

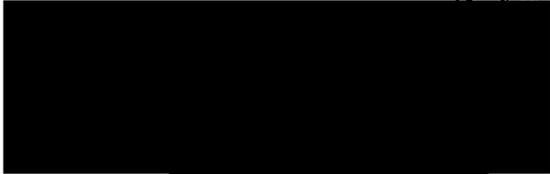
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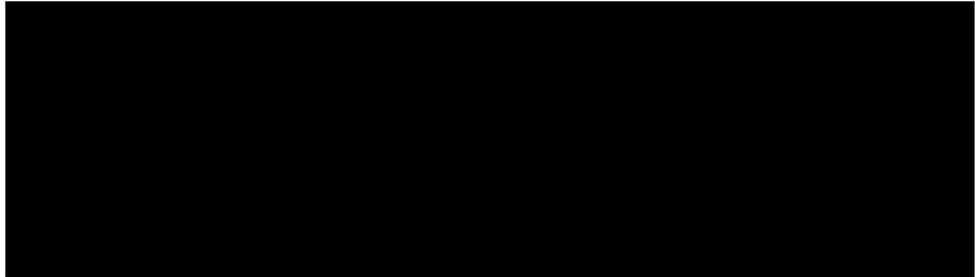


FILE: [REDACTED]  
EAC 04 102 52426

Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:



PETITION: Petition for 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:



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.

*Maura Deardnick*  
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 immigrant classification under 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 her United States citizen spouse.

The director denied the petition because the petitioner did not establish that she entered into marriage with her husband in good faith, that her husband subjected her to battery or extreme cruelty during their marriage, that she resided with her husband and that she was a person of good moral character.

On appeal, counsel submits a letter and additional evidence.

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:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(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.

(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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

\* \* \*

(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 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.

\* \* \*

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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. . . . 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.

\* \* \*

(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 record in this case provides the following facts and procedural history. The petitioner is a native and citizen of the Dominican Republic who was last paroled into the United States in 2004. On May 13, 1998, the petitioner married C-L-<sup>1</sup>, a U.S. citizen, in New York. The petitioner's husband filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on April 16, 1997. While that petition was pending, the petitioner discovered that her divorce from her prior husband was not valid. The petitioner secured a valid divorce from her prior husband and C-L- then filed a second Form I-130 petition on her behalf on June 8, 1998. On October 9, 2001, the New York District Director denied both Form I-130 petitions for failure to establish a bona fide marital relationship. On November 7, 2001, C-L- filed a third Form I-130 petition on the petitioner's behalf which remains pending before the New York District Office.

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

The petitioner filed this Form I-360 on February 23, 2004. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite good-faith entry into the marriage, battery or extreme cruelty, joint residence and the petitioner's good moral character. The petitioner, through counsel, responded with additional evidence. The director then issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good-faith entry into the marriage, battery or extreme cruelty, joint residence and good moral character. In his May 1, 2006 letter, counsel stated that the petitioner had no further evidence to submit in response to the NOID. Accordingly, the director denied the petition on the grounds cited in the NOID on June 13, 2006.

Counsel timely appealed. On appeal, counsel maintains that the petitioner "meets the criteria for approval of her I-360 petition as an abused spouse. Evidentiary issues arose due to the appellant's reluctance to openly confront her abusive husband." We concur with the director's determinations. Counsel's claims and the evidence submitted on appeal fail to overcome the grounds for denial.

#### *Good Faith Entry into Marriage*

The record contains the following evidence relevant to the petitioner's allegedly good-faith entry into marriage with her husband:

- The petitioner's affidavits dated February 19, 2004 and February 28, 2005 submitted below and her August 11, 2006 affidavit submitted on appeal;
- A ConEdison bill dated October 3, 2001 that is jointly addressed to the petitioner and her husband;
- Copies of the former couple's 1999 joint federal and New York state income tax returns that are not signed by the petitioner or her husband; and
- A Refund Anticipation Loan Disclosure Document and Loan Application, Authorization and Certification signed by the petitioner and her husband on January 15, 2000.

