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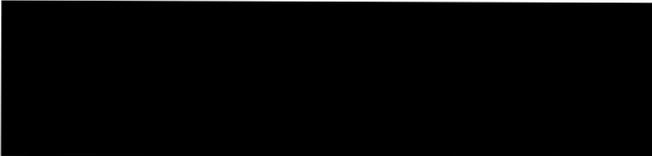
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
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Office: VERMONT SERVICE CENTER

Date: JUL 29 2008

IN RE: Petitioner: [Redacted]

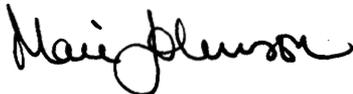
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


2 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)(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 because the petitioner did not establish that she was battered or subjected to extreme cruelty by her United States citizen spouse.

The petitioner submits a timely appeal.

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 C.F.R. § 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 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 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 under section 204(a)(1)(A)(iii) 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 file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner

(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 in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Barbados who indicates on the Form I-360 that she entered the United States on September 5, 1996. The petitioner submits a marriage certificate from Dekalb County, Georgia which indicates that she married C-L- on April 4, 2001. The petitioner filed the instant Form I-360 on February 1, 2006. On April 10, 2006, the director issued a Request for Evidence (RFE) of the requisite qualifying relationship, residence, battery or extreme cruelty, good moral character, and good faith marriage. The petitioner responded to the RFE on June 14, 2006 and requested additional time to respond to the RFE. The petitioner responded with additional evidence on August 24, 2006. On October 2, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite qualifying relationship, residence, battery or extreme cruelty, good moral character, and good faith marriage. The petitioner responded to the NOID on November 22, 2006. The director denied the petition on March 21, 2007, finding that the petitioner had overcome all of the grounds noted in the NOID except the claimed battery or extreme cruelty.

On appeal, the petitioner argues that the evidence submitted establishes her eligibility. As will be discussed below, we concur with the determination of the director and find issues beyond the decision of the director that preclude approval of the petition.

Battery or Extreme Cruelty

At the time of filing, the petitioner submitted no testimonial or documentary evidence to support a claim of battery or extreme cruelty. In response to the director's RFE, the petitioner submitted a personal statement, two statements from friends, and a letter from a counseling center. In her personal statement, the petitioner claims that after their marriage C-L- began drinking excessively, gave his friends "all of his time and attention," and came home at "inappropriate times of the day." The petitioner describes a party at a friend's home on July 4th when C-L- "got drunk [and] started being nasty" and accused her of flirting with another man. The petitioner describes a second incident when she and C-L- had a dinner party and C-L- got angry, broke a dessert dish and blamed it on the petitioner. The petitioner claims that she told her friends that evening that C-L- once attempted to punch her in the face and threatened to call immigration. Finally, the petitioner states that on one occasion C-L- threw a cup at her and pushed her into a wall, and refers to unspecified occasions where C-L- pushed her into furniture.

██████████ a friend of the petitioner, indicates that she was a witness at the July 4th party referred to in the petitioner's statement and similarly describes C-L- as "drinking a lot" and "saying some nasty things" to the petitioner. However, ██████████ also asserts that C-L- "started to push

[the petitioner] around.” The petitioner makes no such accusation regarding any physical abuse at that party.

██████████ a friend of the petitioner, describes being a witness to “the unpleasant mental abuse” that C-L- subjected the petitioner to at the dinner party. ██████████ states that their dinner “came to a sudden end when [C-L-] got up and stomp [sic] away [from] the table and started breaking dishes up.” ██████████ claims that a few days after the dinner party, the petitioner told her the “nasty things” C-L- would say to the petitioner and indicated that C-L- hit the petitioner. However, contrary to Ms. ██████████ statement, the petitioner’s statement referred to only a single incident where C-L- “attempted” to punch her in the face. The petitioner never claims to have been hit on multiple occasions as described by ██████████.

The letter from ██████████, a clinician at COPE Counseling Center, states that the petitioner has attended 10 counseling sessions and is continuing treatment for mental health disorders. The letter does not refer to C-L- or to any alleged battery or extreme cruelty perpetrated against the petitioner.

