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

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FILE:

EAC 05 096 52098

Office: VERMONT SERVICE CENTER

Date:

DEC 09 2008

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.

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 February 8, 2006, for failure to establish the requisite battery or extreme cruelty and that she entered into the marriage in good faith. In its November 22, 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 remanded the matter, however, as the director had not issued a Notice of Intent to Deny (NOID) the petition as required at 8 C.F.R. §204.2(c)(3)(ii). Upon remand, the director issued a NOID on December 18, 2006, which informed the petitioner, through counsel, that the record did not contain sufficient evidence to establish the requisite battery or extreme cruelty and good faith marriage. The petitioner submitted further evidence in response to the NOID. Upon review of the additional evidence, the director determined that the petitioner had not overcome the basis of denial outlined in the NOID. The director denied the petition on April 6, 2007 and certified his decision to the AAO for review.

In the AAO's prior decision, incorporated here by reference, the AAO fully discussed the pertinent facts and relevant evidence in the record when the November 22, 2006 decision was rendered. Accordingly, we will only address the evidence submitted after that decision was issued. The AAO notes that the petitioner has provided additional evidence on certification.

In response to the NOID and the notice of certification, the petitioner submitted two additional statements dated February 10, 2007 and April 20, 2007. In the February 10, 2007 statement, the petitioner provided a few additional details regarding her courtship and wedding, indicating that B-V- had always wanted to marry a Cambodian woman, that B-V-'s mother was not a good woman, that B-V-'s friend, Thet, acted as a witness at the wedding and B-V- knew Thet from the army as they served together. The petitioner also repeated her earlier statements regarding abuse. In the April 20, 2007, the petitioner implicitly indicated that she had told several Cambodians about her problems and some of those individuals had suggested she see an attorney. The petitioner's statements provide only general additional information regarding her courtship and subsequent marriage to B-V- and not the necessary probative details sufficient to establish that she entered the marriage in good faith. The petitioner's additional statements do not demonstrate her intent in entering the marriage. Similarly, the vague information provided in the petitioner's statements in response to the NOID regarding the alleged abuse is insufficient to establish that she was subjected to the requisite battery or extreme cruelty.

The petitioner also submitted a January 6, 2007 report of the results of a polygraph examination administered to her through the use of a Cambodian interpreter on January 4, 2007. The AAO notes that the report of the petitioner's polygraph examination finds that no deception is indicated; however, in this matter the polygraph results are not found to be probative. The AAO finds that the scope of the polygraph questions was limited and the questions have been passed through an interpreter. The examiner has not revealed the methodologies of the polygraph testing but rather submitted a cursory summary of the results. The examiner has not explained or clarified how the use of an interpreter would impact the results. The AAO also finds the value of a polygraph questionable for the same reasons that have led the federal courts to find them inadmissible. In federal court proceedings, evidence of the results of a polygraph test is inadmissible and may not be "introduced into evidence to establish the truth of the statements made during the examination." *United States v. Bowen*, 857 F.2d 1337, 1341 (9th Cir. 1988); see also *United States v. Frogge*, 476 F.2d 969 (5th Cir. 1973), cert. denied, 414 U.S. 849 (1974). The AAO recognizes that in immigration proceedings documentary evidence need not comport with the strict judicial rules of evidence but as in deportation proceedings, "such evidence need only be probative and its use fundamentally fair, so as not to deprive an alien of due process of law." *Matter of Velasquez*, 19 I&N Dec. 377 (BIA 1986); see also *Matter of D*, 20 I&N Dec. 827, 831 (BIA 1994). In this matter, the polygraph report has not been sufficiently explained, detailed, and vetted to establish that the questions and the methodology used would result in an accurate portrayal of the truth as it relates to the reasons for the petitioner's entry into her marriage and to the abuse of the kind that requires a determination of battery or extreme cruelty as statutorily defined. The results of the petitioner's polygraph do not overcome the director's grounds for denial of the petition.

The AAO has also reviewed the four additional affidavits from [REDACTED] and [REDACTED] provided by the petitioner in response to the notice of certification. In an affidavit notarized April 16, 2007, [REDACTED] indicates she knew the petitioner was upset because of the situation with her husband and that she told the petitioner to go to the Buddhist Temple to get help in August 2004. In copies certified May 4, 2007, [REDACTED] and [REDACTED] state that they met the petitioner in December 2004 and October 2004 respectively, that the petitioner briefly mentioned the troubles with her husband, and with the help of the Flower Mound Temple Committee Board they invited the petitioner to stay at the temple until she was able to

seek peace and find the necessary help. In an April 23, 2007 affidavit [REDACTED] states that she has known the petitioner since July 2004, that she and the petitioner contacted each other by phone and that the petitioner told her "stories of her upset life," that the petitioner would cry, that the petitioner felt lonely because she had no family, husband or job, and that the affiant told the petitioner to go to the Khmer Temple Community to get help. Upon review of the additional statements submitted in response to the notice of certification, the information contained in the statements is insufficient to overcome the ground of denial discussed in the NOID. The AAO concurs with the director in this regard. The affiants do not provide additional chronological, substantive, or detailed descriptions of the petitioner's courtship and marriage and the abuser's alleged abuse and its effects on the petitioner.

The AAO acknowledges that the petitioner first received a social security number on August 22, 2005. While this explains the petitioner's inability to provide some documentary evidence and the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf also fail to support a finding that she entered into her marriage in good faith and suffered the abuse claimed. The petitioner in response to the NOID and the notice of certification provides only general information to establish that she entered into her marriage in good faith and does not further provide details of the claimed abuse. Similarly, the affidavits submitted are general and do not provide the pertinent details necessary to establish eligibility for this benefit. 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 and that she has established the requisite abuse as required by section 204(a)(1)(A)(iii)(I)(bb) 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 April 6, 2007 decision is affirmed. The petition is denied.