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

**PUBLIC COPY**

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FILE: [REDACTED]  
EAC 06 106 50554

Office: VERMONT SERVICE CENTER

Date: DEC 12 2008

IN RE: [REDACTED]

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)

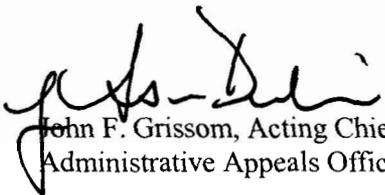
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under 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 on the basis of his determination that the petitioner had failed to establish: (1) that she had resided with her husband; (2) that her husband subjected her to battery or extreme cruelty; (3) that she is a person of good moral character; and (4) that she entered into marriage with her husband in good faith.

The petitioner submitted a timely appeal on February 23, 2007.

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, 8 U.S.C. § 1154(a)(1)(J) 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
- (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. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

- (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 guidelines for a self-petition filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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.

\* \* \*

- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.
- (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 criminal 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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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.

\* \* \*

- (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 of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Canada who, according to the Form I-360, last entered the United States as a nonimmigrant visitor on July 1, 2005. She married E-J,<sup>1</sup> a United States citizen, on June 3, 2005 in New York. E-J- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on August 8, 2005. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date. The petitioner did not appear for a scheduled interview, and the Forms I-130 and I-485 were subsequently denied on March 22, 2006.

The petitioner filed the instant Form I-360 on February 27, 2006. On June 16, 2006, the director issued a request for additional evidence, and requested additional evidence to clarify whether the petitioner and the applicant were still married; whether the petitioner had resided with her husband; whether the petitioner had been subjected to battery and/or extreme cruelty by her husband; whether the petitioner is a person of good moral character; and whether the petitioner had married her husband in good faith. The petitioner responded on August 16, 2006, and submitted additional evidence. The director issued a notice of intent to deny (NOID) the petition on September 27, 2006, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish that the petitioner had resided with her husband; that the petitioner had been subjected to battery and/or extreme cruelty by her husband; that the petitioner is a person of good moral character; and that the petitioner had married her husband in good faith. The petitioner responded the NOID on November 21, 2006, and submitted additional evidence. After considering the evidence of record, including the evidence submitted by the petitioner in response to the NOID, the director denied the petition on January 23, 2007.

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

The petitioner submits a letter from Investors Savings Bank in support of her appeal. As will be discussed below, the AAO finds that the petitioner has failed to overcome the grounds of the director's denial.

### **Joint Residence**

The petitioner claims that she resided with her husband until January 2006. The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- The petitioner's statements in her November 7, 2006 affidavit and on the Form I-290B;
- The November 7, 2006 affidavit from the applicant's mother, in which she states that the petitioner and E-J- resided together at [REDACTED] East Orange, NH 07017 until January 2006;
- The Form I-360, at page 3, section B, where the petitioner claims that she lived with her husband between June 2005 and January 13, 2006;
- The Form G-325A, Biographic Information, submitted on August 8, 2005, on which the petitioner claimed that she had been residing at [REDACTED]; East Orange, NJ 07017, from July 2005 until August 5, 2005, the date the form was signed;
- The petitioner's New Jersey Identification Card, issued on December 28, 2005, which lists the petitioner's address as [REDACTED]; East Orange, NJ 07017;
- Discharge Instructions for the petitioner from the Newark Beth Israel Medical of the Saint Barnabas Health Care System, dated July 23, 2005, which lists the petitioner's address as [REDACTED]; East Orange, NJ;
- The couple's marriage certificate, which indicates that both the petitioner and her husband were residing at the same address at the time of the marriage;
- A February 1, 2006 incident report from the Delray Beach, Florida Police Department, on which the petitioner's husband's address is listed as [REDACTED]; East Orange, NJ 07017;
- A petition for injunction for protection against domestic violence, filed by the petitioner to the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida, on February 6, 2006, which lists the petitioner's husband's address as [REDACTED] East Orange, NJ 07017; and
- A February 3, 2007 letter from Investor's Savings Bank, which states that the petitioner and her husband maintained a joint checking account at that institution from December 20, 2005 until April 28, 2006, and that the address of said joint account was [REDACTED] East Orange, NJ 07017.

