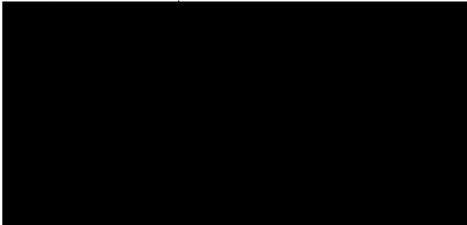




U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

B9



FILE: [Redacted] Office: Vermont Service Center
EAC 00 054 51319

Date: NOV 29 2000

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

APPLICATION: Petition for Special Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. 1154(a)(1)(A)(iii)

IN BEHALF OF PETITIONER:
[Redacted]

PUBLIC COPY

Identifying and removing information to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Mary C. Mulrean, Acting Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a native of Cuba and citizen of Russia who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that she: (1) has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; and (2) is a person whose deportation (removal) would result in extreme hardship to herself, or to her child. The director, therefore, denied the petition.

On appeal, counsel asserts that the petitioner provided ample evidence that she had been subjected to extreme cruelty, and that she clearly established the dynamics of her relationship, the effect of her husband's behavior on her sense of well being, as well as specific facts of cruelty. Counsel further asserts that the petitioner submitted evidence to establish that she would suffer extreme hardship as a result of her deportation.

8 C.F.R. 204.2(c)(1) states, in pertinent part, that:

(i) A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided in the United States with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the

subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character;

(G) Is a person whose deportation (removal) would result in extreme hardship to himself, herself, or his or her child; and

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The petition, Form I-360, shows that the petitioner arrived in the United States as a nonimmigrant student in July 1997. The petitioner married her United States citizen spouse on April 9, 1998 at Tallahassee, Florida. On December 6, 1999, a self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage.

8 C.F.R. 204.2(c)(1)(i)(E) requires the petitioner to establish that she has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. 204.2(c)(1)(vi) provides:

[T]he 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

8 C.F.R. 204.2(c)(2) provides, in part:

(i) 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.

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(iv) 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 abuse may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

The director reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. That discussion will not be repeated here. Because the record did not contain satisfactory evidence to establish that the petitioner has been battered by, or has been the subject of extreme cruelty perpetrated by the citizen or lawful permanent resident during the marriage, or that she is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by the citizen or lawful permanent resident during the marriage, the director denied the petition.

On appeal, counsel asserts that the petitioner furnished her own statements and statements from coworkers, friends, and families as evidence that she has been the subject of extreme cruelty. She

states that after the marriage, the petitioner discovered that her spouse had lied to her regarding having money when in fact he had a \$95,000 loan and no job; he forced her to follow his rules about food and drinking; he was obsessed with the petitioner's whereabouts and called her constantly to make sure that she was home; he accused the petitioner of having an extramarital affair with a woman; he forced her to have sex all the time; he insisted that petitioner did not provide him with enough sexual satisfaction; he scared petitioner when he talked to her; he would also say that she was not wild enough because she refused to consider including another woman in their lovemaking; he became so obsessed with sex that he could not talk about anything else; petitioner felt degraded and humiliated and horrified by his sexual provocations; he kept her isolated by not allowing her to have any friends and prevented her from going out with friends without him; while out with her and her friends from work, he got drunk and humiliated the petitioner by grabbing her and telling her friends she was his property, he would yell at her and be erratic, sometimes he threatened to punch her; he became obsessive and accused petitioner of having affairs with other people and of having HIV; he accused her of being a prostitute and threatened to send her to jail and call Immigration; he put drugs in her wine and he later admitted that he drugged her in order to make her talk; he bugged the petitioner's telephone; and his possessiveness made it impossible for the petitioner to have a normal life.

Counsel further asserts that despite the director's findings, the petitioner has addressed the four factors regarding examination of the dynamics of the relationship, the victim's sense of well-being before the abuse, the specific acts during the period of abuse, and the victim's quality of life and ability to function after the abuse. She states that the petitioner furnished numerous documents including her own statements and statements from coworkers, friends, and families as evidence that the petitioner's husband psychologically taunted and oppressed her regarding:

- His obsession with her whereabouts.
- His accusations of her having affairs with other women.
- His criticism of petitioner about her sexual proclivities and his humiliation of her about her sexual performance.
- His contact with petitioner's family and friends alleging that she was HIV positive and a prostitute.
- Her husband isolated her from her friends and humiliated her in front of other people.
- Her husband stalked her.
- Her husband drugged her.
- Her husband threatened violence by attempting to hit her.
- Her husband yelled at her on numerous occasions.
- Her husband threatened to call INS.

