

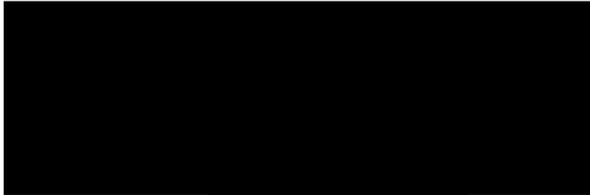
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B9



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JAN 30 2008**
EAC 05 109 53488

IN RE: Petitioner: [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:
[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.

Maura Deadrick
f~ 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 December 8, 2005, for failure to establish the requisite joint residence and entry into the marriage in good faith. In our July 21, 2006 decision on appeal, we concurred with the director's determinations and further found that the petitioner had not established her good moral character. 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 October 3, 2006, which informed the petitioner, through counsel, that she had failed to establish that she entered into her marriage in good faith, that she resided with her husband and that she was a person of good moral character. The petitioner responded with additional evidence, which the director found sufficient to establish the requisite joint residence and good moral character, but not the petitioner's entry into the marriage in good faith. Accordingly, the director denied the petition on March 9, 2007 on this latter ground and certified his decision to the AAO for review.

The relevant evidence submitted below was fully addressed in our prior decision, incorporated here by reference. In response to the NOID, the petitioner submitted her affidavit (notarized on November 28, 2006) and her letter dated October 25, 2006. In her affidavit, the petitioner asserts that the "intense emotion" exhibited by her husband in his "foul messages" (the transcripts of which were submitted below) indicate that theirs was a "real relationship with intense emotions." The petitioner reiterates that

she did not have joint documentation with her husband because she did not have a social security number or employment authorization during their marriage. In her letter, she explains that she had to leave their home suddenly and without the few letters and pictures that she had of herself and her husband. In our prior decision, we acknowledged the petitioner's explanation for her lack of joint documentation, but noted that the petitioner did not submit further testimonial or other evidence of her good-faith entry into the marriage. In her affidavit, the petitioner states, "Numerous affidavits have been submitted by third parties indicating that I . . . entered the marriage in good faith." The petitioner's statement is disingenuous. Below, the petitioner submitted only two affidavits from a single individual in support of her claim. Those affidavits were addressed in our prior decision and we do not repeat the discussion here. We concur with the director's determination that the petitioner has failed to demonstrate by a preponderance of the evidence 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.

On certification, counsel submits letters from three of the petitioner's acquaintances, an undated letter from the petitioner and an undated photograph of the petitioner and her husband in which both of their faces are partially obscured. All of this evidence relates to past events and the petitioner's marriage, yet neither counsel nor the petitioner explains why these documents were not submitted below. In the March 15, 2005 RFE, the director specifically requested further evidence of the petitioner's good faith in marrying her husband and stated that she could submit statements from herself or others with direct knowledge of the former couple's relationship. In the June 17, 2005 RFE, the director again requested further evidence of the petitioner's good-faith entry into the relationship and reiterated that the petitioner could submit affidavits of individuals who could provide specific, relevant information. As previously noted, we also cited the petitioner's failure to provide further testimonial evidence in our prior decision on appeal. Finally, in the October 3, 2006 NOID, the director again requested further evidence that the petitioner married her husband in good faith. In sum, the petitioner was afforded four opportunities to provide relevant evidence over the course of 19 months.

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). The petitioner has provided no explanation and documentation of why the evidence submitted on certification was not available for submission below. Accordingly, the AAO need not and will not consider the evidence submitted for the first time on certification. If the petitioner wishes the evidence to be considered, she may submit it with a new self-petition. *See Matter of Obaigbena*, 19 I&N Dec. at 537.

Upon review, we concur with the director's determination. Based on the record before the director at the time of his March 9, 2007 decision, the petitioner has not demonstrated that she entered into marriage with her husband in good faith. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 decision of March 9, 2007 is affirmed. The petition is denied.