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FILE:

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Office: VERMONT SERVICE CENTER

Date:

MAR 05 2008

IN RE:

Petitioner:

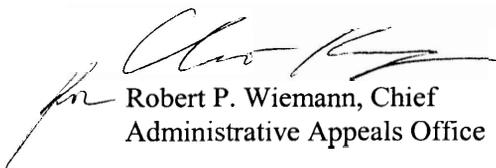
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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.

  
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 United States citizen.

The director denied the petition finding that the petitioner did not establish that she resided with her spouse, that she was battered or subjected to extreme cruelty by her spouse during their marriage, and that she entered into her marriage in good faith.

The petitioner submits a timely appeal with additional evidence.

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 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.

\* \* \*

(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.

\* \* \*

(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.

(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 Guyana who indicates on the Form I-360 that she entered the United States in April 2000 without inspection. On June 16, 2004, the petitioner married E-P-<sup>1</sup>, a U.S. citizen, in New York. The petitioner filed the instant Form I-360 on October 21, 2005. The director issued a Request for Evidence (RFE) on May 30, 2006 of the requisite residence, abuse, and good faith marriage. The petitioner failed to respond to the RFE and the director issued a Notice of Intent to Deny (NOID) on October 5, 2006 which again notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish the claimed residence, abuse and good faith marriage. The petitioner failed to respond to the director's NOID. The director denied the petition on February 16, 2007, finding that the petitioner failed to establish that she resided with her spouse, that she was battered or subjected to extreme cruelty by her spouse during their marriage, and that she entered into her marriage in good faith. The petitioner submitted a timely appeal with additional evidence. As will be discussed, we concur with the determination of director and find the petitioner has failed to establish her eligibility.

#### *Residence*

On the Form I-360, the petitioner indicated that she resided with her spouse from January 5, 2004 until August 4, 2005 and that they last resided together at [REDACTED] in Bronx, New York. However, the petitioner submitted no testimonial or documentary evidence to demonstrate the claimed joint residence either at the time of filing or in response to the director's RFE and NOID. As such, we concur with the director's determination, based upon the record before him, that the petitioner failed to establish that she resided with her spouse.

Although the petitioner submits additional evidence on appeal, in instances 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. *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 appeal was not available for submission below. Accordingly, the AAO need not and will not consider the evidence submitted for the first time on appeal. We note that even if

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

considered, the evidence submitted on appeal does not sufficiently establish the petitioner's claim. The petitioner has provided no testimonial evidence regarding her joint residence and the documentary evidence contains no reference to her spouse. As such, 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.

*Battery or Extreme Cruelty*

The petitioner submitted no testimonial or documentary evidence of the claimed abuse at the time of filing or in response to the director's RFE and NOID. As such, we concur with the director's determination, based upon the record before him, that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse. Although the petitioner submitted additional evidence on appeal, we will not consider that evidence. *See Soriano*, 19 I&N Dec. at 766; *Obaigbena*, 19 I&N Dec. at 537. We again note, however, that even if considered, the evidence submitted on appeal is not sufficient to establish the petitioner's claim of abuse. The general claims made in the petitioner's affidavit that she and her spouse had a verbal disagreement, that her spouse had an attitude, and that he "would find faults" with the petitioner's religion are not sufficient to establish that the petitioner was battered or that she was subjected to extreme cruelty. As such, 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.

*Good Faith Entry into Marriage*

The petitioner submitted no testimonial or documentary evidence of her good faith marriage at the time of filing or in response to the director's RFE and NOID. As such, we concur with the director's determination, based upon the record before him that the petitioner failed to establish that she entered into her marriage in good faith. Although the petitioner submitted additional evidence on appeal, we will not consider that evidence. *See Soriano*, 19 I&N Dec. at 766; *Obaigbena*, 19 I&N Dec. at 537. We again note, however, that even if considered, the evidence submitted on appeal is not sufficient to establish the petitioner's claim of a good faith marriage. In her personal statement, the petitioner offers no testimony regarding how she met her spouse, their courtship or relationship together, other than as it relates to the claimed abuse. Although the petitioner also submitted a copy of her federal income tax returns for 2003 through 2006, the returns all indicate the petitioner's filing status as "single." As such, the petitioner 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 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.