Prior to the abuse, the petitioner "felt safe" with him.
After the abuse, petitioner felt very scared of her husband.
Petitioner felt unsafe.
Petitioner was visibly shaken and distraught by her husband.
Petitioner was depressed.
Petitioner felt humiliated by her husband's actions towards her family and friends.
Petitioner felt disgusted by the sexual confrontations she had with her husband.

Counsel asserts that her husband's acts amounted to extreme cruelty because they consisted of threats of violence and psychological and sexual exploitation. Counsel added that the behavior of the petitioner's spouse consisted of threats of deportation, threats of physical beating, sexual degradation, and humiliation of the petitioner to her friends and family.

Counsel states that the director criticized the letter from the marriage counselor, but refused to acknowledge that due to constraints of confidentiality, the marriage counselor was limited as to the type of evidence she could supply. Counsel indicates that during her (counsel) conversation with the petitioner's spouse, he admitted that he would not allow Margaret Hicks (the marriage counselor) to release any other information because he did not want anything to be revealed from the counseling as this could hurt him if he ran for political office. Counsel contends that the refusal of the petitioner's spouse to allow the information to be revealed hints that not only was there something to hide, but he was again trying to control the petitioner.

A self-petitioner who has suffered no physical abuse is not precluded from a finding of eligibility for the benefit sought. As defined in 8 C.F.R. 204.2(c)(1)(vi), 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.

Pursuant to 8 C.F.R. 204.2(c)(2), the Service will consider any credible evidence relevant to the petition. Documentary proof of non-qualifying abuse may be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred. Based on the evidence in the record, it is concluded that the petitioner has furnished sufficient evidence to establish that she was the subject of extreme cruelty as defined in 8 C.F.R. 204.2(c)(1)(vi).

The petitioner has overcome this finding of the director pursuant to 8 C.F.R. 204.2(c)(1)(i)(E).

8 C.F.R. 204.2(c)(1)(i)(G) requires the petitioner to establish that her removal would result in extreme hardship to herself or to her child. 8 C.F.R. 204.2(c)(1)(viii) provides:

The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation (removal) would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner's child cannot be considered in determining whether a self-petitioning spouse's deportation (removal) would cause extreme hardship.

The director, in his decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to his request for additional evidence. That discussion will not be repeated here. He concluded that the petitioner's claim of hardship did not appear to be well founded based on the record. Because the petitioner failed to establish that she would suffer extreme hardship if removed from the United States, the director denied the petition.

On appeal, counsel states that the petitioner listed five reasons for objective hardship: (1) her husband has the ability and skills to follow her to Russia and abuse her; (2) the legal system in Russia does not protect victims such as the petitioner; (3) the petitioner's family could not protect her; (4) the petitioner has no access to psychological services to assist her with the mental consequences of the trauma she has experienced; (5) the petitioner would be unable to honestly talk about the abuse suffered by her husband because in Russia this is not acceptable; and (6) the petitioner would suffer extreme hardship if deported due to the anti-Semitism in Russia and the petitioner's assimilation into U.S. culture which has allowed her to live without hiding her religion.

Citing a Service Memorandum from General Counsel dated October 16, 1998, counsel states that in evaluating these factors, Service guidelines stress the necessity of remaining flexible. She also cites a case in which the Administrative Appeals Office (AAO) overturned a Service Center decision denying a petitioner for lack of extreme hardship and claims that similarly in this case, the petitioner has established that her husband has the means to follow her to Russia, that her fear is well founded, and that the court

systems in Russia do not protect victims such as the petitioner. It should be noted for the record, however, that each case before the AAO is adjudicated according to its own merit.

