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U.S. Citizenship  
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Services

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*BA*

FILE: [REDACTED]  
EAC 06 195 51235

Office: VERMONT SERVICE CENTER

Date: **FEB 01 2008**

IN RE: Petitioner: [REDACTED]

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

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*  
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 appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition because the petitioner did not establish that she had a qualifying spousal relationship with a lawful permanent resident of the United States, that she married her husband in good faith, resided with him and that her husband subjected her or her minor child to battery or extreme cruelty during their marriage.

On appeal, counsel submits a brief and additional evidence.

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered by or was the subject of extreme cruelty perpetrated by the alien’s spouse. In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II), 8 U.S.C. § 1154(a)(1)(B)(ii)(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].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 . . . lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.

\* \* \*

(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 under section 204(a)(1)(B)(ii) 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser.

(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.

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(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 facts and procedural history. The petitioner is a native and citizen of Guyana who entered the United States on June 28, 2000 as a nonimmigrant visitor (B-1). On October 21, 2002, the petitioner married S-H-<sup>1</sup>, who was a lawful permanent resident of the United States at that time. The petitioner filed this Form I-360 on June 14, 2006. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite qualifying relationship, good-faith entry into the marriage, joint residence and battery or extreme cruelty. The petitioner, through counsel, requested additional time to respond to the RFE. On April 30, 2007, the director issued a Notice of Intent to Deny (NOID) the petition on the grounds cited in the RFE and granted the petitioner additional time to respond. The petitioner, through counsel, timely responded to the NOID with further evidence. The director denied the petition on July 2, 2007 citing the petitioner's failure to establish a qualifying spousal relationship with a U.S. lawful permanent resident, her good-faith entry into the marriage, her residence with her husband and his battery or extreme cruelty.

A further review of Citizenship and Immigration Services (CIS) records shows that the petitioner's husband was a U.S. lawful permanent resident at the time this petition was filed. We also find that the petitioner has established the requisite battery or extreme cruelty. Accordingly, these two portions of the director's decision are withdrawn. We further determine that the director improperly relied upon information provided by the petitioner in her Form I-687, Application for Temporary Resident Status, in finding the petitioner's claim of residing with her husband to be incredible. Nonetheless, the evidence submitted with the instant petition fails to establish that the petitioner resided with her husband. Counsel's claims and the evidence submitted on appeal also fail to establish that the petitioner entered into marriage with her husband in good faith. Accordingly, we concur with the director's determination that the petitioner did not establish these two eligibility criteria.

#### *Qualifying Relationship*

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

CIS records show that the petitioner's husband obtained lawful permanent residency in the United States on May 31, 2001, over five years before this petition was filed.<sup>2</sup> Accordingly, the petitioner was married to a U.S. lawful permanent resident at the time her petition was filed, as required by section 204(a)(1)(B)(ii)(II)(aa) of the Act. The portion of the director's decision to the contrary is hereby withdrawn.

*Battery or Extreme Cruelty*

The record contains the following, relevant evidence of battery or extreme cruelty:

- The petitioner's affidavit notarized on February 20, 2007;
- Affidavit of the petitioner's son, [REDACTED], notarized on May 5, 2007;
- Jersey City Medical Center Emergency Service Record of the petitioner's treatment on December 24, 2002 for a laceration of her upper lip; and
- A photograph of the petitioner with a visible scar on her swollen upper lip.

In her affidavit, the petitioner describes an incident on December 24, 2002 when her husband returned home intoxicated and repeatedly called her derogatory names in front of their relatives. When the petitioner told her husband that she would leave with her son, the petitioner reports that her husband punched her twice in the face and that the rings on his fingers cut her face. The petitioner recalls feeling her blood running from her mouth as she pleaded with her husband to stop. The petitioner states that her daughter-in-law pulled her husband away and took her to the hospital. The petitioner says that when the doctor asked her how she cut her lip, she said she fell, but the doctor did not believe her and had a female police officer speak with her. The petitioner explains that she did not tell the doctor or the police officer that her husband had punched her because she did not want him to get in trouble and that she used her sister's address on the hospital forms because she did not want the police to go to their home.