In her February 19, 2004 affidavit, the petitioner states, "We cared for each other a great deal while we lived together[.]" The petitioner does not discuss how she met her husband, their courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse. In her February 28, 2005 affidavit, the petitioner states "I lived with my husband for many years and we were relatively happy, but things eventually changed for the worse." In her August 11, 2006 affidavit submitted on appeal, the petitioner reports that she met her husband in 1996 and they began living together in early 1997. The petitioner explains that the former couple first married on February 28, 1997, but then realized that her divorce from her prior husband was not valid. The petitioner then obtained a valid divorce from her first husband and she and C-L- were remarried on May 13, 1998. The petitioner states, "My marriage with [C-L-] was good at first[.]" Again, the petitioner does not further describe how she met her husband, their courtship, wedding, joint residence or any of their shared experiences (apart from the alleged abuse).

The single ConEdison bill, unsigned tax returns and loan documents fail to support the petitioner's claim. The petitioner states that she lived with her husband from early 1997 until early 2002. Although the former couple's relationship spanned over five years, the record contains only one jointly addressed utility bill and two documents relating to one income tax return refund anticipation loan. The 1999 tax returns are unsigned and the record contains no evidence that the returns were actually filed.

The petitioner submitted no other documentary or testimonial evidence of her allegedly good-faith entry into marriage with her husband of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the director's RFE. 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). The petitioner's own testimony fails to provide a detailed, probative account of how she met her husband, the former couple's courtship, wedding, joint residence and shared experiences sufficient to establish her good faith entry into their marriage. Accordingly, 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.

#### *Joint Residence*

The same evidence listed above in relation to the petitioner's claim of entering her marriage in good faith is also relevant to the petitioner's claim that she resided with her husband. In her February 19, 2004 affidavit, the petitioner states that she lived with her husband from February 1997 until February 2002 when her husband left their home. On the Form I-360, the petitioner states that she and her husband last resided together at an address in the Bronx, New York. In her February 28, 2005 affidavit, the petitioner states that she lived with her husband "for many years," but provides no further details.

In her August 11, 2006 affidavit submitted on appeal, the petitioner states, "The Service should have been aware that I resided with [C-L-] as early as 1997 by virtue of the first I-130 and adjustment package that was filed some time in 1997." However, the only relevant documents submitted with the Form I-130 petitions filed by the petitioner's husband on her behalf fail to fully support the petitioner's claim. The ConEdison bill is jointly addressed to the petitioner and her husband at the Bronx residence, but this single document is insufficient to establish the former couple's actual joint residence. The unsigned tax returns and refund anticipation loan documents list a different residence as the former couple's address, which the petitioner does not mention in any of her three affidavits submitted in this case. In addition, the petitioner submitted a bill for emergency services at the Lincoln Medical and Mental Health Center, which is dated November 24, 2001 and lists an address for the petitioner that is different than the Bronx address that appears on the October 3, 2001 ConEdison bill, which the petitioner states was the former couple's last joint residence on the Form I-360.

The petitioner submitted no other documents of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and described in the director's RFE. 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). The petitioner's own testimony fails to provide detailed, probative

information sufficient to establish that she resided with her husband. The petitioner also does not state the addresses where she resided with her husband (if there were any other residences in addition to the Bronx residence listed on the Form I-360) and the petitioner does not otherwise explain the discrepancy between her address, as listed on the hospital and ConEdison bills. Accordingly, the record fails to demonstrate that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim that her husband subjected her to battery or extreme cruelty:

- The petitioner's affidavits dated February 19, 2004 and February 28, 2005 submitted below and her August 11, 2006 affidavit submitted on appeal;
- A letter dated February 11, 2005 from [REDACTED] of the Morris Heights Health Center (MHHC);
- Lincoln Medical and Mental Health Center Out-Patient Department Referral Request for the petitioner dated November 24, 2001;
- Lincoln Medical and Mental Health Center Emergency Services bill for the petitioner dated November 24, 2001; and
- Saint Barnabas Hospital Outpatient Department Clinic Referral Information and Appointment Slip for the petitioner.

