner stated that R-R- filed a Form I-130, Petition for Alien Relative, in March 2006 and subsequently withdrew the Form I-130 while she was living in California. The petitioner acknowledged that R-R- filed a second Form I-130 on her behalf in March 2007 after she returned to South Carolina which was approved on October 2, 2007. The petitioner alleges that R-R- used her to obtain money and had forged her name on checks and on credit card charges. She provided: evidence that she sent money to R-R- in 2006 while living in California; copies of checks she claims shows her forged signature; a June 30, 2008 police report alleging that R-R- had signed the petitioner's name to checks issued solely to her; a July 18, 2008 police report alleging R-R- had used the petitioner's credit card without permission; and correspondence between the petitioner's banks and credit card company regarding the unauthorized use of her accounts. The petitioner noted that sometime in May/June of 2008 she "decided to stay with a friend who lives in . . . Charlotte, North Carolina" to avoid the lengthy commute to her work.

In response to the director's RFE, the petitioner stated that R-R- urged her to find work subsequent to their marriage and they mutually determined that she should return to California to study and to obtain work. She alleged that while she was in California R-R- engaged in an extramarital affair, that R-R- informed United States Immigration and Custom Enforcement (USICE) to pick her up at the airport in January 2007, that R-R- forged her name on checks in July 2007, that R-R-'s vehicles were an eyesore and embarrassing, and that R-R- changed her address to a post office box without her permission. The petitioner provided a third police report dated August 5, 2007 which indicated that the petitioner reported that she had learned that R-R-

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

<sup>2</sup> In the petitioner's statements to United States Citizenship and Immigration Services (USCIS) she noted that she resided in California, not in the claimed marital home in South Carolina, in 2006.

had forged her signature but was reluctant to pursue the matter so was advised to sign a forgery affidavit with her bank.

The petitioner added that sometimes when R-R- was tired or mad he would throw things in her direction and that once he punched her on the thigh and screamed at her and once he punched her on the arm while he was driving. The petitioner also added that R-R- threatened her by referencing the [REDACTED]. The petitioner indicated that she was afraid but did not know where to go until she saw a brochure for a shelter and her friend dropped her off at the shelter. The petitioner noted that there was no transportation to her work so she could not remain at the shelter and she did not further pursue their offer of help. The record includes a March 25, 2008 crisis call form incident report prepared by staff at an unnamed shelter accepting the petitioner into the shelter. The incident report noted the petitioner's report that R-R- took her money, threatened to kill her or have her deported, and called her names.

The record also included a March 15, 2010 affidavit signed by [REDACTED] who declared that she dropped the petitioner off at a shelter called Safe Passage in March 2008 when the petitioner stated that she felt unsafe in her home. In an April 7, 2010 affidavit, the petitioner's sister declared that when the petitioner learned that R-R- was trying to get her deported she moved to California. In an April 11, 2010 affidavit, [REDACTED] noted that he had provided marriage counseling to the petitioner and R-R- and provided shelter for the petitioner in his home in June 2008 until September 2008 to ease the petitioner's anxieties and perhaps lead to a marital reconciliation. The petitioner also provided copies of letters signed by R-R- on March 23, 2008 and July 15, 2008 sent to a judge in Atlanta, Georgia which provided his version of events and interactions between the couple.

Upon review of the record, the director noted inconsistencies in the petitioner's testimony and determined that the petitioner had not established that she had been subjected to battery or extreme cruelty as those terms are defined in the statute and regulation.

On appeal, the petitioner asserts that she suffered psychological and physical abuse. The petitioner adds that once while in Florida she asked about the progress on her immigration petition and R-R- started hitting her with his fist. The petitioner references R-R-'s description of his abusive childhood and his inability to pass a psychological test to obtain the use of a firearm. The petitioner indicates that each time R-R- told her of these incidents he would "poke his fingers and make gestures of a gun cocked directed at [her]." The petitioner repeats her statement made in response to the RFE regarding R-R-'s threat while referencing [REDACTED]. The petitioner states generally that there were times that R-R- "would go into fits of unjustifiable rage so threatening, it made [her] cower in fear" and that is why she sought refuge at Safe Passage, Inc. on "February 12, 2010"<sup>3</sup> and later with her Pastor and his wife.

