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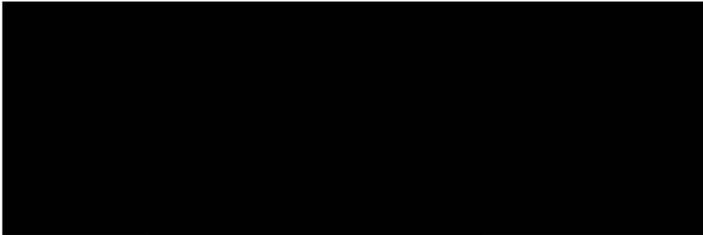
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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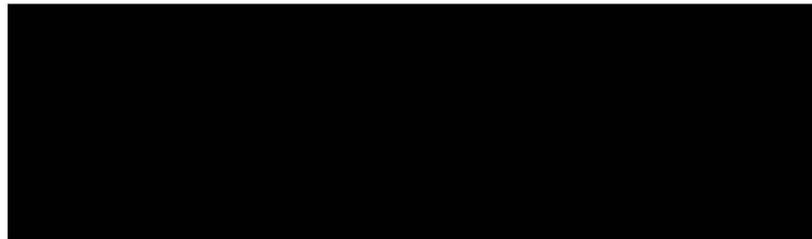


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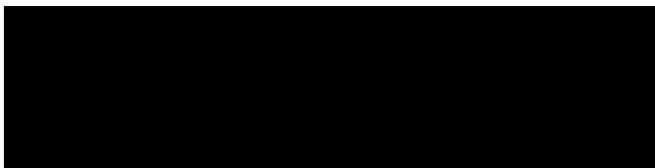
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IN RE: Petitioner:



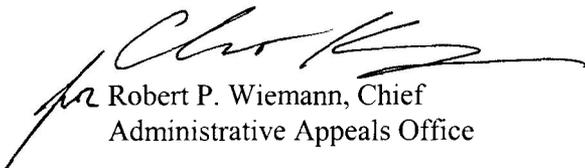
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The petitioner seeks immigrant classification 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.

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 clause (ii) or (iii) of subparagraph (B), 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].

In this case, the director initially denied the petition on August 24, 2005, for failure to establish the requisite battery or extreme cruelty and good-faith entry into the marriage. In our March 30, 2006 decision on appeal, we concurred with the director's determination and further found that the petitioner had not established that she resided with her spouse and that she was a person of good moral character.

However, we remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on August 9, 2006. The petitioner timely responded to the NOID with additional evidence. After considering the evidence, the director denied the petition on January 18, 2007 finding that the petitioner failed to establish that she resided with her spouse, that she was a person of good moral character, that she had been battered or subjected to extreme cruelty by her spouse during their marriage, and that she entered into her marriage in good faith. On certification, the petitioner submits affidavits from friends, co-workers and family members as evidence of the requisite residence, battery or extreme cruelty, good moral character, and good faith entry into marriage.

As the relevant evidence submitted below was fully addressed in our prior decision, our review focuses on the documentation submitted subsequent to the AAO's remand decision, incorporated here by

reference. The evidence consists of letters from acquaintances and family members of the petitioner, a letter from the Village of Spring Valley police department and an "Abuse Assessment Report." The petitioner has provided no explanation and documentation of why the evidence submitted on certification was not available for submission below. In instances where, as here, 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 will not accept evidence offered for the first time on appeal or certification. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). In this case, the petitioner was afforded three opportunities to provide relevant evidence over the course of 16 months. Accordingly, with one exception as will be discussed, in this case we will not consider the evidence submitted by the petitioner on certification. If the petitioner wishes the additional evidence to be considered, she may submit it with a new self-petition. *See Matter of Obaigbena*, 19 I&N Dec. at 537.

Good Moral Character

In response to the director's NOID, despite the director's specific instructions to obtain a police clearance using *all aliases*, the petitioner again submitted an updated clearance under the name [REDACTED] only. Given that the record reflects the petitioner's use of at least six different names, the updated clearance based upon a single name is not sufficient to establish the petitioner's good moral character. Primary evidence of the petitioner's good moral character is an affidavit from the petitioner accompanied by a police clearance or state criminal background check from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. 8 C.F.R. § 204.2(c)(2)(v). If a self-petitioner explains that such checks or clearances are unavailable, CIS will consider other relevant credible evidence. *Id.* Given the petitioner's failure to indicate that the required clearances are unavailable, the letters submitted on the petitioner's behalf are insufficient to demonstrate her eligibility under this criterion. Accordingly, we concur with the director's determination that the petitioner 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.

Good- Faith Entry Into Marriage

The letters submitted on the petitioner's behalf in response to the director's NOID attest to her character but provide no probative details regarding her claim of a good faith marriage. For instance, the letters contain no description of the petitioner's relationship with her spouse prior to or after their marriage, shared experiences, or other details which demonstrate the petitioner's feelings or intent in marrying her spouse.

Accordingly, we concur with the director's finding that the petitioner 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. We note that even if the petitioner's certification submission was considered, the letters submitted on her behalf fail to overcome this finding as the letters do not contain any probative details of her good-faith entry into her marriage.

