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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE: [Redacted]
EAC 06 109 50208

Office: VERMONT SERVICE CENTER

Date:

DEC 12 2008

IN RE: [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)

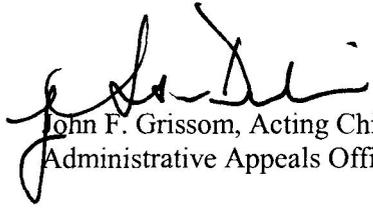
ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The service center director 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 on the basis of his determination that the petitioner had failed to establish: (1) that she had resided with her husband; (2) that her husband subjected her to battery or extreme cruelty; (3) that she is a person of good moral character; and (4) that she entered into marriage with her husband in good faith.

Counsel submitted a timely appeal on February 14, 2007.

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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.
- (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 of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of Vietnam who entered the United States with a K-1 visa on December 1, 2003. She married V-N-¹ a United States citizen, on January 4, 2004 in Philadelphia, Pennsylvania. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on February 4, 2004. The petitioner withdrew the Form I-485 on February 11, 2005.

The petitioner filed the instant Form I-360 on March 2, 2006. On June 8, 2006, the director issued a request for additional evidence, and requested additional evidence to clarify whether the petitioner and the applicant were still married; whether the petitioner had resided with V-N-; whether the petitioner had been subjected to battery and/or extreme cruelty by V-N-; whether the petitioner is a person of good moral character; and whether the petitioner married V-N- in good faith. The petitioner responded on August 4, 2006, and submitted additional evidence. The director issued a notice of intent to deny (NOID) the petition on September 13, 2006, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish that the petitioner had resided with her husband; that the petitioner had been subjected to battery and/or extreme cruelty by her husband; that the petitioner is a person of good moral character; and that the petitioner had married her husband in good faith. However, the petitioner did not respond to the director's NOID. After considering the evidence of record, the director denied the petition on January 17, 2007.

Counsel submits a "Psychological Hardship Evaluation" from M.S.W., Psy.D., a social worker and psychologist, in support of her appeal. As will be discussed below, the AAO finds that the petitioner has failed to overcome the grounds of the director's denial.

¹ Name withheld to protect individual's identity.

Joint Residence

The petitioner claims, alternatively, that she resided with her husband until July 2004 and September 2004. The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- The petitioner's statements in the undated affidavit submitted at the time the petition was filed.
- The petitioner's statements in her August 1, 2006 affidavit.
- The petitioner's February 11, 2005 sworn statement to the CIS Philadelphia District Office.
- August 1, 2006 affidavit, in which he states that he sometimes visited the petitioner and V-N-;
- July 29, 2006 affidavit, in which he states that he visited the petitioner and V-N-;
- The Form G-325A, Biographic Information, submitted on February 4, 2004, on which the petitioner claimed that she had been residing at [REDACTED]; Philadelphia, PA, from January 2003 until January 12, 2004, the date the form was signed;
- The Form I-485, on which the petitioner provides the address of [REDACTED]; Philadelphia, PA 19140;
- A copy of an envelope addressed to the petitioner and her husband at [REDACTED] Philadelphia, PA 19140, postmarked September 15, 2004;
- Copies of statements from the petitioner's and her husband's joint bank account at Freedom Credit Union, which provide the address of [REDACTED]; Philadelphia, PA 19140;
- A copy of the petitioner's income tax return, filed jointly with V-N-, for tax year 2003. which provides the address of [REDACTED] Philadelphia, PA 19140;
- A copy of a residential lease, which states that the petitioner and her husband were to rent an apartment located at [REDACTED] Philadelphia, PA 19140 between January 12, 2003 and January 12, 2006; and
- The Form I-360, at page 3, section B, where the petitioner claims that she lived with her husband between January 2004 and July 2004.

