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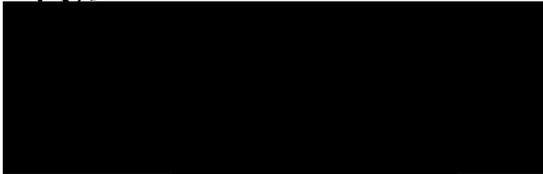
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC 05 142 53086

Office: VERMONT SERVICE CENTER

Date:

DEC 06 2006

IN RE:

Petitioner:



PETITION: 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)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

Robert P. Wiemann, 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 petitioner seeks classification as an immigrant pursuant to section 204(a)(1)(A)(iii) of 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 denied the petition because the record did not establish the requisite qualifying relationship, battery or extreme cruelty and good faith marriage.

On appeal, the petitioner states that she has a qualifying relationship with her husband, but does not address the other grounds for denial.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been

committed by the citizen . . . , 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 standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

\* \* \*

(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.

The petitioner in this case is a native and citizen of the Dominican Republic who states on the Form I-360 that she entered the United States on April 17, 1991. On February 4, 1995, the petitioner married A-M-<sup>1</sup>, a U.S. citizen, in New York. On April 18, 2005, the petitioner filed the instant Form I-360. On April 26, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good faith marriage to her husband. The petitioner responded with additional evidence on June 27, 2005. On November 22, 2005, the director issued a Notice of Intent to Deny (NOID) the petition because the petitioner did not establish the requisite qualifying relationship, good faith marriage and battery or extreme cruelty. The petitioner did not respond. Accordingly, the director denied the petition on April 3, 2006.

On appeal, the petitioner simply asserts that she has a qualifying relationship with her husband. We concur with the director's determinations. Beyond the director's decision, the record also fails to establish that the petitioner was eligible for immediate relative classification based on a qualifying relationship with her husband.

*Qualifying Relationship and Eligibility for Immediate Relative Classification*

On the Form I-360, the petitioner states that she is married to A-M- and that she has been married one time. However, in documents dated May 8 and July 18, 2002, the petitioner's psychotherapist, [REDACTED] referred to the petitioner's husband as her former spouse and her "second husband." In a subsequent report dated February 26, 2005, [REDACTED] states, "during the session it was clarified [sic] the patient's marriage to [A-M-]. The patient states that she has not seen [her husband] since he abandoned the household in 1998, but she is still legally married to him." In the NOID, the director asked the petitioner to submit proof of the legal termination of any and all of her previous marriages and, if she had not been previously married, to submit a statement to clarify the discrepancy in the record regarding the status of her marriage. The petitioner did not respond to the NOID.

On appeal, the petitioner states that she has only been married once in her life, to A-M-, and that the comments of [REDACTED] cannot be attributed to her. The petitioner also states that her children were born out of wedlock from relationships with two other men. The petitioner does not explain why she did not submit such statements in response to the NOID and we cannot consider her testimony for the first time on appeal. Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988);

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

*see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Accordingly, we concur with the director's determination that the unresolved discrepancy in the record regarding the status of the petitioner's marriage and any previous marriages fails to demonstrate that the petitioner had a qualifying relationship with her husband, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act.

Beyond the director's decision, the record also fails to establish that the petitioner was eligible for immediate relative classification based on her relationship with her husband, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive spouse. The record does not establish that the petitioner had a qualifying relationship with her husband and consequently also fails to demonstrate that the petitioner was eligible for immediate relative classification based on such a relationship.

#### *Good Faith Entry into Marriage*

In her March 18, 2002 affidavit, the petitioner states, "I married in love with [A-M] . . . and the ceremony was held 2/4/95. . . . We lived together at [REDACTED] New York City[.]" The petitioner does not describe how she met her husband, their courtship, wedding ceremony or any of their shared experiences, apart from her husband's alleged abuse. The petitioner submitted supporting letters from friends and neighbors, but their statements provide no probative information about the petitioner's allegedly good faith marriage. Rather, their statements address the former couple's joint residency and the alleged abuse.

