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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC 06 120 50053

Office: VERMONT SERVICE CENTER

Date: JUN 16 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.

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 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 lawful permanent resident of the United States.

The director denied the petition finding that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during her marriage.

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

(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.

\* \* \*

(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.

\* \* \*

(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.

\* \* \*

(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 Trinidad who entered the United States on March 31, 1994 as a nonimmigrant visitor (B-2). On March 23, 1997, the petitioner married K-J,<sup>1</sup> a United States citizen, in New York. On October 17, 1997, K-J filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 and the Form I-485 remain adjudicated. The petitioner filed a Form I-360 on July 29, 2003, claiming eligibility as an abused spouse of a United States citizen. The petition was denied on March 22, 2005.

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

The petitioner filed the instant Form I-360 on March 15, 2006. On June 22, 2006, the director issued a request for, *inter alia*, further evidence to establish that the petitioner was battered or subjected to extreme cruelty by her spouse during their marriage. The petitioner responded to the director's request on August 21, 2006. On October 20, 2006, the director issued a Notice of Intent to Deny (NOID) the petition that notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish her claim of abuse. The petitioner, through counsel, timely responded to the director's NOID on December 13, 2006. After considering the evidence in the record, including the evidence submitted in response to the request for evidence (RFE) and NOID, the director denied the petition on February 27, 2007 noting inconsistencies in the record and finding that the petitioner failed to demonstrate that she was battered or subjected to extreme cruelty during her marriage.

On appeal, counsel argues that the petitioner has established her eligibility, that she resolved the noted discrepancies in her responses to the RFE and NOID and that the director failed to consider critical elements of the report submitted by the petitioner's doctor. As will be discussed, we concur with the findings of the director that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse.

#### *Battery or Extreme Cruelty*

In her initial statement, dated January 13, 2005, the petitioner claimed that K-J- drank too much which caused him to lose his temper and to scream, yell and curse at the petitioner. The petitioner further claimed that K-J- would call her names and could not keep a job, although she stated that K-J gave her approximately \$200 a week for expenses. The petitioner indicated that K-J- also began to use drugs and would disappear for weeks at a time. The petitioner described one occasion where K-J- told her that she had to support him financially because he was a citizen and she could be sent back to Trinidad. Additionally, the petitioner described an instance where she alleges that K-J- was intoxicated during their joint interview with Citizenship and Immigration Services (CIS). Finally, the petitioner generally described occasions where she claimed K-J- "would try to force" her to have sexual intercourse. However, the petitioner also indicated that she was either able to refuse him or gave in because she "loved him so much." The petitioner did not indicate that she was threatened or coerced into having sexual relations with her spouse or that she was ever physically injured by her spouse during sex. Rather, her statement indicates that she decided when and if she would engage in sexual relations.

The petitioner's psychological report, prepared by [REDACTED], reiterated the petitioner's claims regarding K-J-'s drug and alcohol abuse and that he "was often out of the home [and] did not work consistently." Although the petitioner's statement only generally referenced instances where her K-J- "would try to force" her to have sexual intercourse, her psychological report states:

[The petitioner] reports that she suffered sexual abuse and was repeatedly raped and on several occasions would wake up in the middle of the night and [K-J-] would be on top of her body holding her down and forcing her to have sexual intercourse. [The petitioner] says that he also forced her to remain motionless while he performed cunnilingu [sic] on her

hurting and bruising her genitals. She says that he would also insist on sexual intercourse when she was having her menses and felt constantly hypervigilant about when she would be attacked. She says that this occurred when he was inebriated and did not care about the physical and emotional harm that he caused her.