The petitioner describes in detail how she was anesthetized and her wound was sutured. The petitioner further states that when she returned home, she spent the rest of the night and following day locked in her daughter-in-law's room to hide from her husband. When relatives visited during the holidays, the petitioner told them she had fallen down the stairs and cut her lip. Although some relatives may have suspected that her husband had hit her, the petitioner explains that they would not get involved in the former couple's private affairs. The petitioner states that after this incident, her husband frequently threatened to throw her out of their apartment and would abuse her verbally and physically when he was intoxicated until she moved out of their home on May 5, 2003.

The petitioner's son describes the December 24, 2002 incident in probative detail consistent with the petitioner's account. The medical records are dated December 24, 2002 and confirm that the petitioner was treated for a laceration of her upper lip. The photograph shows a scar on the

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<sup>2</sup> CIS records also show that the petitioner's husband was naturalized on July 13, 2006.

petitioner's upper lip and the back of the photograph contains the handwritten date of December 25, 2002 and the imprinted date of January 4, 2003 from the photographic processor.

In his decision, the director addressed none of the relevant evidence, which demonstrates that the petitioner's husband subjected her to battery during their marriage. Accordingly, the petitioner has met the requirement at section 204(a)(1)(B)(ii)(I)(bb) of the Act and the portion of the director's decision to the contrary is withdrawn.

*Residence*

In determining that the petitioner had not demonstrated her residence with her husband, the director relied on information provided on her prior Form I-687. As the information contained in such applications is subject to special confidentiality provisions, the director's reliance on the petitioner's Form I-687 was improper. See section 245A(c)(5) of the Act, 8 U.S.C. § 1255a(c)(5) (prohibiting the use of information furnished by the applicant on a legalization application for any purpose other than adjudicating the application).

Nonetheless, the pertinent evidence submitted with the instant petition fails to establish that the petitioner resided with her husband. The petitioner submitted the following, relevant materials:

- The petitioner's affidavit notarized on February 20, 2007 and her January 25, 2007 handwritten statement;
- Affidavit of the petitioner's son, [REDACTED] notarized on May 5, 2007;
- 2002 Form 1099 Interest Income Statement, jointly addressed to the petitioner and her husband at [REDACTED] in Jersey City;
- Uncertified federal income tax return transcripts showing that the petitioner and her husband jointly filed 2003 and 2004 returns and listing their address as [REDACTED];
- A blank savings account withdrawal slip and a voided check listing the petitioner's name and address at [REDACTED];
- Bank statement dated July 31, 2002 addressed to the petitioner's husband at [REDACTED];
- Overdraft bank notice dated March 21, 2003 jointly addressed to the petitioner and her husband at [REDACTED];
- Marriage license receipt dated October 15, 2002 made out to the petitioner's husband and listing his address as [REDACTED];
- Jersey City Medical Center Emergency Service Record of the petitioner's treatment on December 24, 2002 listing the petitioner's address as [REDACTED] in Jersey City;
- Credit card charge slips for wedding rings dated November 15 and December 15, 2002 and January 15, 2003 listing the petitioner's address as [REDACTED] in Jersey City;
- Jersey City Online Tax Inquiry printouts showing that the residence at [REDACTED] belongs to [REDACTED], that the residence at [REDACTED] Jersey City belongs to [REDACTED] and the residence at [REDACTED] Jersey City belongs to [REDACTED].

- Letter dated May 20, 2003 from Fleet Bank addressed to the petitioner at [REDACTED] and informing her that her address had been changed to [REDACTED] in Jersey City; and
- Comcast service order dated February 22 of an unspecified year and listing the petitioner's address as [REDACTED] in Jersey City.

On the Form I-360, the petitioner stated that she lived with her husband from October 20, 2002 until May 2003 and that their last, joint residence was at [REDACTED] in Jersey City, New Jersey. In her affidavit, the petitioner confirms that she moved in to her husband's apartment at [REDACTED] after their marriage, but she states that they used her sister-in-law's address at [REDACTED] as their mailing address because they had problems receiving their mail at their own apartment. The petitioner does not further describe the former couple's allegedly joint residence, apart from the December 24, 2002 incident. The petitioner's son describes that incident, which occurred during his visit with his "mother at her shared apartment with her husband, my step father, at [REDACTED],]" not [REDACTED] which the petitioner states was the residence she shared with her husband. On appeal, counsel attributes the discrepancy in the petitioner's son's statement of the former couple's address as a typographical error, but the petitioner herself does not acknowledge or explain the discrepancy.

