

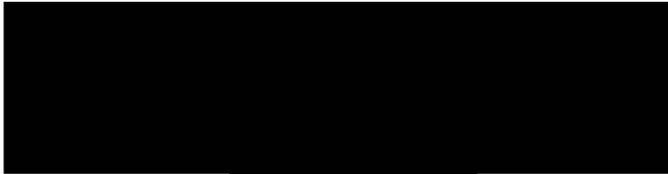
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U.S. Citizenship
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Services

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FILE: [Redacted]
EAC 07 082 50658

Office: VERMONT SERVICE CENTER

Date: MAY 20 2008

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:



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, that she resided with her spouse and that she entered into her marriage in good faith.

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 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 Kenya who entered the United States on September 7, 2003 as a nonimmigrant student (F-1). On October 31, 2005, the petitioner married P-M¹, a United States citizen, in Rhode Island. On January 30, 2006, the petitioner's spouse 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 was denied on August 17, 2006 and the Form I-485 was denied on January 16, 2007. On that date, Citizenship and Immigration Services (CIS) issued a Notice to Appear (NTA) to the petitioner charging her as removable under section 237(a)(1)(C)(i) of the Act for failing to maintain or comply with the conditions of her nonimmigrant status. The petitioner remains in proceedings.

The petitioner filed the instant Form I-360 on January 29, 2007. On March 28, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite residence, abuse, and good faith marriage. The petitioner, through counsel, requested additional time to respond to the March 28, 2007 RFE. On July 18, 2007, 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, *inter alia*, her claim of abuse, residence with her spouse, and her good faith marriage. The petitioner, through counsel, timely responded to the director's NOID. After considering the evidence in the record, including the evidence submitted in response to the NOID, the director denied the petition on August 22, 2007 for failure to demonstrate the requisite residence, battery or extreme cruelty, and good faith marriage.

The petitioner, through counsel, submits a timely appeal with additional evidence and argues that she has established the requisite residence, abuse and good faith marriage. 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, that she resided with her spouse and that she entered into her marriage in good faith. As it relates to the additional evidence submitted on appeal, the petitioner provides no explanation or documentation of why the evidence submitted on appeal was

¹ Name withheld to protect individual's identity.

not available for submission below. As the record demonstrates that the petitioner was properly notified of the deficiencies in the record and afforded numerous opportunities to respond, we will not accept the evidence submitted by the petitioner on appeal. In instances such as this one, where a petitioner has been put on notice of deficiencies 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). Accordingly, the AAO need not and will not consider the evidence submitted for the first time on appeal.

Residence

On the Form I-360, the petitioner indicated that she resided with her spouse from November 2005 until May 2006 and that she last resided with her spouse at [REDACTED] in Malden, Massachusetts. On the Form G-325A, Biographic Information, submitted by the petitioner at the time of filing and signed under penalty of perjury on January 20, 2007, the petitioner indicated that she resided at [REDACTED] Pawtucket, Rhode Island from September 2003 until November 2005 and at [REDACTED] from November 2005 to May 2006. The record contains a second Form G-325A, signed by the petitioner on January 20, 2006, that was submitted in support of her Form I-485 application in which she indicated that she lived at [REDACTED] from September 2003 to November 2005. However, the petitioner's marriage certificate, which was issued on October 31, 2005 (a date in which the petitioner's Forms G-325A listed her address on [REDACTED]), indicates the petitioner's address as [REDACTED], Pawtucket, Rhode Island.

In her February 28, 2007 affidavit, the petitioner provided no testimonial evidence regarding her residence with her spouse. However, in her July 23, 2007 affidavit, submitted in response to the director's discussion of the discrepancies in the record regarding the petitioner's claimed residences, the petitioner stated the following:

[A]fter . . . I got married, we lived in [REDACTED] Pawtucket, RI . . . from October 2005 to December 2005;

That in January 2006 we move to [REDACTED] Malden, MA.

That when we lived [in] Massachusetts we lived together with two roommates[.]

The petitioner provided no explanation for why the [REDACTED] address was not listed on either of the petitioner's Forms G-325A. Although the petitioner's psychological evaluation generally indicates that after their marriage, the petitioner's spouse moved into the petitioner's apartment in Rhode Island, the evaluation does not specify the address or provide any other description of the petitioner's residence to clarify the above-noted discrepancy. Additionally, while she is not required to do so, the petitioner has not offered any statements from the two roommates she claimed that she and

her spouse resided with in Massachusetts and does not explain why their testimony is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

We further note that the Form G-325A, dated January 20, 2006, submitted by the petitioner's spouse in support of the Form I-130 petition he filed on the petitioner's behalf, indicates that the petitioner's spouse resided at [REDACTED] (the address listed on their marriage certificate) until November 2005 when he moved to [REDACTED]. The petitioner's spouse's Form G-325A does not list an address at either [REDACTED] or on [REDACTED].