The director found this evidence insufficient to establish joint residency and, in his September 13, 2006 NOID, notified the petitioner of his intent to deny the petition on this ground, and questioned several pieces of the petitioner's evidence. First, the director questioned the credibility of the lease as evidence of joint residency, noting that the lease was signed on January 12, 2003, the petitioner did not enter the United States until December 12, 2003. The director also found fault with the petitioner's statements in her response to the request for additional evidence regarding this discrepancy:

In response you submitted a letter from your landlord [REDACTED] dated July 31, 2006, in which it is claimed that an error was made on the lease and the date should be

January 2004, not January 2003. This office notes that the date of January 12, 2003, is repeated on the least at least five (5) times: in clauses #1, #3, #6, and by the witness and signing parties of the document. Further, in clause #4 it states that the renewal term will be automatically “another three years” which would coincide with the information provided in clause #3 listing [the] starting date as “1/12/03” and the ending date was listed as “1/12/06.” Therefore, the letter from your landlord does not appear to be consistent with the “three year” statement made in the lease. . . .

The AAO notes further that, on the Form G-325A, the petitioner stated that she had lived at the address (the address for which the lease was signed) since January 2003.

The director also noted discrepancies between the petitioner’s three statements to USCIS in his NOID. For example, in her February 11, 2005 sworn statement to the USCIS Philadelphia District Office, the petitioner stated that V-N- left in September 2004, but that since that time he has called twice, and come back to visit twice. However, this contradicted her affidavit submitted at the time the petition was filed on March 2, 2006, in which she stated that V-N- left in July 2004 and that, although she has attempted to find him, they have had no contact. Her August 1, 2006 affidavit contained further discrepancies: the petitioner states that V-N- left her in July 2004 but returned three weeks later, and then left again in September 2004. The director noted further that, in her February 11, 2005 statement, the petitioner stated that V-N- had told her he was going to California to become a monk, but in her August 1, 2006 statement the petitioner claimed she did not know his whereabouts. Further, in her August 1, 2006 affidavit, the petitioner referenced obtaining a marriage certificate on December 22, 2003, which contradicts the marriage certificate itself, which states the two were married on January 4, 2004. 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). Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The AAO notes further that, according to counsel’s August 3, 2006 response to the director’s request for additional evidence, the petitioner’s wedding took place in Vietnam, which is a further inconsistency: the other documentation in the file, including the immigration filings, indicate that the petitioner and V-N- were married in Philadelphia.

As a result of the discrepancies in the record, the director stated the following:

Taken together, the evidence discussed above appears to indicate multiple discrepancies and inconsistencies between your own statements when compared to one another. Consequently . . . this inconsistent reporting brings the reliability of your own statements into question, and diminishes their weight as evidence.

Based upon the above cited inconsistencies and discrepancies, **you are not longer considered a reliable or credible witness**. Therefore, your own statements must be substantiated by independent means. Further, any evidence based solely upon your own statements will also not be considered sufficiently reliable as evidence unless substantiated by independent means [emphasis in original].

The director also requested originals, rather than copies, of the bank statements submitted by the petitioner, as well as an IRS stamped copy of the joint tax return.

Counsel and the petitioner elected not to respond to the director's NOID, and offered no explanation for their failure to do so. Accordingly, the director found that the petitioner had failed to establish joint residency between she and V-N- in his January 17, 2007 denial.

On appeal, although counsel states on the Form I-290B that the director did not properly consider the evidence, she offers no specific examples of mistakes made by the director in his review of the evidence. Counsel fails to address, or submit any evidence to overcome, the findings of the director. She does not submit the evidence specifically requested by the director. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Although counsel does submit a "Psychological Hardship Evaluation" from ██████████ M.S.W., Psy.D., a social worker and psychologist, the AAO notes that ██████████'s findings are based upon the testimony of the petitioner, whose statements were specifically deemed unreliable and lacking in credibility by the director. Counsel and the petitioner have failed to overcome the director's denial of the petition on this ground. Accordingly, the petitioner has not established by a preponderance of the evidence that she resided with V-N-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The petitioner makes no claims that she was the victim of battery at the hands of V-N-. Rather, her claim is based upon the infliction of extreme cruelty. In her first affidavit, submitted at the time the petition was filed on March 2, 2006, the petitioner states that she met V-N- in 2000, in Vietnam. She was vacationing with her family at the same hotel in Hai Phong where V-N- was staying. They exchanged addresses and telephone numbers, remained in touch after his return to the United States, and became engaged in May 2002.