The AAO finds the evidence of record sufficient to establish that the petitioner maintained a joint residence with her husband. Although there is no single piece of evidence naming both the petitioner and her husband (beyond immigration filings), there are several documents that individually list the petitioner and her husband as living at the claimed joint address during the claimed time they resided together. The AAO finds that this evidence, in its totality, establishes that

the petitioner and E-J- in fact resided together. The petitioner has established, by a preponderance of the evidence, that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. That portion of the director's decision finding otherwise is withdrawn.

### **Battery or Extreme Cruelty**

The petitioner makes no direct claim of battery or extreme cruelty. Rather, the petitioner submits the following documents from the Delray Beach Police Department and the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida:

- A February 1, 2006 incident report from the Delray Beach Police Department;
- A February 6, 2006 Temporary Injunction for Protection Against Domestic Violence from the Circuit Court of the Fifteenth Judicial Circuit, Palm Beach County, Florida prohibiting the petitioner's husband from committing domestic violence against the petitioner, from contacting the petitioner, and from damaging or removing furnishings or fixtures from the couple's previous shared premises. The document states that, since the injunction was issued without prior notice to the petitioner's husband, both the petitioner and the husband were to appear and testify at a hearing on the matter on February 16, 2006, at which time the court would consider whether to issue a Final Judgment of Injunction for Protection Against Domestic Violence; and
- A February 16, 2006 order extending the temporary injunction through March 2, 2006, and rescheduling the hearing on the matter for March 2, 2006.

According to the Delray Beach Police Department Incident Report, the petitioner reported that she had become afraid of her husband and moved from New Jersey to Delray Beach, Florida in order to live with an aunt. The petitioner told the officer that E-J- had become verbally and mentally abusive, that he slapped her, and that, after moving to Florida, he called and told the petitioner's aunt to send the petitioner back to New Jersey, or he would have friends do it for him. The petitioner also reported that her husband had threatened to use voodoo against the petitioner and her aunt.

The petitioner's motion for injunction stated that E-J- called her aunt, with whom the petitioner was living, and threatened to kill both of them. The petitioner stated that E-J- told her he could use voodoo to hurt her, and that he would find her anywhere and kill her. The petitioner also stated that her husband did not want her to go to school, talk to her family, have any friends, or work, and that, if she did not obey him, he would cancel her immigration status. The petitioner also claimed that she had two miscarriages due to the stress of the marriage.

In his September 27, 2006 notice of intent to deny the petition, the director requested additional evidence to establish that the petitioner had been subjected to battery or extreme cruelty by her husband. The director first requested the following:

Please submit a complete copy of the final findings of the court regarding your request for a protection order and the hearing on March 2, 2006 and any subsequent hearings.

The director also requested documentary evidence to establish that the petitioner had been subjected to battery and/or extreme cruelty, such as reports and affidavits from police officers, judges, court officials, medical personnel, counselors, social workers or other social agency personnel, or school officials; evidence that she had sought refuge in a shelter for the abused; photographs of injuries and affidavits from witnesses; and a statement from the petitioner describing, in her own words, the alleged abuse.

The director also noted that, if the petitioner's claim was based on mental/emotional abuse (as opposed to battery), the standard to meet is extreme cruelty. The director requested the following:

Further evidence or testimony is needed in order to promote a finding of extreme cruelty. Such testimony might involve an explanation of the type of abuse suffered and the after-effects of the abuse. . . .

The director then advised the petitioner that her statement should address issues such as verbal abuse, to include the types of words and names used, tone of voice, whether there was a need for appeasement, etc.; any feelings of social isolation; whether her husband was possessive, and her feelings regarding such possessiveness; and quality of life issues. The director noted that it is important for CIS to have an understanding of such factors in order to determine whether the abuse qualifies as extreme cruelty.

