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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 2000  
Washington, DC 20529-2000



U.S. Citizenship  
and Immigration  
Services



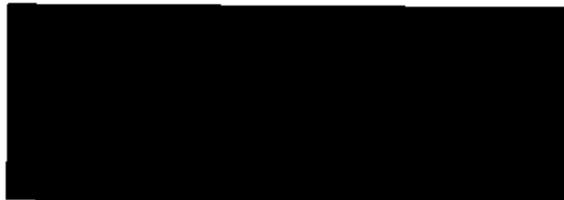
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DATE: **JUL 13 2012** Office: VERMONT SERVICE CENTER FILE:

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:



**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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, (the "director") denied the immigrant visa petition. 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 that she had been subjected to battery or extreme cruelty perpetrated by the United States citizen (USC) spouse or that she had established she is a person of good moral character. On appeal, the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a psychological evaluation.

#### *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 pursuant to Section 204(a)(1)(A)(iii) of the Act are further set out 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.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

Section 101(f) of the Act states in pertinent part:

For the purposes of this Act-No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is or was—

\* \* \*

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act[.]

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

### *Facts and Procedural History*

The petitioner is a citizen and native of Cambodia who entered the United States on December 8, 2000 using the passport of another individual. On July 14, 2001, she married M-L,<sup>1</sup> the claimed abusive USC spouse, using the name of the individual on the false passport. On September 13, 2005, she filed a Form I-485, Application to Register Permanent Residence or Adjust Status, again using the name of the individual on the passport. On April 4, 2006, she appeared for an interview in connection with her Form I-485 at which time she was placed under oath and

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

testified as Y-P-<sup>2</sup> that she had not been married before and did not have any children. Upon subsequent investigation, United States Citizenship and Immigration Services (USCIS) found that Y-P- whose name was on the passport submitted by the petitioner was married to another individual and had two children. On December 14, 2007, the petitioner provided a sworn statement before an immigration officer that she paid \$500 to someone in Cambodia who provided her with the passport and visa and that she was aware that her picture had been placed in the passport of another person. On July 7, 2009, the petitioner's Form I-485 was denied.

On June 3, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner stated on the Form I-360 that she resided with M-L- from July 14, 2001 until November 2008. As the initial record was insufficient to establish the petitioner's eligibility, the director issued a request for evidence (RFE) and subsequently a Notice of Intent to Deny (NOID) the petition. Upon review of the totality of the record, including the petitioner's responses to the RFE and the NOID, the director determined that the petitioner had not established she had been subjected to battery or extreme cruelty by the USC spouse or that she is a person of good moral character. On appeal, counsel for the petitioner asserts that the petitioner was in an abusive marriage and merits a favorable decision on her Form I-360 petition. Counsel asserts that the psychological evaluation submitted on appeal provides dispositive information concerning the petitioner's abusive relationship. Counsel requests that the new evidence (the psychological evaluation) along with the evidence previously submitted be reviewed when determining the extent of the abuse as well as the petitioner's good moral character.

#### *Battery and/or Extreme Cruelty*

In the petitioner's initial statement, she indicated that she and M-L- were relatively happy until October 2005 when she discovered that M-L- was having an affair. The petitioner stated that the couple argued over his affair and when he would drink he would beat her and that this happened on multiple occasions. She noted that she was afraid to go to the police because of her limited knowledge of English and her lack of immigration status in the United States. The petitioner stated that three days after she had their child in December 2007, the couple had an argument and M-L- pushed her and she hit the baby's crib and fell to the ground. The petitioner noted that M-L- had a second affair and in November 2008 he left for good. The initial record also included a statement signed by [REDACTED] who reported that the petitioner had told her that M-L- had affairs and would become angry and hit her when the petitioner questioned him about his affairs. [REDACTED] declared, in addition, that on one occasion she heard M-L- call the petitioner names. In a statement signed by [REDACTED] noted that once while she was at the couple's apartment she saw that M-L- was drunk and that he pushed the petitioner really hard.

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<sup>2</sup> Name withheld to protect the individual's identity. Y-P- is the name of the individual whose identity the petitioner assumed.

In the petitioner's statement in response to the director's RFE, she added that M-L-'s family did not like her and would blame her for the problems between herself and M-L-. The petitioner also provided a statement signed by [REDACTED] who noted that she mostly saw M-L- verbally abuse the petitioner but she also saw him shove the petitioner once when the petitioner complained to him. In the statement of [REDACTED] noted that M-L- was intoxicated at times which partially explained why he treated the petitioner poorly. In a statement signed by [REDACTED] declared that he heard M-L- call the petitioner a name once and they would fight in their language and incidents like that made him stop going out with the couple.

The director determined that the record did not include sufficient probative evidence to establish that the petitioner had been subjected to battery or extreme cruelty. On appeal, counsel for the petitioner submits a psychological evaluation dated September 2, 2011 prepared by [REDACTED] indicates the petitioner reported that the first five years of her marriage were fine although the couple experienced some stress living with M-L-'s relatives. [REDACTED] indicates that when the petitioner learned of her husband's affair and questioned him, the conflicts would upon occasion terminate in physical violence with M-L- pushing or hitting the petitioner. [REDACTED] noted that the petitioner had periods of time when she met the criteria for the diagnosis of Major Depressive Disorder but that she does not currently experience symptoms designated under the diagnosis of Post-traumatic Stress Disorder. [REDACTED] summary includes her opinion that the petitioner has been the direct victim of domestic violence in the past.