Battery or Extreme Cruelty

In response to the director's NOID, in order to support her claim of battery or extreme cruelty, the petitioner submitted an "Abuse Assessment Report" from [REDACTED] CSW. In his certification decision, the director found that this assessment was a "copy" of one that had been previously submitted by the petitioner and "deemed insufficient to establish [the petitioner's] claims to being [abused] . . . this deficiency was discussed in the initial denial." A review of the record does not support the director's findings. First, the record does not contain another copy of this assessment. Second, the director's initial decision does not mention the existence of the assessment. Moreover, we note that counsel does not include this assessment in her list of supporting documentation submitted at the time of filing or in response to the director's Request for Evidence (RFE). Finally, the assessment was not noted in our previous decision. Although the director failed to consider this assessment, we will address the assessment in this decision, and we find the director's error to be harmless.

In her assessment, [REDACTED] indicates that the petitioner's spouse would lie to the petitioner, became "irritable and argumentative" and started fights with the petitioner. [REDACTED] further states that the petitioner alleged that her spouse would "yell and scream derogative remarks" at the petitioner and often left their home without returning for several days. The assessment does not describe any specific incident in detail and provides no probative information to establish that the petitioner was battered or that she was subjected to extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which includes actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Accordingly, although we find fault with the director's reason for denial on this issue, we concur with his ultimate determination that the petitioner failed to establish that she was battered by 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. Again, we note that even if the petitioner's certification submission was considered, the letters submitted on her behalf on certification fail to provide any probative details to establish her claim of abuse.

Joint Residence

As it relates to the petitioner's residence with her spouse, we note that although this ground was one of the four grounds for denial cited by the director in his certification decision, this ground was not cited in the director's NOID. Upon review, we find the director's failure to address this issue in his NOID to be harmless error. First, although not explicitly discussed, our decision put the petitioner on notice that we found the record insufficient to support her claim of residence. Second, the director's certification decision contained a specific discussion of this issue. Moreover, as previously indicated, although we do not usually consider evidence submitted for the first time on certification, to be equitable given the procedural history surrounding this issue, we will consider all of the evidence contained in the record, including the relevant evidence submitted on certification.

On the Form I-360, the petitioner indicated that she resided with her spouse from June 2002 until July 2003 and that she last resided with him at [REDACTED], Spring Valley, New York. Although the petitioner submitted numerous documents that indicate her residence at the claimed address, including bank information and bills, the documents are in the petitioner's name only and are dated *after* the petitioner claims she no longer resided with her spouse. The petitioner also submitted several photographs of what appear to be her wedding day that counsel claimed are evidence of the petitioner's residence. However, the petitioner fails to describe the photographs; to state the date, time and importance of the events; or to provide any other information about the photographs to establish their relevance to her claim of residence with her spouse. Although the lack of documentary evidence of the petitioner's residence with her spouse is not automatically disqualifying, the remaining testimonial evidence submitted by the petitioner does not establish her claim.

In her affidavit, dated June 29, 2004, the petitioner generally stated that after they were married in June 2002, she and her spouse "began living together as man and wife." She does not, however, provide any further probative details regarding their residence together. The petitioner's April 5, 2005 letter contains no further testimonial evidence of her claimed residence with her spouse. The petitioner also submitted a letter from [REDACTED] who stated that he "kn[e]w that they live[d] at [REDACTED] Spring Valley," but failed to explain the basis of his knowledge, for instance, by indicating that he visited the petitioner's residence with her spouse. Similarly, the letter from [REDACTED] generally states that he visited the petitioner at the residence she shared with her spouse but provides no other probative information such as dates to establish the petitioner's claimed residence with her spouse. Although the petitioner also submitted a letter from her landlord, [REDACTED], Mr. [REDACTED] does not provide any details to establish that the petitioner resided with her spouse at the claimed address. Rather, while he indicates that the petitioner became his tenant in July 2000 (nearly two years prior to her marriage), he claims that he was told "another member" would be moving into the house in June 2001. [REDACTED] does not indicate that the petitioner's spouse was placed on the lease, does not describe seeing the petitioner's spouse at the home or provide any other probative testimony to establish the petitioner's residence with her spouse.

On certification, the petitioner submits 28 letters from friends, family and coworkers, only two of which provide any information regarding the petitioner's residence with her spouse. The letter from [REDACTED] generally describes one occasion when she went to the petitioner's home but provides no specific information regarding the petitioner's residence. The letter from [REDACTED] indicates that he was invited to the petitioner's home on several occasions to have dinner with the petitioner and her spouse. Again, however, [REDACTED] does not provide any probative details to establish the petitioner's claimed residence with her spouse, such as the dates he visited or the petitioner's address.

As discussed above, the petitioner has submitted no documentary evidence of her residence with her spouse. Further, the relevant testimonial evidence submitted by the petitioner and on her behalf fails to provide probative, detailed information sufficient to establish her claim of residence. Accordingly, we concur with the determination of the director that 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.

Upon review, we concur with the director's determinations that the petitioner failed to establish that she is a person of good moral character, that she entered into her marriage in good faith, that she was battered or subjected to extreme cruelty by her spouse during their marriage, and that she resided with her spouse. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

The denial of the petition will be affirmed for the reasons stated above, 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 director's decision of January 18, 2007 is affirmed. The petition is denied.