The petitioner did not address any of these issues in her response to the NOID. In denying the petition on this ground, the director stated the following in his January 23, 2007 denial:

In the intent to deny, you were asked to submit a complete copy of the final findings of the court regarding your request for a protection order and the hearing on March 2, 2006 and any subsequent hearings. Your response on November 21, 2006 did not contain any of the requested documentation, nor did it contain an explanation for not submitting these documents. The temporary restraining order, issued ex-parte, in which you claimed [E-J] made threatening telephone calls, is of insufficient weight by itself to establish that you were the victim of abuse committed by your spouse.

The petitioner does not address the issue on appeal. Accordingly, she has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. The petitioner has failed to comply with the director's express instruction to submit the final findings of the court regarding her request on March 2, 2006, and has failed to comply with the director's express instruction to draft a statement discussing the battery and/or extreme cruelty inflicted upon her by her husband. The petitioner has failed to establish that her husband subjected her to battery or extreme cruelty during their 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) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks 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 (in this case, during the period beginning in February 2003 and ending in February 2006). The petitioner submitted no affidavit regarding her good moral character and no police clearances or state-issued criminal background checks, despite having been placed on notice via the June 16, 2006 request for additional evidence, the September 27, 2006 NOID, and the January 23, 2007 denial that such evidence was required. Nor has she submitted an explanation as to why such evidence is unobtainable. 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

### **Good Faith Entry into Marriage**

The petitioner provides no probative testimony regarding how she met her husband or their courtship. She submits four undated pictures of the couple's wedding day and two other undated pictures of the two of them together, and states the following in her November 7, 2006 affidavit:

[O]ne thing I know is that I married my spouse in good faith. I left my job along with my life in Canada just so I could be with him.

The petitioner also submits a copy of a health insurance card in her husband's name and a letter indicating the couple had a joint checking account. Finding the petitioner's documentation deficient, the director stated the following in his January 23, 2007 denial:

The I-360 also requires that the self-petitioning spouse establish that he or she entered into the qualifying relationship to the citizen or lawful permanent resident in good faith. No evidence was submitted to satisfy this requirement, therefore you were asked to submit documentation to establish that you had a good faith marriage with [E-J-]. In response, you submitted Discharge Instructions from Saint Barnabas Health Care Systems which indicates [the petitioner] had same day surgery and was discharged on July 23, 2005. This office noted that it appeared you have had a medical procedure known as a "D & C" for unstated reasons and therefore the document did not establish a good faith marriage. You were asked to please obtain medical records to establish you were pregnant, and that [E-J-] was involved as either your spouse or the named father. You were also asked to submit any other evidence you believed would establish a good faith marriage. . . .

[None of the documents submitted to that point] establishes joint residency or a good faith marriage. The photographs submitted are undated and establish a one day ceremony, not an on-going relationship or good faith marriage.

As noted previously, on appeal the petitioner submits a February 3, 2007 letter from Investor's Savings Bank, which states that the petitioner and her husband maintained a joint checking account at that institution from December 20, 2005 until April 28, 2006, and states that "I hope this statement will show you that my husband and I were married in good faith."

The AAO finds the petitioner's statement deficient. The AAO agrees with the director's assessment that the photographs are undated and establish a single-day event, not a shared life together. Nor does the letter submitted on appeal from Investor's Savings Bank establish a good faith marriage. The joint checking account referenced in that letter was established on December 20, 2005 and, according to the Form I-360, the petitioner departed the couple's shared residence on January 13, 2006. That the couple shared a joint checking account for three weeks before separating does not establish that she entered into the marriage in good faith. Without further corroborating evidence, such as affidavits from friends or family, or any of the other items enumerated by the director in his request for additional evidence or NOID, the evidence submitted by the petitioner is insufficient. Accordingly, the petitioner has not demonstrated that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has failed to establish that her husband subjected her to battery or extreme cruelty; that she is a person of good moral character; and that she entered into marriage with her husband in good faith. She is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.