While the ability of the citizen spouse to travel to Russia is not debated, the likelihood that he would do so, or that her spouse or the spouse's family, friends, or others acting on his behalf in the foreign country would physically or psychologically harm the petitioner has not been established. As noted by the director, the petitioner has not established that abused women are not helped in Russia, that the petitioner and her spouse are divorced and he was planning to marry someone else, and that there was no indication that the petitioner would have a founded fear of retaliation or harassment by him in Russia since he was moving on with his life. Further, there is no evidence in the record that the petitioner's spouse is presently pursuing or stalking the petitioner in the United States, nor is there evidence that she even sought a protection order against her spouse in the United States.

The director, in his decision, noted that the petitioner gave no indication in the record that she or her family had experienced any type of trouble or persecution due to her religion, and while the petitioner submitted various recent articles regarding anti-Semitism in Russia, the record did not establish any direct link between anti-Semitism in general and the petitioner specifically. He further noted that no evidence or discussion was presented to show that the petitioner would suffer due to the beliefs of some groups of Russian people.

On appeal, counsel reiterates that the petitioner would suffer extreme hardship because she is Jewish. He states that the petitioner provided reports showing anti-Semitism and discrimination in Russia, and that if returned to Russia, she would be subjected to extreme hardship because she would again have to hide her religion in order to be safe.

The petitioner, however, has not established that she is likely to be the specific target of crime because of her religion. Nor is there evidence that the petitioner would be subjected to discrimination and that she would be ostracized in her country, and whether living in a country where violence exists will subject the petitioner to such violence.

Counsel asserts that the petitioner would suffer extreme hardship if returned to Russia due to her psychological fear of returning. She states that the petitioner has made a life here in the United States, she has a good job and has learned to cope with the cruelty in her relationship with her husband, she has learned to feel safe here, she has learned to live a free open life; she can tell people

about the problems she had with her husband; she can tell people that he accused her of being a prostitute, homosexual, and HIV victim; and she can tell people that she is Jewish. Counsel further asserts that the petitioner would suffer extreme hardship if returned to Russia because of her fear of living a life in isolation where she has to hide things about her life.

Readjustment to life in the native country after having spent a number of years in the United States is not the type of hardship that has been characterized as extreme, since most aliens who have spent time abroad suffer this kind of hardship. See Matter of Uy, 11 I&N Dec. 159 (BIA 1995). The director noted that the petitioner is approximately twenty-four years old, she has marketable business skills, and she was only in this country for three and a half years before filing the petition.

The evidence furnished by the petitioner is insufficient to establish that her removal from the United States would result in extreme hardship based on economic, political, or social problems in her country. Nor has she established any specific relationship between her return to Russia and the manner in which the conditions there would affect her, whether living in a country where violence exists will subject the petitioner to such violence, that she would not find employment there or that she would be unable to pursue her occupation or comparable employment upon her return. The loss of current employment, the inability to maintain one's present standard of living or to pursue a chosen profession, separation from a family member, or cultural readjustment do not rise to the level of extreme hardship. See Matter of Ige, 20 I&N Dec. 880, 882 (BIA 1994); Lee v. INS, 550 F.2d 554 (9th Cir. 1977).

Further, emotional hardship caused by severing family and community ties is a common result of deportation. See Matter of Pilch, Int. Dec. 3298 (BIA 1996). In the petitioner's case, removal from the United States would result not in the severance of family ties but rather in the reunification of her family in Russia. Further, as determined by the director, it is not clear why the petitioner would have to tell anyone about lies her husband told regarding her sexual relationships. He noted that the petitioner had indicated that her family knows, and it appears that her family still was supportive of her.

While counsel asserts that the petitioner has no access to psychological services to assist her with the mental consequences of the trauma she has experienced, the petitioner has not established that she would not be treated properly in her country due to economical condition and lack of medical facilities. Nor has she established that she is presently receiving treatment for medical or psychological condition, the seriousness of her health,

whether her presence in the United States is vital to her medical and psychological needs, that her medical and psychological needs cannot be met in her home country, or that she cannot be treated there.

The record lists no other equities which might weigh in the petitioner's favor. Even applying a flexible approach to extreme hardship, the facts presented in this proceeding, when weighed in the aggregate, do not demonstrate that the petitioner's removal would result in extreme hardship to herself. The petitioner has failed to overcome the director's finding pursuant to 8 C.F.R. 204.2(c)(1)(i)(G).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.