Upon review of the record, the petitioner has not provided testimony regarding specific instances of battery. Although the petitioner states that she was pushed, shoved, and hit when the couple argued she does not provide the descriptive detail necessary to assist in ascertaining the truth of her statements. Similarly, the petitioner's indication that once she was pushed into the baby's crib and fell down is not accompanied with detailed circumstances of the incident. The statements submitted on the petitioner's behalf do not include detailed testimony regarding specific instances of battery. The general statements provided do not include sufficient information to establish that the petitioner was subjected to battery while married to M-L-.

The petitioner also refers vaguely to fighting and arguing over her spouse's alleged affairs but her statements do not provide sufficient detail of the circumstances of these incidents to conclude that M-L- used threats as a method to control the petitioner or subjected the petitioner to duress or intimidation. The generality of the petitioner's statements regarding her husband's affairs and the resulting verbal abuse is insufficient to establish that the petitioner was subjected to extreme cruelty as that term is defined in the statute, regulation, and pertinent case law. The petitioner has not provided probative testimony that she was subjected to actions or behavior by M-L- that are 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. 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 has not described

instances of verbal abuse in sufficient detail to demonstrate she was subjected to intimidation, coercion, duress, or threats or acts of violence. Similarly, the statements submitted on her behalf do not provide a record sufficient to establish that the petitioner was subjected to verbal abuse or other acts that constitute extreme cruelty as that term is set out in the statute, regulations, and pertinent case law. As noted previously, the testimony of the petitioner's friends was vague regarding the actions of M-L- they claimed to have witnessed or were told about by the petitioner.

Upon review of the psychological evaluation submitted on appeal, [REDACTED] does not sufficiently describe specific incidents of abuse accompanied by their details and circumstances to conclude that the petitioner was subjected to behavior or conduct that constitutes battery or extreme cruelty as those terms are defined in the immigration context. [REDACTED] opinion that the petitioner was a victim of domestic violence is not sufficient to establish that the petitioner was subjected to battery or extreme cruelty as those terms are interpreted in the statute, regulations, and pertinent case law. [REDACTED] fails to causally connect specific conduct perpetrated by M-L- to the petitioner's previously diagnosed Major Depressive Disorder.

The petitioner's testimony, the statements of others on her behalf, and the psychological evaluation submitted on appeal lacks probative detail of particular incidents or events that demonstrate the petitioner was the victim of battery or extreme cruelty as that term is set out in the statute, regulation, and case law. A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The petitioner has not provided testimonial or other evidence on appeal sufficient to overcome the director's ultimate decision on this issue.

#### *Good Moral Character*

In his NOID, the director notified the petitioner that she gave false testimony under oath during her adjustment of status interview in April 2006 when she held herself out to be Y-P-, the person whose passport she used to enter the United States. In her response to the director's NOID, the petitioner provided a May 16, 2011 statement regarding the circumstances surrounding her obtainment and use of the fraudulent passport and visa. The petitioner did not, however, deny that she falsely testified to her identity as Y-P-; she merely stated that she told the USCIS officer the truth during her second interview regarding her adjustment of status application.

Counsel does not specifically address the director's determination that the petitioner has not established that she is a person of good moral character because she gave false testimony for the purpose of obtaining benefits under the Act. The petitioner provided false testimony when she identified herself as Y-P- under oath before an immigration officer during her adjustment of status interview, and did not acknowledge her deceit or false testimony until confronted with the biographic data of Y-P- which differed significantly from her biographic data.

In *Matter of R-S-J-*, 22 I&N Dec. 863 (BIA 1999), the Board of Immigration Appeals (BIA) stated:

The Supreme Court has held that section 101(f)(6) of the Act does not impose a materiality requirement for false testimony, but noted that such testimony "is limited to oral statements made under oath . . . with the subjective intent of obtaining immigration benefits." Kungys v. United States, 485 U.S. 759, 780 (1988). Hence, false statements which appear in an application, even if the application bears a statement of oath, do not constitute testimony within the meaning of section 101(f)(6) of the Act.

In accordance with *Matter of R-S-J-*, 22 I&N Dec. 863 (BIA 1999), the petitioner's testimony that she was the individual, Y-P-, which she gave under oath before a USCIS officer in April 2006, constitutes testimony within the meaning of section 101(f)(6) of the Act. *Matter of R-S-J-*, 22 I&N Dec. at 865. *See also Opere v. INS*, 267 F.3d 10 (1<sup>st</sup> Cir. 2001) (false statements at adjustment interview constituted false testimony under section 101(f)(6) of the Act). Thus, the director correctly found that the petitioner lacks good character because, in order to gain an immigration benefit, she provided false testimony under oath to a USCIS officer.

In view of the foregoing, the petitioner has not demonstrated that she is a person of good moral character. Accordingly, the AAO concurs with the findings of the director that the petitioner failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) 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.