In her February 19, 2004 affidavit, the petitioner states that after their marriage, her husband seemed to have physical and emotional problems and that in December 2001, he lost his job and started to ask her for money. The petitioner states, "his situation was worsening due to his dependency on drugs. This was not a subject that could be readily discussed at home, as I became fearful of his reaction to my comments." The petitioner does not discuss any specific incidents of abuse or explain why she became fearful of her husband.

In her February 28, 2005 affidavit, the petitioner states that she could not document her husband's abuse because "the incidents of verbal and physical abuse did not result in calls to or contact with the police." The petitioner further reports that in 2001, her husband began to act in a threatening and erratic manner and she became concerned for her personal safety. The petitioner states, "I believe that many of my husband's problems stemmed from drug usage, but I was not certain of this while we were married. I later learned from my husband's brother that he had been in rehab[ilitation]." The petitioner explains that on November 23, 2001, she was running away from her husband when he pushed her and she fell near the bathroom floor. The petitioner states that she went to the hospital the next day without her husband's knowledge. The petitioner does not further describe this or any other incidents of abuse.

In her August 11, 2006 affidavit, the petitioner states that she “did not disclose to hospital authorities how [she] had been hurt” when she went to the hospital on November 24, 2001. The petitioner does not explain why she did not tell anyone at the hospital how she had been injured.

The hospital documents fail to fully support the petitioner’s claim. The Lincoln Medical and Mental Health Center Out-Patient Department Referral Request form indicates that the petitioner was referred to adult orthopedics and states that she had knee pain resulting from a fall, that her knee was immobilized and she was given Motrin. The Emergency Services bill confirms that the petitioner was seen at the hospital on November 24, 2001, but the handwritten notes on the bill are illegible. The Saint Barnabas Hospital form contains a sticker with the petitioner’s name and the notation “O/P-Emergency Roo [sic] 09/03/00.” The form states that the petitioner had an appointment with a doctor in the Medicine Clinic on September 5, 2000. The petitioner does not describe any incident of abuse that occurred on or about September 3, 2000 and does not otherwise explain the significance of the Saint Barnabas Hospital appointment form.

The MHHC letter states that the petitioner was seen at the Center’s “Behavior Health Unit” for a screening and would be contacted for the intake process. The letter does not indicate the reason for the petitioner’s visit and provides no further probative information. In addition, the letter is dated three years after the petitioner and her husband separated, nearly a year after the petitioner filed the Form I-360 and over three months after the RFE was issued. The petitioner does not explain why she waited so long to seek treatment and she submitted no further evidence of any mental health diagnosis or treatment in response to the NOID or on appeal. Accordingly, the MHHC letter is of little probative value.

The petitioner states that no incidents of abuse resulted in police involvement, but she does not explain, for example, that her husband threatened her or she was otherwise afraid to call the police. The petitioner also does not explain why, when she went to the hospital on November 24, 2001, she did not tell medical personnel how she was injured. The petitioner does not describe any other incidents of alleged abuse and does not explain the significance of the September 3, 2000 Saint Barnabas Hospital appointment form. In sum, the evidence fails to demonstrate that the petitioner’s husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Moral Character*

Despite the director’s specific requests in the RFE and the NOID, the petitioner submitted no evidence of her good moral character below. On appeal, the petitioner submits a Good Conduct Certificate from the New York City Police Department that is dated August 2, 2006 and indicates that the petitioner’s request was processed on July 28, 2006, over a month after the director denied the petition. In his August 11, 2006 letter, counsel states, “I acknowledge that prior correspondence in this matter did not address the good moral character issue and I trust the enclosed certificate establishes the applicant’s good moral character.”

The petitioner was put on notice of the evidence required to establish her good moral character and the director gave her a reasonable opportunity to provide the evidence for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence below and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The petitioner submitted no evidence of her good moral character below. Accordingly, the record fails to demonstrate that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petitioner has failed to demonstrate that she entered into marriage with her husband in good faith, that she resided with her husband, that he subjected her to battery or extreme cruelty during their marriage and that she is a person of good moral character. 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.