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<sup>3</sup> The petitioner's reference to February 12, 2010 appears to be a typographical error. We note that she received a copy of the March 25, 2008 report of her contact with a shelter on February 12, 2010.

Upon review of the record, the petitioner has not established that she was subjected to battery or extreme cruelty as defined in the statute and regulation. The petitioner initially does not reference any physical confrontations between the couple alleging only that she was subjected to verbal abuse and humiliation, referred to as an illegal alien wife, and that R-R- threatened to have her deported and took action with USCIS to have her deported. In response to the director's RFE, the petitioner vaguely references an incident of being punched on the thigh and an incident of being punched on the arm and of being threatened. The AAO shares the director's concern with regard to the escalation in the type of claimed abuse described by the petitioner over the course of the petition. The petitioner's addition of previously omitted physical interactions with R-R- in response to the director's RFE and the addition of yet other physical incidents on appeal are tantamount to inconsistent testimony on the part of the petitioner in this matter. Moreover, the AAO observes that the petitioner on August 5, 2007, June 30, 2008, and July 18, 2008 spoke to the police department regarding R-R- and although claiming financial malfeasance on the part of R-R- failed to mention any incident of physical abuse or other threatening actions on the part of R-R-. Further, the petitioner's statement on appeal that she felt unsafe in her home which prompted her to visit a shelter appears inconsistent with her initial testimony that sometime in May/June 2008 she decided to stay with a friend who lived in Charlotte, North Carolina to be closer to her work. She does not initially include any reference to her fear of staying at the claimed marital residence as a reason for her move. Similarly, [REDACTED] does not include any information that the petitioner reported that she was being subjected to physical abuse at the time he and his wife offered the petitioner a place to stay; rather [REDACTED] noted that he and his wife provided a refuge for the petitioner to alleviate her anxieties with the hope that the couple could be reconciled. Upon review of the totality of the record, the discrepant testimony provided regarding the issue of physical abuse and threats undermines the petitioner's credibility and the testimony she offered claiming that she was subjected to threats and physical abuse. The petitioner has not provided probative, credible testimony establishing that she was subjected to battery.

The petitioner also failed to establish that she was subjected to extreme cruelty as that term is set out in the statute and regulation. The petitioner's primary complaint relates to the couple's disagreements regarding finances. The record does not include sufficient probative evidence that R-R-'s financial malfeasance constituted psychological or emotional abuse. The petitioner's statements that R-R- threatened her with deportation do not include a chronological timeline regarding these threats. Neither the petitioner's testimony nor her sister's testimony on her behalf provides detail and consistent circumstances of the alleged threats regarding her deportation. Likewise and as observed above, the petitioner's addition of threats of physical violence subsequent to her initial statement are not detailed and do not describe the circumstances and events surrounding the claimed threats; thus the information provided is insufficient to ascertain that the threats actually occurred. The petitioner does not provide credible probative testimony that R-R-'s behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over her.

The petitioner fails to provide specific testimony of the verbal abuse allegedly suffered and she does not specifically describe instances of exploitation, forced social isolation, psychological abuse, or control perpetrated by R-R-. Upon review, the petitioner has not credibly established

that R-R-'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 R-R-'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 petitioner's testimony in this matter lacks the requisite credible, probative detail demonstrating that R-R-'s conduct was a form of extreme cruelty under the statute and regulation. Based upon a review of the totality of the evidence in the record, the petitioner has not established that she was subjected to battery or conduct that constitutes extreme cruelty as defined in the statute and regulation.

#### *Good Faith Entry Into Marriage*

In the petitioner's initial personal statement, she stated generally that she had known R-R- since September 2004. She also stated that she lived in California and R-R- lived in South Carolina and the couple exchanged correspondence and spoke on the phone for almost a year. The petitioner indicated that she is from a traditional and religious family and believed that R-R- was a religious man. She also stated that in October 2005 R-R- invited her to Las Vegas and the couple was so happy in Las Vegas that she agreed to marry him when he asked. The petitioner stated further that before the couple married she had helped R-R- with bills and at some point he asked her to sign a warranty deed to his house in Charlotte, North Carolina. The petitioner indicated that she returned to California to finish an H&R Block course and in December 2005 went to South Carolina to join her husband. The petitioner also indicated that at some point in 2006 she returned to study and live in California, only returning to South Carolina in January 2007. The initial record included a copy of the couple's marriage certificate, a photograph, an article indicating that R-R- had been ordained as a minister, a post card, and information regarding the petitioner's personal bank accounts and credit cards.