The report also generally indicated that the petitioner suffered mental cruelty due to "isolation, taunting, degradation, demeaning actions, and teasing." However, the report offered no specific examples to establish any of the claimed mental cruelty. The report stated that the petitioner and her children "could not move around freely in their own home" because they felt "intimidated by his drug use and hostile presence." The report, however, does not describe specific actions or behavior on the part of K-J- that were "aggressive or hostile" as indicated in the report. The report further stated that K-J- controlled the petitioner's social interactions by opening her mail, monitoring her phone calls, screening who she could see and speak to, and following her. Again, however, the report does not describe any specific incident in detail. Moreover, as the petitioner and the report both indicate that the petitioner's spouse would disappear "for weeks at a time," it is unclear how the petitioner maintained and exerted control over the petitioner's social interactions. Although the report also refers to K-J-'s alleged "sabotage" of the petitioner's immigration case, [REDACTED] does not state that K-J- ever threatened the petitioner or otherwise used her immigration status against her. Instead, the report indicates that the petitioner refrained from calling the police regarding the alleged abuse because she feared she would jeopardize her own case and cause K-J- to be arrested. Although the report indicates that K-J- tried to convince the petitioner that she was worthless and that her case would fail, the report contains no description of K-J-'s use of the petitioner's immigration status to control her. While the report describes the incident where K-J- was intoxicated at the interview with CIS, there is no indication that this behavior was aimed at manipulating the petitioner or as a means to control her. Rather, his behavior appears consistent with the petitioner's claim regarding K-J-'s abuse of drugs and alcohol. The report also indicates that the petitioner was financially abused because K-J- refused to work and used their savings while the petitioner had to pay the rent and other household necessities. The report does not mention, as did the petitioner, that for nearly their entire marriage, K-J- gave the petitioner \$200 per week, or \$800 per month. Finally, as it relates to their separation, the report states that K-J- "essentially left their marriage because he was sleeping several days a week away from home and one day permanently left . . . ." In contrast, the petitioner stated that "[o]ne night in 2002, [K-J-] came home, drunk as usual, and tried to force me to have sex with him. I refused and we both fell asleep. The next morning he got up and left."

In addition to her own statement and the psychological report, the petitioner submitted a letter from [REDACTED], Senior Case Manager of Safe Horizon, dated October 29, 2004, who indicated that the petitioner sought counseling "to address her issues of domestic violence." [REDACTED] stated that the petitioner reported her spouse's drug and alcohol abuse and claimed being the victim of financial abuse due to her spouse's taking money from their savings account. [REDACTED] further stated that the petitioner reported being abandoned by her spouse and being verbally and emotionally abused. [REDACTED] did not provide specific examples of the claimed verbal or emotional abuse.

The petitioner also submitted letters from her friends, [REDACTED] and [REDACTED]. These letters, however, contain general statements with no probative details to support a claim of battery or extreme

cruelty. For instance, [REDACTED] claims that K-J- was verbally abusive and had erratic behavior, while Ms. [REDACTED] claimed that there were “serious domestic issues which sometimes ended up in many verbal abuses.”

In response to the director’s RFE which identified inconsistencies between the petitioner’s statement, the psychological report, and the statements from the petitioner’s friends, the petitioner explained that the reason her friends’ statements differed from her own statement and from [REDACTED]’s report was because she did not feel comfortable telling her friends and family the full extent of the abuse she suffered. The petitioner stated:

. . . [REDACTED] made me feel comfortable enough to confide in him completely. I attribute this to his skill as a caring doctor, and to the fact that I believed that what I told him would only be relayed to my attorneys and to the USCIS.

Although the explanation provided by the petitioner clarifies that her friends’ may not have been aware of the extent of the alleged abuse, her statement does not explain the discrepancies between her personal statement and [REDACTED]’s report.

In response to the director’s NOID, the petitioner provided a statement in which she attempts to clarify the inconsistencies noted between [REDACTED]’s statement and [REDACTED]’s report. Again, however, the petitioner fails to address the discrepancies highlighted in the NOID regarding her own statement and Dr. [REDACTED]’s report.

On appeal, counsel continues to mischaracterize the director’s concerns as only being related to the discrepancies between [REDACTED]’s report and the petitioner’s friends’ statements and [REDACTED]’s letter. Counsel fails to recognize and address the director’s valid concerns regarding the noted discrepancies between the petitioner’s own statement and [REDACTED]’s report. Accordingly, we concur with the director’s finding, based upon unresolved discrepancies in the record, that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse. Despite the director’s specific discussion in both the RFE and the NOID regarding the inconsistencies between the petitioner’s statement and [REDACTED]’s report, the petitioner failed to provide any explanation for the discrepancies or further elaboration on her claims.

