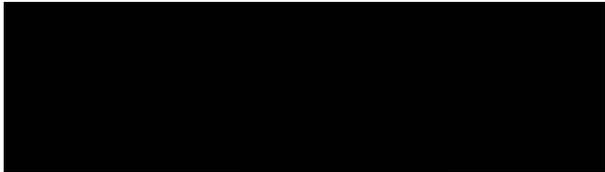


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Office: VERMONT SERVICE CENTER

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Petitioner:



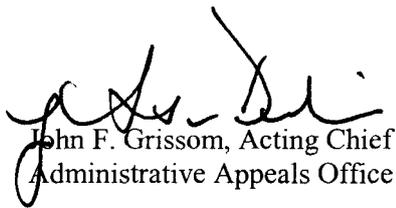
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


John F. Grissom, Acting 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.

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 matter, the director initially denied the petition on January 11, 2006, for failure to establish the requisite battery or extreme cruelty, good faith marriage, and the petitioner's good moral character. In its October 19, 2006 decision on appeal, the AAO concurred with the director's determinations on the issues of the failure to establish the requisite battery or extreme cruelty and good faith marriage. The AAO determined that the petitioner had submitted sufficient evidence to establish her good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. The AAO remanded the petition, however, for issuance of a Notice of Intent to Deny (NOID) the petition in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on December 4, 2006, which informed the petitioner, through counsel, that she had failed to establish the requisite battery or extreme cruelty and good faith marriage. The petitioner submitted further evidence in response to the NOID. The director determined that the new evidence submitted did not establish the requisite battery or extreme cruelty and good faith marriage, denied the petition on March 9, 2007 and certified his decision to the AAO for review.

In the AAO's prior decision, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence in the record when the October 19, 2006 decision was rendered. Accordingly, we will only address the evidence submitted after that decision was issued. The AAO notes that the petitioner has not provided additional evidence on certification. In response to the NOID, the petitioner submitted a January 23, 2007

statement. The petitioner indicated: she had remained silent in the past and did not disclose all of the threats and abuse inflicted on her in fear of retaliation, that her husband had threatened several times to take all the things she had worked for from her if she did not give him money or go along with his sexual advances, and that her car was stolen on August 14, 2006 along with her purse, ATM card, and other identifying documents. The petitioner stated her belief that her husband stole the car and although the car was later located, her bank account was emptied and she had to replace her credit cards and open a new bank account. The petitioner provided a copy of a police report showing she had reported her car stolen from a parking lot/garage in Springfield, Massachusetts. The petitioner claimed that her husband was the perpetrator as her husband had threatened her prior to the robbery, although she was not able to prove it. She does not provide further information to substantiate her belief that her husband stole her car. The petitioner also provided copies of bank statements for February, March, and April 2001 issued by a Brazilian bank for an account held in the name of the petitioner and her husband. The petitioner stated that she and her husband did not have a joint account in the United States as her "husband never wanted to include [her] name in any of [their] assets." The petitioner further reported that she had only one picture to submit as all the pictures that she and her husband had accumulated had been taken by her husband and when she asked for the pictures he stated that he had burned the pictures to "teach her a lesson." The petitioner concluded by indicating that she is still afraid of her husband and believes he will continue to try to victimize her.

In addition to her statement, the petitioner also submitted through counsel: a January 27, 2007 statement from [REDACTED] a January 9, 2007 letter signed by the [REDACTED] and a January 26, 2007 letter from [REDACTED], a licensed certified social worker. The statement from [REDACTED] does not address the discrepancy observed by the AAO in its October 19, 2006 remand decision between the accounts of [REDACTED] and [REDACTED] or that of [REDACTED] regarding the alleged abuse incident of January 14, 2004. Similarly, although the January 27, 2007 statement from [REDACTED] appears to confirm the account of Mr. [REDACTED] regarding an alleged incident on July 4, 2005, the record does not include information clarifying the differences in the accounts of this incident provided by [REDACTED] and [REDACTED]s. The AAO notes that [REDACTED] clarifies the discrepancy in the date the petitioner started treatment in the January 26, 2007 letter submitted in response to the NOID. Upon review of the additional statements submitted in response to the NOID, the director found the information contained in the statements insufficient to overcome the ground of denial discussed in the NOID. The AAO concurs with the director in this regard. The information does not directly address the different accounts provided by individuals regarding the January 14, 2004 incident and the July 4, 2005 incident. Likewise, the petitioner, by her own statement, confirms that she cannot prove that her husband stole her car and emptied her bank account. The petitioner's belief is insufficient to establish this claimed incident of abuse. The petitioner's counselor and pastor in their statements in response to the NOID, do not provide additional chronological, clinical, or substantive details of the abuser's alleged abuse and its effects on the petitioner. The information in the record does not establish the requisite battery or extreme cruelty as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner in response to the NOID provides only general information to establish that she entered into her marriage in good faith. She provides one photograph, copies of three months of bank statements from a Brazilian bank, and her statement that her husband did not want to include her name on any of their assets and burned their photographs to teach her a lesson. The petitioner has not presented probative details of her

life together with her husband before or after their marriage. The AAO acknowledges the petitioner's claim that she is unable to provide documentary evidence of the marriage as her husband did not want her name included on any assets and burned their photographs. The AAO finds the petitioner's failure to explain the lack of documentation initially and her late explanation that her husband did not want her name included on any assets and had burned their photographs disingenuous and not supported by probative detail. However, while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf also fails to support a finding that she entered into this marriage in good faith. The declarations submitted on the petitioner's behalf are similar regarding the petitioner's courtship and early marital relationship; however, it is the generality and bareness of detail included in the affidavits that fail to establish the petitioner entered into the marriage in good faith. The record does not provide sufficient probative details to establish the petitioner's intent when entering the marriage. Accordingly, the AAO concurs with the finding of the director 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.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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. The petitioner has not sustained that burden.

ORDER: The director's March 9, 2007 decision is affirmed The petition is denied.