In response to the director's RFE, the petitioner indicated that she placed an advertisement in a magazine looking for a companion and received 15 letters in response to her advertisement. She noted that she responded to three of the letters and after several months of exchanging letters decided to choose R-R- because he was single and religious. The petitioner altered her initial testimony to state that R-R- proposed marriage in June 2005 and they decided to marry a day after her birthday in Las Vegas, Nevada. The petitioner also indicated that R-R- brought her to different financial institutions to try to refinance R-R-'s houses and that the couple bought a house together. The petitioner claimed that she made payments on the mortgage although it was only in R-R-'s name and that she used her funds to help fix up another residence. The petitioner provides a receipt for a homeowner's policy issued to R-R- and herself, utility bills and bank statements in her own name, and a void check and bank cards for a Bank of America account listing both names. The record also includes copies of unsigned and uncertified Internal

Revenue Service (IRS) federal tax returns for 2005, 2008, and 2009 showing the couple as married filing separately. The record also includes a document the petitioner describes as a receipt for a tax refund check for 2007; however, the receipt does not include sufficient identifying information to ascertain its issuance from the federal government. The petitioner submitted additional photographs of the couple's wedding ceremony and at various vacation locales as well as previously submitted documents. The affidavits provided by the petitioner's sister, her pastor, and a tenant of a house owned by R-R- do not provide information regarding the petitioner's intent in marrying R-R- and do not provide their observations of the couple's interactions in detail.

Based on the record, the director determined that the petitioner had not established that she had entered into the marriage in good faith.

On appeal, the petitioner asserts that when she married R-R- she was love struck and it was her realization of a lifelong dream to marry a foreigner. The petitioner provides additional photographs and states that the photographs are of her and her family and R-R- in California. The petitioner states that it is only because of the intervening events of R-R-'s actions that she moved from R-R-'s place, a place she considered their conjugal abode for three years.

In this matter, the petitioner provides an overview of her initial contact in September 2004 with R-R- in response to her advertisement, subsequent correspondence, their initial in-person meeting in Las Vegas, Nevada, and their marriage on October 5, 2005. The petitioner does not provide a detailed account of the couple's courtship and marriage, apart from the claims of abuse, which would assist the AAO in evaluating her intentions upon entering the marriage. For example, she fails to describe, in any meaningful detail, the couple's first introductions; her first impressions of R-R; their courtship; their decision to marry; their engagement; their wedding; or any of their shared experiences. The petitioner alters the circumstances of R-R-'s marriage proposal, first saying that the couple decided to get married while in Las Vegas because they were happy and in response to the director's RFE stating that R-R- had proposed in June 2005. The petitioner does not provide the requisite detail in any of her statements sufficient to ascertain her intent in marrying R-R. Although the petitioner professes that her intent in marrying R-R- was for love, she does not provide the necessary underlying detail required to support and ascertain her actual intent when entering into the marriage. The record does not contain probative, credible testimony regarding her courtship with R-R-, the types of activities they enjoyed together in detail, or her interactions with R-R- except as it relates to the claim of abuse. 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). The petitioner's testimony does not convey the meaningful detail necessary to ascertain the petitioner's intent when entering into the marriage.

Regarding the documentary evidence submitted, the petitioner has not provided documents or other indicia showing the couple commingled assets or intended to establish a life together. As the director determined the photographs and greeting cards while showing the couple spent time together does not establish the petitioner's intent when entering into the marriage. Similarly, the

petitioner has not provided evidence that the tax returns in the record were filed with the IRS; moreover, such tax returns even if filed are insufficient to establish the petitioner's intent when entering into marriage. Upon review of the utility bills, the claimed joint bank account, and the petitioner's witnesses' testimony, the record does not include information that the couple commingled assets with the intent to establish a life together. Moreover, again upon review, the petitioner's testimony is of little probative value as it lacks credible detail establishing her intent when entering into the marriage. Upon review of the totality of the record in this matter, the record does not include sufficient probative evidence establishing that the petitioner entered into marriage with R-R- 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.