Although the petitioner's account of what happened after she arrived in the United States varies from affidavit to affidavit, it appears that she and V-N- were married in the United States (regardless of whether or not there was also a ceremony in Vietnam). A few months after they were married, V-N- decided he wanted to become a Buddhist monk, and left the marital residence. While the record is unclear as to how much contact the petitioner has had with V-N-, it is clear that there is little hope for reconciliation.

In her affidavits the petitioner describes her feelings of hurt, rejection, sadness, and loneliness. She states that she cannot eat or sleep, and that each day she prays he will return so that they can be a family again. She also describes the economic hardship she has faced in supporting herself alone in the United States.

The director stated the following in his NOID:

Marital tensions and incompatibilities which serve to place severe strains on a marriage, and in fact may be the root of the marriage's disintegration, do not, by themselves, constitute extreme cruelty. **The evidence provided in the present case does not suggest that the marital difficulties claimed by you were beyond those encountered in many marriages.**

VAWA was designed to provide a means of securing legal immigration status to those individuals who had been battered by or were the victims of extreme cruelty at that hands of citizen or lawful permanent resident spouses or parents. **The intent did not encompass the mental anguish generally associated with marital difficulties or abandonment** [emphasis in original].

The director requested additional evidence to establish that V-N- had in fact subjected the petitioner to extreme cruelty. However, as noted previously, counsel and the petitioner elected not to respond to the director's NOID, and offered no explanation for their failure to do so. Accordingly, the director found that the petitioner had failed to establish that she had been subjected to extreme cruelty.

In his evaluation, [redacted] discusses the petitioner's feelings of depression and anxiety, which he describes as being related to the significant losses of unexpected abandonment, while being left to cope with few resources, no language skills, little emotional support, and no real understanding of American culture. However, the AAO notes that [redacted] does not opine that the petitioner was subjected to extreme cruelty by V-N-. Further, the AAO notes that [redacted] opinions are based upon the petitioner's answers to a questionnaire and one two-hour interview with her. His conclusions do not reflect the insight and elaboration commensurate with an established doctor-patient relationship, thereby rendering his findings speculative and diminishing the evaluation's value.

While V-N-'s actions as described in the record may have been unkind and inconsiderate, they 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. The claims made by the petitioner and the letters submitted on her behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that V-N-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. She has failed to overcome the director's concerns regarding the issue of battery and/or extreme

cruelty. The petitioner has failed to establish that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) 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 (in this case, during the period beginning in March 2003 and ending in March 2006). Although the record contains a police clearance from the State of Pennsylvania, the petitioner was specifically instructed by the director's NOID that additional clearances were necessary, as USCIS records show that the petitioner has used a total of three names (all of which were provided in the NOID). The petitioner has not submitted the additional two clearances, and has submitted no explanation for her failure to do so.

The director also requested originals, rather than copies, of the bank statements submitted by the petitioner, as well as an IRS stamped copy of the joint tax return. None of these items are submitted on appeal, nor does counsel submit an explanation for their absence. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Despite having been specifically placed on notice of the director's concerns via his September 13, 2006 NOID, counsel and the petitioner have elected not to submit the requested materials, and have offered no explanation for their failure to do so. Accordingly, the petitioner has failed to establish 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 Entry into Marriage

As discussed previously, the petitioner described how she first met V-N- in her affidavits: she states that they met in 2000, in Vietnam, at a hotel. However, and again, as noted previously, the director called the petitioner's affidavits, as well as her supporting evidence, into question in his September 13, 2006 NOID. Again, counsel and the petitioner did not respond to the NOID, and on appeal have elected to not respond to the director's concerns. They have not offered any explanation of the inconsistencies and discrepancies in the record, nor have they submitted any of the items specifically requested by the director. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Although [REDACTED] evaluation discusses the couple's courtship, the AAO notes again that [REDACTED] findings are based upon the testimony of the petitioner, whose statements were specifically deemed unreliable and lacking in credibility by the director. Counsel and the petitioner have failed to overcome the director's denial of the petition on this ground. Accordingly, the petitioner has not demonstrated that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has failed to establish that she and her husband shared a joint residence; that her husband subjected her to battery or extreme cruelty; that she is a person of good moral character; and that she entered into marriage with her husband in good faith. She is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.