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U.S. Department of Homeland Security
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U.S. Citizenship
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Services

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FILE:

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Office: VERMONT SERVICE CENTER

Date:

MAY 04 2007

EAC 06 020 53320

IN RE:

Petitioner:

[REDACTED]

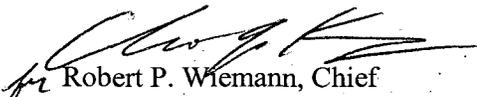
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. 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 *Immigration and Nationality Act* (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 by or subjected to extreme cruelty by her spouse and that she is a person of good moral character.

The petitioner submitted 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 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).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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.

(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 . . . A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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.

* * *

(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 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.

* * *

The petitioner in this case is a native and citizen of Peru who entered the United States on August 16, 2003, as a B-2 nonimmigrant visitor. On February 4, 2004, the petitioner married L-M,* a U.S. citizen, in Miami, Florida. On February 18, 2004, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. On April 15, 2004, the petitioner filed a Form I-485, Application to Adjust Status. The Form I-130 and Form I-485 were denied on March 28, 2005. On May 26, 2005, a Notice to Appear was served on the petitioner and she was placed in removal proceedings.

The petitioner filed the instant Form I-360 on October 20, 2005. Despite the filing of the Form I-360, the removal proceedings initiated against the petitioner were not administratively closed or held in abeyance and, therefore, continued during the adjudication of the Form I-360. On February 14, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, evidence to support the petitioner's claim of abuse and good moral character. On April 3, 2006, the petitioner requested additional time to respond to the RFE. The director

* Name withheld to protect individual's identity.

issued a Notice of Intent to Deny (NOID) on May 17, 2006, again indicating, *inter alia*, that the petitioner failed to establish her claims of abuse and good moral character. In the interim, on June 1, 2006, the petitioner was ordered removed by an Immigration Judge in Miami, Florida. The petitioner responded to the NOID on July 17, 2006. After reviewing the evidence in the record, including the petitioner's response to the RFE and the NOID, the director denied the petition, finding that the petitioner failed to establish that she had been battered by or subjected to extreme cruelty by her spouse and that she was a person of good moral character.

On October 19, 2006, the petitioner submitted an appeal with no brief or new evidence. On appeal, the petitioner generally asserts that she meets the requirements for eligibility. As will be discussed, we concur with the findings of the director that the petitioner has failed to establish her claims of abuse and that she is a person of good moral character. These findings have not been overcome on appeal.

Battery or Extreme Cruelty

With her initial filing, the petitioner submitted no statement regarding the claimed abuse and did not submit any documentary evidence such as affidavits, police, or medical reports. In response to the director's NOID, the petitioner submitted a personal unsworn statement and statements from friends. In her personal statement the petitioner claimed that after her marriage, her spouse "started not paying attention to [her] and not being there for [her]." The petitioner also claimed that her spouse screamed at her, spit in her face, and made her wash his clothes. The petitioner stated that she was afraid of her spouse because she felt "tension" between them and was "afraid that he was going to abandon [her] and [she] was terrified." While the petitioner also claimed in one instance that her spouse "separated [her] from everyone" and "wouldn't allow [her] to call [her] family in Peru," she describes the fact that her best friend ██████████ "always came to [her] house," and indicated that she continued to communicate with her father in some manner as he continued to support her with money. The petitioner further describes the fact that she and her spouse actually lived for a time with her friend Janet and describes her aunt and grandparents coming to the house.

The affidavits submitted on the petitioner's behalf do not provide any descriptions of physical abuse or incidents of extreme cruelty. Rather, the affidavits contain general statements indicating that the petitioner had "problems" and "drastic things" in her life with her spouse and allege that the petitioner's spouse was unfaithful. As described by the petitioner and the affidavits submitted on her behalf, the facts are not sufficient to establish that the petitioner was battered by her spouse. Further, while the actions of the petitioner's spouse may have been hurtful to the petitioner, the petitioner has failed to establish that her spouse exerted control over her by socially isolating her from her family and friends, that his actions were part of an overall pattern of violence against the petitioner, or that his actions rose to the level of the 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.

On appeal, the petitioner fails to address the director's finding regarding her failure to establish a claim of abuse. Accordingly, the petitioner has failed to establish that she was battered by or subjected to extreme cruelty by her spouse during her marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) indicates that primary evidence of the petitioner's good moral character is an affidavit from the petitioner accompanied by a police clearance from each place the petitioner has lived for at least six months during the 3-year period immediately preceding the filing of the self-petition. At the time of filing, the petitioner failed to submit an affidavit regarding her good moral character. Additionally, the petitioner failed to submit police clearances from the jurisdiction where she resided during the three-year period prior to filing her petition. We note that although the record contained a police clearance from the Sheriff's Office of Broward County, the clearance was dated February 10, 2004, more than one year prior to the filing of the Form I-360 petition. Despite the director's specific request for an affidavit and police clearance in his RFE and NOID, the petitioner failed to submit any further evidence. Accordingly, the director properly determined that the petitioner failed to establish that she was a person of good moral character.

On appeal, the petitioner resubmits a copy of the police clearance dated February 10, 2004. She also submits a printout from a webpage, "USSearch," and states that she was unable to get a letter directly from the police department in New Jersey. This evidence is not sufficient to overcome the director's findings. First, we note that in instances where 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 does not usually accept evidence offered for the first time on appeal. If the petitioner had wanted the submitted evidence to be considered, she should have submitted the documents in response to the director's RFE or NOID. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighèna*, 19 I&N Dec. 533 (BIA 1988). Second, even if considered, the evidence does not meet the regulatory requirements. The record reflects that during the three-year period leading up to the filing of the petition, the petitioner resided in Florida. Although the petitioner submitted a clearance from the Broward County Sheriff's Office, as previously indicated, the clearance does not cover the 3-year period immediately preceding the filing of the self-petition. The petitioner's reference to a police clearance from a police department in Trenton, New Jersey appears to be irrelevant to the instant proceeding as the record does not reflect that the petitioner lived in New Jersey at the time of filing the Form I-360 or any time prior. Finally, the petitioner has failed to submit a statement which addresses her good moral character.

Accordingly, the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Beyond the decision of the director, we additionally find that the petitioner has failed to establish that she resided with her spouse. On the Form I-360, the petitioner claims to have resided with her spouse from December 2003 until January 2005 and that she last resided with her spouse at [REDACTED] Florida. In her personal statement, although the petitioner generally describes her and her spouse residing with her aunt and uncle and at her friend's home, the petitioner provides no specific addresses, dates of residence, or other details about their residence together. As documentary evidence, the petitioner submitted three bank statements, dated July, November, and December 2004, which were issued to the petitioner and her spouse at [REDACTED]. However, given the petitioner's failure to describe a residence at this address or to provide any details regarding her specific addresses and lengths of residence, these three bank statements are not sufficient to establish a claim of joint residence. The petitioner has not submitted rent receipts, leases, utility bills or any other documentary evidence other than the three bank statements to support her claim of a joint residence of more than one year. While we acknowledge the submission of a letter from the petitioner's friend, Janet, who stated that they "lived with me for awhile," this general statement does not contain sufficient detail regarding their dates of

residence or other specific information to establish the petitioner's residence with her spouse. Accordingly, we withdraw the director's finding in this regard. The petitioner has failed to establish that she resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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 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.

ORDER: The appeal is dismissed.