In response to the NOID, the petitioner submitted three additional statements from friends and a family member. The petitioner’s friend, ██████████ states that he hoped that the petitioner’s marriage could “survive C-L-’s mental control,” but does not elaborate on this statement or provide details regarding the “mental control.” We also note that he makes no claim regarding any alleged physical abuse. Similarly, the petitioner’s mother, ██████████, and the petitioner’s friend, ██████████ generally describe seeing C-L- get “a bit angry” and claim the petitioner stated “she wasn’t that happy in her marriage,” but provide no probative details regarding battery or extreme cruelty.

In his decision, the director found that the evidence lacked sufficient detail to establish the claimed abuse and further noted discrepancies between the petitioner’s statements and the statements submitted on her behalf. For instance, the director noted discrepancies between the petitioner’s claim that she told ██████████ about the alleged abuse on the night of the dinner party while Ms. ██████████ indicated that the conversation took place at a later date and between ██████████ assertion that she witnessed physical abuse perpetrated against the petitioner at the 4th of July party and the petitioner’s statement that contained no such allegation. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On appeal, the petitioner submits no further documentary or testimonial evidence of the alleged abuse. As it relates to the discrepancies noted by the director, the petitioner states:

The events that I tried to describe aren’t something that I like to remember. The statements from [friends] describe the abuse from their point of view, I describe what I went through from my point of view.

We are not persuaded by the petitioner's explanation. Clearly, each statement is based upon the individual writer's own perspective. Therefore, we do not expect the descriptions contained in the statements to be identical. However, we would expect that material facts would be similar. In this instance, the discrepancies contained in the statements relate to material facts regarding the claimed abuse. Specifically, [REDACTED] claims that during the 4th of July party she witnessed the petitioner being "pushed around," while the petitioner's description of this event contains no such allegation. Similarly, [REDACTED] describes the petitioner relating multiple incidents of being "hit," while the petitioner herself identifies only a single instance where C-L- attempted to hit her. Further, while the petitioner claims that she told [REDACTED] of the alleged abuse on the night of the dinner party, Ms. [REDACTED] states that she was not told of the abuse until [REDACTED] "drop[ped] everything and flew back to see her three days later."

In addition to the fact that they are inconsistent, the petitioner's statements and those submitted on her behalf do not contain sufficient probative information to establish that the petitioner was battered or subjected to extreme cruelty. In her own statement, the petitioner vaguely refers to one instance when C-L- threw a cup at her and pushed her, and other unspecified occasions when C-L- pushed her into furniture. Neither [REDACTED] nor [REDACTED] elaborate on their references to the petitioner being "push[ed] around" and hit by C-L- several "times." As it relates to the claimed extreme cruelty, the petitioner and her witnesses only generally refer to the "nasty things" C-L- would say to the petitioner.

As discussed above, the claims regarding C-L-'s non-physical actions do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution and do not demonstrate that his behavior was accompanied by any coercive actions or threats of harm that were aimed at ensuring dominance or control over the petitioner. Further, the record contains unresolved discrepancies regarding the alleged physical abuse. Accordingly, the weight of the relevant evidence does not satisfy the petitioner's standard of proof. We, therefore, concur with the finding of the director that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Eligibility for Immediate Relative Classification

As evidence of her legal marriage to C-L-, the petitioner submitted a copy of a marriage license that contained a certification in which [REDACTED] a pastor, indicated that he performed the petitioner's and C-L-'s marriage ceremony. The certificate, however, does not indicate that it was filed and recorded with the probate court after the ceremony was performed. Rather, the portion of the certificate reserved for recordation remains blank. Without further evidence that the marriage was recorded with the appropriate authority in Dekalb County, Georgia, the certificate submitted by the petitioner is not sufficient to demonstrate that a legal marriage took place between the petitioner and C-L-. Therefore, the petitioner has failed to establish that she had a qualifying relationship as the spouse

of a United States citizen and that she is eligible for classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa), (bb).

Residence

On her Form I-360, the petitioner indicated that she resided with C-L- from April 2001 until December 2003 and that she and C-L- last resided together at [REDACTED] in Stonemountain, Georgia. The petitioner, however, submitted no documentary evidence to demonstrate her residence with C-L- at the listed address. Although the record contains a single pay statement for C-L- from September 2002 which lists his address at [REDACTED] the record contains no evidence which indicates that the petitioner also resided there. The petitioner's personal statement does not discuss their residence, describe any of their shared possessions, or provide any further probative details regarding their residence during their marriage such as whether the residence was leased or owned, whether she moved into C-L-'s previous residence with him or whether they found a new residence together. Similarly, although the letters submitted on the petitioner's behalf refer to shared occasions spent with the petitioner and C-L-, they do not offer specific details such as the C-L-'s and the petitioner's address or the dates of their residence. Although the petitioner submits a letter from her purported former neighbor, [REDACTED] claims to have lived next door to the couple "since 1999" and refers to their separation in 2004. These dates conflict with those provided by the petitioner, who indicated that she resided with C-L- from 2001 to 2003. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, at 591-92.

