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U.S. Citizenship
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FILE: [REDACTED]
EAC 06 108 50280

Office: VERMONT SERVICE CENTER

Date: DEC 28 2007

IN RE: Petitioner: [REDACTED]

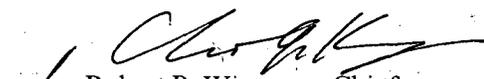
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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.


for 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 a United States citizen.

The director denied the petition finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage.

The petitioner submits a timely appeal.

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 . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

* * *

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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen 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.

* * *

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Jamaica who entered the United States on August 28, 2001, as a nonimmigrant visitor (B-2). On March 21, 2003, the petitioner married R-C¹, a U.S. citizen, in Brooklyn, New York. The petitioner filed this Form I-360 on March 1, 2006. On May 31, 2006, the director issued a Request For Evidence (RFE) of, *inter alia*, the requisite abuse. The petitioner responded to the RFE on July 14, 2006. On August 22, 2006, the director issued a Notice of Intent to Deny (NOID) indicating, *inter alia*, that the evidence submitted was insufficient to establish a claim of abuse. The petitioner responded to the NOID on September 11, 2006. On October 30, 2006, after reviewing the evidence in the record, including the evidence submitted in response to the RFE and NOID, the director denied the

¹ Name withheld to protect individual's identity.

petition finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage. The petitioner submitted a timely appeal with additional evidence.

On appeal, the petitioner does not dispute the findings of the director or allege any error on the part of the director. Rather, the petitioner reiterates the claims previously made. As will be discussed, the petitioner's claims on appeal are insufficient to overcome the findings of the director and to establish her eligibility.

To support her claim of abuse, the petitioner submitted two personal statements and a statement from a friend. The statements, however, are general in nature and fail to describe acts that indicate that the petitioner was battered or subjected to extreme cruelty by her spouse during their marriage.

In her initial statement, the petitioner claims that her spouse asked her to have sex with his friend to make money and to engage in "a threesome." The petitioner indicates that she refused both requests. The petitioner further claims that her spouse and his friends would smoke and drink and that her spouse called her names on two occasions.

In her second statement, the petitioner reiterates the claims that her spouse wanted her to have sex with his friends in order to make money and that he would call her names. The petitioner also generally states that her spouse "always [gave her] verbal abuse" and that he would "lash" at her. The petitioner does not elaborate on either of these claims or provide specific examples of the claimed verbal abuse or "lash[ing]."

The general statements provided by the petitioner's friends, [REDACTED] and S [REDACTED], also fail to establish that the petitioner was battered or subjected to extreme cruelty by her spouse. Ms. [REDACTED] states that the petitioner told her that her spouse had "change[d] towards her," that he insulted the petitioner in front of friends, and that he was "sleeping around." Ms. [REDACTED] states that the petitioner's spouse would curse the petitioner, calling her a "barren [expletive]," and invited people that the petitioner did not know to their home.

On appeal, the petitioner submits an additional personal statement which contains claims that were not previously made. For instance, the petitioner now claims that her spouse "lash[ed]" her "several times," that he was "always threatening" her with deportation if she went to the police, and that he would push and slap her. The petitioner does not explain why she did not mention any of these claims in either of her previous statements. Regardless, the petitioner again fails to describe any incident in specific details or to elaborate on any of these claims.

The petitioner's general statement on appeal is insufficient to establish that she was battered by her spouse. Further, the incidents described by the petitioner and the claims contained in the statements submitted on her behalf also do not rise to the level of the other 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. The petitioner's spouse's actions, while hurtful to the petitioner, do not appear to have been part of an overall pattern of violence against the petitioner. Accordingly, the petitioner has failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Eligibility for Immediate Relative Classification

Beyond the decision of the director, we find additional grounds that preclude the petitioner's eligibility. Specifically, we find that the record does not adequately establish that the petitioner's spouse is a citizen of the United States and, therefore, that she has a qualifying relationship as the spouse of a United States citizen and is eligible for immediate relative classification based upon that relationship. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The sole piece of evidence submitted to establish the petitioner's spouse's citizenship is a copy of the marriage license and marriage certificate which indicate that he was born in New York. We note that although the Service will consider "any credible evidence" and that the petitioner is not required to demonstrate that primary or secondary evidence is unavailable, ultimately, the determination as to credibility and weight is within the sole discretion of the Service. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). In this instance, the fact that the petitioner's spouse provided this birth information on his marriage license does not persuasively establish his citizenship status as there is no requirement that proof of United States citizenship be submitted in order to obtain a marriage license in New York, much less that there be an independent verification of such citizenship. *See N.Y. Dom. Rel. Law*, §§ 10-25 (McKinney 2007). The record contains no other testimonial or documentary evidence regarding the petitioner's spouse's citizenship status. Citizenship and Immigration Services (CIS) electronic records also contain no indication of her spouse's citizenship. *See* 8 C.F.R. § 204.1(g)(3). Accordingly, we find that the petitioner has failed to establish that she has a qualifying relationship as the spouse of a United States citizen and that she is eligible for immigrant classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA), (cc) of the Act. We, therefore, withdraw the director's determination on these two issues.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.