The petitioner has submitted no documentary evidence of her joint residence with her spouse. While the petitioner submitted a bill from the Massachusetts General Physicians Organization, dated May 2006, that was addressed to the petitioner at [REDACTED], the petitioner has not provided any evidence of her spouse's residence at that address or any of the petitioner's other claimed addresses. Further, although the petitioner has also submitted letters from friends, none of the letters contain any reference to the petitioner's residence with her spouse. More importantly, the petitioner's testimonial evidence contains discrepancies and contradicts other documentary evidence contained in the record. Despite being notified of these discrepancies and afforded the opportunity to explain the discrepancies, including on appeal, the petitioner has offered no further explanation to demonstrate the truth. A few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. See, e.g., *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683, 694 (9th Cir. 2003). However, anytime a petition includes numerous errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after CIS provides an opportunity to do so, those inconsistencies will raise serious concerns about the veracity of the petitioner's assertions. Doubt cast on any aspect of the petitioner's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). In this case, the discrepancies and errors catalogued above cast doubt on the petitioner's credibility.

Based upon the above discussion, we concur with the determination of the director 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.²

² We note that even if considered, the lease submitted with the petitioner's appellate submission further undermines the petitioner's credibility regarding her residence with her spouse. First, the petitioner fails to explain the prior non-availability of the lease despite the fact that the lease is dated nearly 15 months before this petition was filed. The petitioner also continues to fail to explain the discrepancies between the marital address claimed on the Forms I-360 and G-325A and in her personal statement. In addition, the validity of the lease is questioned given that despite its year long agreement, the petitioner's own statement indicates that she only resided there for one month of the year long term.

Battery or Extreme Cruelty

To support her claim of abuse, the petitioner submitted a copy of her Petition for Harassment Restraining Order and accompanying Temporary Restraining Order dated August 14, 2006,³ two affidavits, letters from friends, and a psychological evaluation.

In her February 28, 2007 affidavit, the petitioner claims that during their marriage, her spouse would call her names and was “freaky” sexually. Although the petitioner generally indicated that her spouse threatened to hit her and occasionally did hit her, she does not describe any specific incident in detail or provide any probative details to support her claims. The petitioner also claims that after she left her spouse and moved to Minnesota, he came to her apartment in July 2006, when he forced her to engage in unwanted sexual acts and in August 2006 when he called her names and insulted her, but she told him to leave. The petitioner’s July 23, 2007 affidavit offers no further description of the alleged abuse. Instead, she generally states that she moved to Minnesota because she “could not handle [her spouse’s] abusive behavior.” The petitioner does not mention or further discuss her spouse’s July 2006 visit to her apartment. Regarding the August 2006 visit, the petitioner states that her spouse “stayed the night, however, we stayed in separate rooms.” This account is inconsistent with her prior attestation (in her February 2007 affidavit) that she told her spouse to leave. The petitioner also does not further describe her spouse’s actions during the August 2006 visit and indicates only that “because of what happened that night, [she] felt scared and fearful.”

While the petitioner also submitted several letters from friends, the letters do not provide any probative details regarding the petitioner’s claim of abuse. Rather, while a few of the letters reference the petitioner’s “problems” with her spouse without any further elaboration, the majority of the letters discuss the petitioner’s character and work habits.

The psychological evaluation, prepared by [REDACTED], Ph.D. states, that “within a matter of a few months after the wedding, serious problems began to surface in the couple’s relationship.” Dr. [REDACTED] reports that the petitioner indicated that her spouse “‘loved’ to drink,” that he lied about the suspension of his driver’s license, was verbally and emotionally abusive, shoved and punched the petitioner, and made sexual demands of the petitioner that made her uncomfortable. Although the evaluation references “at least” two times where the petitioner’s spouse “‘forced (her) physically’” to have sex, like the petitioner’s statements, the evaluation does not provide any specific information regarding forced sexual activity. Rather, the evaluation reports that the petitioner’s spouse asked for sex when the petitioner was tired and that although she felt uncomfortable performing acts that her spouse wanted, she “would let him try it out at times.” In the evaluation, [REDACTED] further conveys the petitioner’s statements that her spouse rarely worked and that the petitioner was financially responsible for their household bills. Ultimately, [REDACTED] explains that the petitioner decided to

³ State of Minnesota, County of Hennepin, District Court file number HA 27 CV-06-14959.

leave her spouse and states, "Looking back now [the petitioner] recalls: 'It became that we were arguing all the time, and I couldn't stand it . . . I was just tired of it.'"

The evaluation provides the following description of the petitioner's spouse's July 2006 visit to her home in Minnesota:

"I didn't know he was coming," [the petitioner] says, "But we had an amicable conversation. He asked my why I left, without telling him. I told him I just didn't want to live with him anymore," she recalls. "He started raising his voice and getting argumentative."

[The petitioner] reports that her Minnesota friend wasn't home at the time, and says: "[My spouse] wanted to sleep with me. I did it, but it was like I was saying 'Farewell' – like if I'd treat him nice, maybe he'd leave without making a scene. He spent the night, but the next day I told him to leave. The next day, he was gone," [the petitioner] says, and she has not seen him since.

