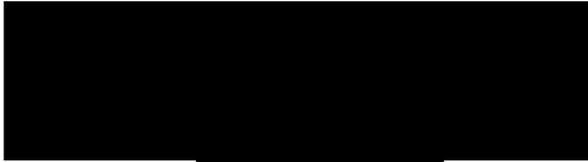


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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **OCT 25 2007**  
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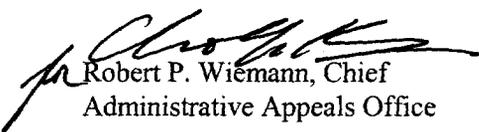
IN RE: Petitioner: [Redacted]

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 The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner seeks immigrant classification 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 petitioner did not establish that she entered into her marriage in good faith.

The petitioner, through counsel 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:

(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.

\* \* \*

(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 Trinidad who indicates on the Form I-360 that she entered the United States on June 4, 1990 without inspection. On September 29, 1995, the petitioner married J-P-<sup>1</sup>, a U.S. citizen, in Hempstead, New York. The petitioner filed the instant Form I-360 on June 22, 2005. On August 30, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite good faith marriage. The petitioner, through counsel, after requesting additional time to respond to the RFE, submitted additional evidence. After considering the evidence, the director denied the petition on January 27, 2006, finding that the petitioner failed to establish that she entered into her marriage in good faith.

On appeal, counsel claims that the evidence submitted by the petitioner "clearly showed that she had in fact entered [into her] marriage in good faith" and that the director took a single statement from the petitioner's affidavit out of context. Upon review, while we agree with counsel that the petitioner's statement was taken out of context, we concur with the ultimate determination of the director that the petitioner failed to establish that she entered into her marriage in good faith.

#### *Good Faith Marriage*

The sole documentary evidence submitted consists of photographs which appear to have been taken at the petitioner's marriage ceremony and on other, unspecified occasions. While the photographs are evidence that the petitioner and her spouse were together at particular places and times, they are of little probative value in establishing the petitioner's intent at the time of her marriage.

In her initial statement, the petitioner provided scant details regarding how she met her spouse, their courtship, and subsequent marriage, apart from her claim of abuse during the marriage. She stated:

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

I worked for Wells Fargo Security when I met my husband . . . in 1991. My husband also worked for Wells Fargo Security . . . at that time and we became good friends. After approximately one year we started dating each other. In 1993 he moved in with me at my apartment at [REDACTED] got married on September 29, 1995 and lived at [REDACTED]

In her second statement, while the petitioner refers to three utility companies with which she and her spouse had an account during their marriage, she provides few further probative details regarding her good faith intent in marrying her spouse. She states:

As I do not have the traditional evidence to establish my bona fides, I can document our personal days together. I met my husband while working for Wells Fargo Security based at a hospital, A [REDACTED] I worked as a supervisor of phone services and my husband worked as a security guard. I liked him because he was attentive to me, and he would take me out, buy me flowers. We lived together prior to our marriage. I never wanted to get married, but he pursued me constantly. Our friends would laugh that he chased me like a puppy dog. I finally agreed to marry him.

The remainder of the petitioner's second statement is dedicated to describing details such as her husband's employment and social life. She provides no specific information regarding her intent in marrying her spouse other than to state that she did not marry her husband for a green card and that they had a "bona fide marriage at the inception."

The petitioner also submitted affidavits from her friend, [REDACTED] her niece, [REDACTED] and her therapist, [REDACTED]. None of the affiants, however, provides any testimonial evidence relevant to the petitioner's claim of a good faith marriage. [REDACTED] does not describe the petitioner's relationship with her spouse or feelings toward her spouse prior to her marriage and indicates only that she visited them at their house "occasionally." Similarly, [REDACTED]s and I [REDACTED] generally describe visits at the couple's home but do not provide any specific details about the petitioner's relationship with her spouse or her intent in marrying him.

The director denied the petition, in part, on a finding that the petitioner had submitted contradictory statements. Specifically, the director determined that the petitioner's statements that she "never wanted to get married" and that she "had a bona fide marriage," were contradictory.

On appeal, counsel argues that taken in context and viewed "as part of the larger affidavit," the statements are not contradictory. We agree and, therefore, withdraw this portion of the director's decision. Despite this determination, however, we concur with the ultimate conclusion of the director that the petitioner failed to submit sufficient evidence to establish her good faith marriage.

As discussed above, the testimonial evidence of the petitioner and her affiants does not contain sufficient probative details regarding the petitioner's intent at the time of her marriage or her feelings toward her spouse at that time or for their future life together. While the petitioner provides an explanation for the lack of utility bills as documentary evidence, other than a single bank account, she fails to provide probative details regarding other assets or liabilities that they shared, such as tax documents.

Accordingly, we concur with the director's determination that the petitioner has failed to establish that she entered into her marriage in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Consequently, the petitioner is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied. However, because the director failed to issue a Notice of Intent to Deny (NOID) in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) which requires the director to issue a NOID in all cases where "the preliminary decision on a properly filed self-petition is adverse to the self-petitioner," the case must be remanded to the director for further consideration.

Accordingly, the decision of the director must be withdrawn. The case will be remanded for the purpose of the issuance of a new notice of intent to deny as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.