As discussed above, the record contains significant, unresolved discrepancies and inconsistencies regarding the alleged 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 or her children were 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.

Beyond the decision of the director, we find additionally find the petitioner failed to establish that she entered into her marriage in good faith. As documentary evidence of her good faith marriage, the petitioner submitted evidence of the joint tax returns filed during their marriage, a joint bank account, utility bills and copies of photographs. The information related to the petitioner’s bank account demonstrates that the petitioner and K-J- opened the account together in March 1998. The petitioner, however, submitted evidence of only 10-months of transactions from March 1998 to January 1999 with no evidence of the joint use of the account, such as copies

of cancelled checks or other evidence to establish who made the deposits or withdrawals. Further, two of the three documents related to shared utilities are dated *after* the petitioner claims to have ceased residing with her spouse. Specifically, the Verizon bill is dated July/August 2002 and the Keyspan bill is dated October 23, 2002. As the petitioner indicated on the Form I-360 that she and her spouse ceased residing together in March 2002, bills dated more than five months after their separation carry no weight in establishing the petitioner's good faith marriage. Although the petitioner also submitted copies of photographs, the photographs are of little probative value in establishing the petitioner's claim of a good faith marriage. The petitioner fails to describe the photographs, the date, time and importance of the photographed events, and to provide any other information about the photographs to establish their relevance to her claim of a good faith marriage. Despite a claimed relationship of five years, the petitioner provides no further documentary evidence of joint assets and liabilities. Although the lack of documentary evidence of a good faith marriage is not automatically disqualifying, the testimonial evidence submitted by the petitioner on her own behalf is also lacking as well as inconsistent.

In her statement, dated January 13, 2005, submitted at the time of filing, the petitioner stated that she met K-J- in 1996 while she was on her way to get her hair braided. She further stated that they passed each other on the street, that they said hello to each other, talked, and exchanged phone numbers. Despite indicating that they dated for approximately one year, the petitioner provided no further details regarding their courtship or relationship prior to their marriage. More significantly, in contrast to the petitioner's statement regarding how she met her spouse, the petitioner's psychological report indicates that the petitioner met her spouse "through mutual friends" and that the petitioner's friend told the petitioner that K-J- was interested in meeting the petitioner. The discrepant statements regarding how the petitioner met her spouse casts doubt on the veracity of her claim of a good faith marriage. In her own statement, the petitioner does not indicate that her friend was present at the time that she met K-J- on the street or that the friend was in any way involved in their meeting. Rather, the petitioner's statement seems to indicate that the meeting was by chance. Conversely, the psychological report does not mention a meeting on the street or the petitioner's intended trip to get her hair braided. 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).

The remaining testimonial evidence submitted on the petitioner's behalf also does not establish the petitioner's claim of a good faith marriage. The statement from [REDACTED] indicates that he has known the petitioner and K-J- "since their marriage," but provides no discussion of their relationship prior to their marriage which establishes the petitioner's intent in marrying her spouse. Further, although [REDACTED] claims that he had the "previllage [sic] being around them," he does not describe any specific occasions or incidents in which he witnessed their relationship other than as it relates to the claimed abuse. The letter from [REDACTED] is similarly lacking. [REDACTED] generally indicates that she knew the petitioner and K-J- before their wedding, that she was at their wedding, and that they visited each other on a regular basis and attended social functions together, but provides no discussion regarding the petitioner's relationship with K-J- before their marriage or any detailed description of any shared occasions.

As discussed above, based upon the lack of documentary and testimonial evidence and the inconsistencies noted between the petitioner's statement and the information contained in her psychological report, the petitioner has failed to demonstrate that she entered into marriage with her spouse in good faith, as required by section

204(a)(1)(A)(iii)(I)(aa) of the Act. Accordingly, we withdraw the finding of the director on this issue.

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 reasons stated above, 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.