In addition to the lack of probative information in the testimonial evidence, there are several inconsistencies between the statements contained in the evaluation and those made in the petitioner's own statements. First, contrary to the petitioner's claim in the evaluation that she and her spouse had an amicable conversation but later became argumentative with each other, in her February 28, 2007 affidavit, the petitioner claimed that her spouse called her names and raised his hand as if to hit her. Second, in the evaluation the petitioner indicated that she had sexual relations with her spouse in July 2006 as a kind of "farewell," while in her affidavit she indicated that her spouse forced her into "unwanted sexual acts." Third, although the evaluation indicated that the petitioner claimed that she did not see her spouse again after the July 2006 incident, in both her February 28, 2007 and July 23, 2007 affidavits and her Affidavit and Petition for Harassment Restraining Order, the petitioner describes an incident she claimed occurred in August 2006 where her spouse called her names.

Despite the director's request in his NOID to provide further evidence regarding the outcome of her temporary protective order, such as the findings of the court and whether the order was extended or dismissed, the petitioner failed to submit any further documentary or testimonial evidence regarding the protective order. More significantly, despite the director's specific discussion regarding the inconsistencies in the petitioner's claims, the petitioner failed to provide any personal explanation for the discrepancies in her statements.⁴

⁴ Although, as previously indicated, we have not considered the additional evidence submitted by the petitioner on appeal, we note that if considered, the evidence further detracts from the petitioner's testimony and the evidence submitted on her behalf. In his new letter submitted on appeal, Dr. [REDACTED] now claims to have been present during the July 2006 incident between the petitioner and her spouse in Minnesota and states that he "happened to pass by [the petitioner's] apartment and found them arguing so bitterly." He further claims that he was able to "deescalate" the situation and

As discussed above, the record contains significant, unresolved discrepancies and inconsistencies regarding the alleged abuse. The petitioner also failed to respond to the specific request in the NOID to provide evidence regarding the resolution of the temporary restraining order. 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.

Good Faith Entry into Marriage

As documentary evidence of her good faith marriage, the petitioner submitted eleven photographs with the caption "Wedding of [the petitioner and her spouse]." Despite a claimed relationship of nearly 18 months, the petitioner provides no other photographs of shared events or special occasions either prior to or after their marriage or other documentary evidence of joint assets and liabilities such as shared bank accounts, life, car or health insurance. Although the lack of documentary evidence of a good faith marriage is not automatically disqualifying, the testimonial evidence submitted by the petitioner does not establish her good faith marriage.

In her February 28, 2007 affidavit, the petitioner provided no details regarding her relationship with her spouse other than as it relates to the alleged abuse. In her July 23, 2007 affidavit, the petitioner generally states that she is married but provides no details regarding how she met her spouse, their courtship, her feelings for her spouse or her intent in marrying him. The letters submitted on the petitioner's behalf provide no further probative details regarding the petitioner's good faith marriage.

The petitioner's psychological evaluation indicates that the petitioner met her spouse at a party at a friend's house, that they began dating approximately one month later, and dated for nearly a year before her spouse proposed. The evaluation generally describes two of the petitioner's dates with her spouse and indicates that the petitioner was "still hesitant" and was "'holding back'" her emotions but "agreed to marry" her spouse. Specifically, as it relates to the petitioner's reasons for accepting her spouse's proposal, the evaluation states:

[The petitioner] describes her reaction to [her spouse's] proposal: "I decided I'm not getting any younger, so maybe it's not a bad idea." She admits now: "Maybe I

that both parties became "calm and willing to listen to each other." Finally, he states that when he checked on the petitioner the following morning, she indicated that she was "okay" and that her spouse had returned to Boston. [REDACTED] provides no explanation for his failure to describe this incident in his July 21, 2007 letter submitted below. Additionally, the petitioner provides no explanation for her failure to mention in any of her statements or in her interview with [REDACTED] that [REDACTED] was present and purportedly witnessed the argument with her spouse.

wasn't that deeply in love, I kind of held something back, because of my first relationship.

The evaluation provides no other description of their year-long courtship, the petitioner's feelings or reasons for marrying and offers no details of their life together after their marriage except as it relates to the claimed abuse.

As noted above, the petitioner submitted no relevant, documentary evidence to establish her claim of a good faith marriage. Although not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). Further, the testimonial evidence lacks probative information about the petitioner's relationship with her spouse and shared events and does not discuss assets and liabilities such as their joint finances, utilities, or tax documents. Accordingly, the testimonial evidence does not carry sufficient weight to establish the petitioner's intention to share a life with her spouse. Therefore, we concur with the finding of the director that 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.⁵

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.

⁵ We note that even if the petitioner's relevant appellate submission was considered, the greeting cards, the petitioner's statement, and general statements submitted on her behalf contain no probative details regarding the petitioner's intent to share a life with her spouse and her good faith marriage and would not overcome this finding.