U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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MAR 2 0 2007

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 05 232 52119

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:

[redacted]

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 sustained.

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 because the petitioner did not establish that she entered into marriage with her former husband in good faith.

On appeal, counsel submits a brief 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:

> (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 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.
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> (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 pertinent facts and procedural history. The petitioner is a native and citizen of Brazil who entered the United States on July 25, 2000 as a nonimmigrant visitor (B-2). On February 15, 2001, the petitioner married B-P-[1], a U.S. citizen. The petitioner filed this Form I-360 on August 17, 2005 and indicated that she was still married at that time. On appeal, the petitioner submits testimony that she and her husband were divorced sometime after their separation in December 2003. On October 19, 2005, the director issued a Request for Evidence (RFE) of the petitioner's good faith marriage to her former husband. The petitioner, through counsel, timely responded with further documentation. On January 27, 2006, the director denied the petition for lack of the requisite good-faith entry into the marriage and counsel timely appealed. On appeal, counsel claims that the director erroneously discounted certain testimony and that the evidence submitted below and on appeal establishes that the petitioner entered into marriage with her former spouse in good faith.

The petitioner submitted the following evidence relevant to the issue of her good faith entry into marriage with her husband:

- The petitioner's April 12, 2005 affidavit;
- The August 12, 2005 affidavit of the petitioner's friend,
- The June 15, 2005 affidavit of the petitioner's friend
- The December 13, 2005 affidavit of the petitioner's friend,
- The December 13, 2005 affidavit of , the brother of nd s and a friend of the petitioner's former husband;
- The February 22, 2006 affidavit of the petitioner's former husband submitted on appeal;
- Copies of the former couple's joint federal income tax returns for 2002 and 2003;

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[1] Name withheld to protect individual's identity.

- Tax return transcripts from the Internal Revenue Service, submitted on appeal, which show that the petitioner and her former husband jointly filed income tax returns for 2002 and 2003;
- A statement of the former couple's joint savings account indicating that the account had a balance of zero on June 19, 2001;
- The signature card for the former couple's savings account, dated March 11, 2001, which states that the former couple owned the account jointly with survivorship; and
- Three photographs of the petitioner and her former husband at their wedding.

In her affidavit, the petitioner states that she came to the United States in July 2000 to visit her friend, is, and that she met her former husband at a party given by s brother, She explains that although she did not speak very much English at that time, she was able to communicate with her former husband in Spanish. The petitioner states that she and her former husband danced and chatted at the party and that her former husband then visited her about twice a week. The petitioner reports that she and her former husband began dating in October 2000 and describes in detail the location and nature of their dates and the increasing intimacy of their relationship. The petitioner explains that when she told her former husband that she planned to return to Brazil in December 2000, he begged her not to leave and asked her to marry him.

The petitioner states that spoke to her friend, about her former husband's proposal, but that warned her not to accept it because had heard that her former husband took advantage of women. The petitioner explains that she did not listen to 's advice and accepted the proposal because she loved her former husband, enjoyed being with him and because he treated her with interest and care.

The petitioner reports that and were the former couple's witnesses at their wedding and that they had a celebration at home after the ceremony. After their marriage, the petitioner reports that she moved into her former husband's apartment. The petitioner states that the first two months of their marriage was wonderful and she describes in detail the former couple's activities, shared life, residences and plans for their future together.

The record shows that the petitioner is 26 years older than her husband and the petitioner reports that problems in their relationship arose when she asked her former husband for their marriage certificate, read the document and realized that he was only 20. The petitioner explains that her former husband previously had refused to talk about his age, but it was not important to her because he looked mature and she had thought he was about 30. The petitioner indicates that her former husband's abuse began shortly after this incident.

The petitioner describes in detail three occasions where she returned to her former husband after she had left him following incidents of battery. The petitioner explains, "I loved him and I did not want anything bad to happen to our relationship." For example, after an incident in June 2003 when her husband punched her in her eye causing it to bruise and swell for nearly a month, the petitioner explains:

> I never called the police because I was ashamed of what had happened to me, and also because I didn't want to see [my former husband] get in trouble. He promised me that he would change and that things would be like they were when we first married. He started to behave better and convinced me to move back with him for the third time. He promised me that everything would change. I really believed him and I had hope that things would change for the better.

The testimony of the petitioner's friends supports her account of her good-faith entry into marriage with her former husband and her commitment to the relationship despite her former husband's repeated abuse. s confirms the petitioner's account of how she met her former husband, their courtship and wedding and describes these events in probative detail. also states that she warned the petitioner that marrying her former husband would be a mistake, but that the petitioner "was in love with him and decided to marry him." s states that when she learned of the abuse after the former couple's marriage, she repeatedly urged the petitioner to leave her former husband, but the petitioner told her that she loved her former husband and did not want to leave him. also attests that about a year after the petitioner was married, found out about the abuse and told the petitioner to leave her former husband, but the petitioner "said no, she wouldn't, because she loved him."

and s also confirm the petitioner's account of how she met her former husband, their courtship and wedding. They further state that it is very common for Brazilian women to date and marry much younger men and note that their own, 62-year-old mother is dating a man who is 30 years younger than herself. also states that when the petitioner told her of her former husband's proposal, approved of the marriage because the former couple appeared to be in love, although notes that her sister, opposed the marriage and warned the petitioner about her former husband's past mistreatment of other women.

In his affidavit submitted on appeal, the petitioner's former husband describes in detail how he met the petitioner. He explains, "I did not care about the age difference since she was very vibrant and I have often dated women much older than me." The petitioner's former husband also describes in detail the former couple's courtship, wedding and early marital relationship in a manner consistent with the testimony of the petitioner and her friends. The petitioner's former husband reports that he and the petitioner separated in December 2003 and later divorced.

Apart from the three photographs which merely attest to the former couple's wedding, the remaining relevant evidence supports the petitioner's claim. The director noted that the documentation of the former couple's joint bank account did not show any transaction history and that the copies of the federal income tax returns submitted below were unsigned. However, the documentation of the bank account is consistent with the testimony of the petitioner who states, "[My former husband] controlled every aspect of my life. He did not give me any money. . . . I was not allowed to write checks even though we had a joint account." The petitioner's former husband also attests that he controlled all of the former couple's finances during their marriage. In addition, the IRS tax transcripts submitted on

appeal show that the petitioner and her former husband jointly filed income tax returns for 2002 and 2003.

In sum, the evidence provides a detailed, probative and consistent account of how the petitioner met her husband, their courtship, wedding, marriage, shared residence and experiences, as well as the petitioner's commitment to her former husband and their marriage despite her husband's repeated abuse. The petitioner has demonstrated that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has met that burden. Accordingly, the appeal is sustained.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.