Accordingly, we find that the petitioner has failed to establish that she resided with her spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) 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. As the Form I-360 was filed on February 1, 2006, the three-year period prior to filing dates back to February 1, 2003. The record of proceeding reflects that during this three-year period, the petitioner lived in Georgia and New Jersey.

The petitioner submitted no affidavit regarding her good moral character and no police clearance or state-issued criminal background check from Georgia and New Jersey at the time of filing. The director specifically notified the petitioner of the regulatory requirements in both the RFE and NOID. In addition, the director noted that if the petitioner obtained a clearance based upon name only (rather than fingerprints), she must obtain a clearance based upon all names used. In response to the director's

RFE the petitioner submitted a letter from the police department from the township of Bloomfield, New Jersey, which indicates that a check of the name “June Lovell” revealed no “process or warrant.” The petitioner did not submit an affidavit regarding her good moral character and submitted no clearance from Georgia. Although no further evidence regarding the petitioner’s good moral character was submitted in response to the NOID, the director found that the petitioner had overcome this ground of ineligibility. Upon review, we do not agree. As noted above, the petitioner has failed to submit a personal statement which discussed her good moral character and a clearance from the state of Georgia. Moreover, although the petitioner did submit a clearance from the local police department in New Jersey, the clearance was obtained based upon only one of the three names the record reflects the petitioner has used. Accordingly, we find the petitioner has failed to establish find 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 Marriage

At the time of filing, the petitioner submitted photocopies of nine photographs of what appears to be her and C-L-’s wedding. The petitioner submitted no testimonial evidence, such as a discussion of how she met C-L-, their courtship, her feelings for C-L- and intent in marrying him, or any other information to demonstrate that she entered into her marriage in good faith. In response to the director’s RFE, the petitioner submitted additional photographs of two unspecified occasions, a personal statement, and statements from two friends. In response to the director’s NOID, the petitioner submitted a letter from her mother and two friends.

As discussed above, the record contains scant documentary evidence to support a finding that the petitioner entered into her marriage in good faith. The petitioner submits photographs from her wedding day and two other unspecified occasions. The petitioner provides no discussion and no further photographic documentation of her more than two-year relationship. Further, the record contains no documentary evidence of shared assets and liabilities, such as joint bank accounts, credit cards, taxes, life, car, or health insurance, or any other evidence which demonstrates the petitioner’s intent to share her life with C-L-.

Although the lack of documentary evidence is not necessarily disqualifying, the petitioner also fails to submit sufficient testimonial evidence of her good faith marriage. In her personal statement the petitioner claims that she met C-L- through a friend, at C-L-’s aunt’s birthday party. The petitioner explains that as she and C-L- resided in different states, they spoke to each other frequently on the phone and flew to see each other “once or even twice a month.” The petitioner generally states that she and C-L- spent Christmas and the “New Year” together, that C-L- proposed to her in February, and that they got married in April. The petitioner states that C-L- “took care of the bills” and that they jointly “took on the responsibility of grocery shopping.” The petitioner offers no further details of their courtship, her reasons for marrying C-L- or any other details of their married life other than as it relates to the claimed abuse.

The statements submitted on the petitioner’s behalf provide no further probative details of her good

faith marriage. For instance, [REDACTED] states only that she knows the petitioner's marriage is "real because [she] stood up for her at the wedding as her matron of honor" and generally states that the petitioner and C-L- would visit [REDACTED] and her husband at each other's homes. However, other than as it relates to the claimed abuse, [REDACTED] provides no description of the petitioner's interactions with her spouse or a description of their relationship to establish that the petitioner entered into her marriage in good faith. The remaining letters contain the same general descriptions of sharing dinners or visiting the petitioner and C-L-, but offer no probative details of their relationship prior to the marriage or the petitioner's feelings for her spouse as evidence of the petitioner's intent to share a life with C-L-.

Accordingly, 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.