The petitioner submitted no other relevant documentary or testimonial evidence of her purportedly good faith marriage of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the director's NOID. Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

On appeal, the petitioner states that she "lost one pregnancy" in 1997 during her marriage, but she does not submit any corresponding medical records or other documentary evidence to support her statement. Moreover, the petitioner does not explain why she did not submit her statement in response to the NOID. Again, when a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The record does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Battery or Extreme Cruelty*

The petitioner submitted the following evidence relevant to her claim of battery or extreme cruelty:

- Her March 18, 2002 affidavit;
- An assessment, reports and letters dated May 8, June 25, July 18, 2002; June 2, 2003 and February 26, 2005 by [REDACTED];
- Letters from the petitioner's friends, [REDACTED] and [REDACTED]

In her affidavit, the petitioner explains that her husband used alcohol and drugs and that their relationship began deteriorating in March 1996. The petitioner states:

March 2, 1996; May 5, 1996; and January 6, 1997, had been fixed in my memory because of the emotional, verbal, and constant oral charges to my womanhood, threats to do harm to my child, and his continuous attacks to my integrity forcing me to perform sexual acts when he was deepened in drugs, alcohol and without proper cleansing.

The petitioner reports that she suffered flashbacks, nightmares and depression as a result of her husband's behavior and that she contacted her priest for consolation, assistance and healing.

In her May 8, 2002 assessment and June 25 and July 18, 2002 reports, [REDACTED] states her clinical impression that the petitioner has an adjustment disorder with depressed mood. In her May 8, 2002 assessment, [REDACTED] reports that the petitioner is aware that her husband's "addiction was the cause of their separation" and [REDACTED] conveys the petitioner's description that her husband's "substance abuse altered his personality." In her June 25, 2002 report, [REDACTED] states, "The patient spoke of her experience of sexual abuse by her husband, [A-M-]. She ventilated feelings of sadness and shame regarding this treatment." In her June 2, 2003 letter entitled "Description of Victimization in Response to INS Request," [REDACTED] conveys the petitioner's description of her husband's verbal and sexual abuse. However, in her own affidavit, the petitioner herself does not discuss the specific incidents and behavior described by [REDACTED].

The petitioner's friends also discuss incidents that the petitioner does not mention in her own affidavit. [REDACTED] states that the petitioner told her that her husband was aggressive, called her derogatory names, threatened to get her deported and twice ripped her clothing and violated her sexually. Yet Ms. [REDACTED] does not indicate that she witnessed any incidents of abuse. [REDACTED] states that she once witnessed the petitioner's husband make a sarcastic and degrading comment about the petitioner, but [REDACTED] does not indicate that she witnessed any incidents of battery or extreme cruelty. [REDACTED] states that on September 23, 1996 during a birthday party for the petitioner, the petitioner's husband threw a drink in her face and the couple went into their bedroom and argued. [REDACTED] explains that she heard the petitioner's husband call the petitioner derogatory names and states, "We heard a slap but

I couldn't tell if he got to hit her because the door was closed." [REDACTED] reports that the petitioner's husband left the party and the petitioner came out crying and excused herself. [REDACTED] does not indicate that she observed any injuries on the petitioner. [REDACTED] states that she once went to pick up the petitioner to go shopping, but the petitioner's husband told her that the petitioner was not going because he changed his mind and [REDACTED] opines that the petitioner's husband treated the petitioner like his property.

In her affidavit, the petitioner herself does not describe any of the incidents of alleged verbal and sexual abuse and controlling behavior described in the statements of the petitioner's friends and [REDACTED]. Although the director's NOID specifically requested the petitioner to submit a specific and detailed statement in her own words describing the battery or extreme cruelty of her husband, the petitioner failed to do so. On appeal, the petitioner submits no explanation for her failure to respond to the NOID.

The petitioner did not submit any other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). In her affidavit, the petitioner states that she sought assistance from her priest, but she does not submit any supporting statement from her priest or other clergy. Although she is not required to do so, the petitioner does not explain why such a statement or other supporting evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). The record does not establish that the petitioner's husband battered or subjected her or her minor child to extreme cruelty during their marriage, as specified in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The record fails to demonstrate that the petitioner had a qualifying relationship with her husband, was eligible for immediate relative classification based on such a relationship, entered into their marriage in good faith and that she or her minor child was battered or subjected to extreme cruelty by her husband. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.