None of the above-listed documents are jointly addressed to the petitioner and her husband at the [REDACTED] residence that the petitioner states they shared from October 20, 2002 until May 5, 2003. In addition, the documents list four different addresses for the petitioner during her marriage, none of which is the residence she claimed to share with her husband.

In her January 25, 2007 statement, the petitioner explains that most of her belongings had to be left behind when she departed from her husband's home. The petitioner does not, however, describe any documents contained in those belongings that would have established her residence with her husband and she does not explain why further evidence of their shared residence is not available from third parties.

On appeal, counsel admits that his search of the Jersey City Online Tax Inquiry found that the petitioner's stated marital residence at [REDACTED] does not exist, although [REDACTED] is a valid address. When counsel conveyed this information to the petitioner, he states "This is when she corrected herself and stated that in fact, she lived in [REDACTED], not [REDACTED]." Counsel further states that the petitioner confirmed that [REDACTED] who is identified as the owner of [REDACTED] on the submitted Jersey City Online Tax Inquiry printout, was the former couple's landlord. Counsel indicated that the petitioner was attempting to obtain an affidavit from [REDACTED], but no such affidavit has been submitted. While the Comcast service order lists the [REDACTED] residence as the petitioner's address, the order's date is incomplete. On appeal, counsel notes that the Comcast order states that the installation was completed on February 22 on a Saturday and that he has confirmed that February

22, 2003 was a Saturday, hence, the document was dated during the petitioner's marriage. Regardless of the actual date of the order, the document contains no indication that the petitioner shared the residence with her husband. Finally, counsel explains that the petitioner's erroneous recollection of her former marital address is understandable given her illiteracy. Yet counsel does not explain how the petitioner was able to write her affidavit and statement if she is indeed illiterate.

On appeal, the petitioner does not submit her own statement attesting to any of the preceding explanations made by counsel. The unsupported assertions of counsel do not constitute evidence and cannot satisfy the petitioner's burden of proof. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The relevant evidence contains four documents jointly addressed to the petitioner and her husband at [REDACTED]. Yet the petitioner states that this address is the residence of her sister-in-law, which she and her husband used only as a mailing address. The petitioner submitted no documentation or detailed, probative testimony regarding the former couple's shared residence and the record contains numerous, unresolved discrepancies regarding the actual address of their allegedly shared residence. Accordingly, the petitioner has not established by a preponderance of the evidence that she resided with her husband, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act.

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

The record contains the following evidence relevant to the petitioner's allegedly good-faith entry into marriage with her husband:

- The petitioner's affidavit notarized on February 20, 2007 and her January 25, 2007 handwritten statement;
- 2002 Form 1099, Interest Income Statement jointly addressed to the petitioner and her husband at [REDACTED] in Jersey City;
- Uncertified federal income tax return transcripts showing that the petitioner and her husband jointly filed 2003 and 2004 returns and listing their address as [REDACTED] and [REDACTED];
- An overdraft bank notice dated March 21, 2003 jointly addressed to the petitioner and her husband at [REDACTED].

In her affidavit, the petitioner states that her sister-in-law introduced the petitioner to her husband and that they became friends and dated for three months before her husband proposed marriage. The petitioner states that after their wedding, they ate dinner at a restaurant with her husband's siblings and they had a larger party the following weekend at her sister-in-law's home. The petitioner does not further describe the former couple's courtship, her feelings for her husband at the time, their wedding or any of their shared experiences, apart from the abuse.

The federal income tax return transcripts are uncertified and unaccompanied by any evidence that they were issued by the Internal Revenue Service. Regardless, the 2004 return is dated after the petitioner reports separating from her husband and both returns list the [REDACTED] where the petitioner attests the former couple never resided. The Form 1099 and overdraft notice are also jointly addressed to the former couple at [REDACTED] and do not show any usage of either account by both the petitioner and her husband prior to or during their marriage. While the petitioner explains, in her January 25, 2007 statement, that most of her belongings were left behind when she departed from her husband's apartment, she does not describe any of those belongings nor state that other verification of the former couple's relationship was unobtainable from third parties.

On appeal, counsel asserts that the petitioner married her husband in good faith, but provides no substantive discussion of this issue. In sum, the relevant documentation and testimony fail to establish by a preponderance of the evidence that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

The petitioner has not established that she resided with her husband and entered into their marriage in good faith. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(B)(ii) of the Act and her petition must be denied.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.