



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: DEC 04 2009
EAC 08 019 50125

IN RE: Petitioner: [Redacted]

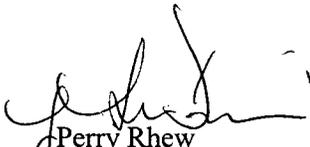
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[Redacted]

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.


Perry Rhew
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 because the petitioner did not establish that she resided with her husband, that her husband subjected her to battery or extreme cruelty during their marriage, and that she entered into marriage with her husband in good faith.

On appeal, counsel submits a brief and additional affidavits.

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 explained 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 explained 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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Jamaica. She married [REDACTED] a United States citizen in New York on October 15, 1996. The petitioner filed the instant Form I-360 on September 19, 2007. On the Form I-360, the petitioner indicated that she resided with [REDACTED] from January 1996 to January 2000. The petitioner indicated further that the last place she resided with [REDACTED] was at an address in Hempstead, New York.

The director issued a Notice of Intent to Deny (NOID) the petition on September 8, 2008. The director notified the petitioner that the record did not establish: that she had resided with [REDACTED] that she had been subjected to extreme cruelty or abuse by [REDACTED] and that she had married N-W-.² The petitioner responded on October 10, 2008 by submitting her affidavit and affidavits of other individuals. After considering the evidence in the record, including the evidence submitted in response to the NOID, the director denied the petition on January 14, 2009, finding that the evidence submitted did not establish that she had resided with [REDACTED]; that she had been subjected to extreme cruelty or abuse by [REDACTED]; and that she had married [REDACTED] in good faith. The AAO concurs with the findings of the director and affirms his decision.

The director found that the petitioner's initial evidence was contradictory as set out in the NOID and that the petitioner's statement and affidavits from friends and family in response to the NOID were also inconsistent and conflicting. The director noted, for example, that the affidavits submitted from friends and family stated that the petitioner and [REDACTED] were in a *bona fide* marriage but did not mention witnessing any abuse. On appeal, counsel asserts: that the evidence submitted is not inconsistent or

¹ Name withheld to protect individual's identity.

² The director's decision shows acknowledgment that the petitioner married [REDACTED] thus the director's indication that the petitioner did not marry [REDACTED] is an inadvertent error when the words "good faith" were not included with this clause. As counsel for the petitioner provided a response that addressed the issue of "good faith," this is a harmless error.

conflicting; that the director erred when finding the evidence submitted not credible; that the director failed to “follow the all credible evidence requirement,” and that the petitioner has been the victim of battery and extreme cruelty. Also on appeal, counsel asserts that Congressional intent under VAWA is to allow a broad, flexible evidentiary standard to make it easier for battered women to prove their cases and that United States Citizenship and Immigration Services (USCIS) guidance provides that a self-petition may only be denied on evidentiary grounds if the evidence that was submitted was not credible or otherwise fails to establish eligibility. Upon review, we acknowledge counsel’s citation to USCIS guidance and concur that evidence submitted must be credible and must establish the petitioner’s eligibility.

The AAO also references section 204(a)(1)(J) of the Act which requires USCIS to “consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of” USCIS. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, “All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(iv). In this matter, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner’s burden of proof. While USCIS must consider all credible evidence relevant to a petitioner’s claims, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner’s burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless. In this matter our review encompasses an assessment of all of the evidence submitted by the petitioner and we find that the petitioner has not submitted consistent statements and affidavits sufficient to establish her eligibility for this benefit.

Joint Residence

In addition to the information on the Form I-360, the record contains the following evidence relevant to the petitioner’s claim that she resided with [REDACTED]

- The petitioner’s three affidavits dated October 11, 2007, October 10, 2008, and February 10, 2009;
- An undated envelope issued by the New York State Department of Taxation and Finance addressed to [REDACTED] which includes the petitioner’s partial name at the Hempstead, New York address;
- A September 5, 1997 letter issued by the [REDACTED] indicating that the petitioner “maintains a joint interest bearing savings account with [REDACTED] under her social security

- number” and indicating that the account had been opened since April 9, 1997 and that the petitioner’s address was listed as an address in Brooklyn, New York;
- An unsigned Internal Revenue Service (IRS) Form 1040X, Amended U.S. Individual Income Tax Return, for 1996 dated April 7, 1997 for the petitioner and [REDACTED] which lists an address in “Canarsie,” New York that has been handwritten in under the typed names of the petitioner and [REDACTED]
 - A petition for paternity against [REDACTED] dated September 9, 1998, listing an address in Brooklyn, New York for [REDACTED]
 - A 1998 IRS Form W-2, Wage and Tax Statement, issued to the petitioner showing an address in [REDACTED] handwritten over an illegible address in [REDACTED] New York;
 - A 1999 IRS Form W-2, issued to the petitioner showing an address in Hempstead, New York;
 - A DIME bank statement for the period of February 14, 2001 to March 13, 2001 issued to the petitioner and [REDACTED] at the [REDACTED]
 - A DIME bank statement for the period of March 14, 2001 to April 15, 2001 issued to the petitioner and [REDACTED] at the Hempstead, New York address;
 - [REDACTED] for the period June 14, 2002 to July 12, 2002 issued to the petitioner and [REDACTED] at the Hempstead, New York address;
 - Printouts from the IRS for the years 2001 to 2005 showing the petitioner’s address in West Palm Beach, Florida;
 - A 2006 IRS Form W-2 issued to the petitioner showing an address in [REDACTED] Florida; and
 - Affidavits from [REDACTED] the petitioner’s “close friend,” from [REDACTED] her cousin, and from [REDACTED]

As noted above, on the Form I-360, the petitioner stated that she resided with her husband from January 1996 to January 2000. In the petitioner’s October 11, 2007 affidavit, the petitioner stated that [REDACTED] moved into her cousin’s house with her when they were married and they resided there for a month. The petitioner stated further that she and [REDACTED] moved between her cousin’s house and [REDACTED] cousin’s house until they found a place in Brooklyn where they stayed for a year and then moved back to her cousin’s house in Long Island, New York. The petitioner noted that at one point, sometime after 1998, she decided to stay with another cousin for a few days and that she left New York in 2002. The petitioner also indicated that eventually [REDACTED] started to call her and he would come to Florida to visit her. The petitioner stated that [REDACTED] wanted to move to Florida but “I discouraged him as much as I could.”

In the petitioner’s October 10, 2008 affidavit in response to the NOID, the petitioner explained that she indicated on the Form I-360 that she resided with [REDACTED] until 2000 because she interpreted the word “resided to mean living with someone for an uninterrupted period of time.” She stated that she moved out of the Hempstead, New York address in 2000 but did not change her address because she hoped that she and [REDACTED] would reconcile. She noted that she moved back and forth from her Jamaica, New

York address to the Hempstead, New York address between 2000 and 2002. The petitioner further noted that eventually she moved back in with [REDACTED] at the [REDACTED] address while she was pregnant with another man's child because [REDACTED] had forgiven her and they had reconciled and decided to raise the baby together. The petitioner stated further that she moved to Florida in July 2002 but that when she moved to Florida, she and [REDACTED] "were still together;" that they "talked frequently on the phone;" that [REDACTED] would visit her and her son often; and that she would visit [REDACTED] in New York, until she ended the relationship in 2006. The petitioner also noted that she and [REDACTED] attended two immigration interviews in New York in 2004 and 2005 because even though they were living apart, "we were still in a marriage." The petitioner explained that the Form 1040X submitted was unsigned because the tax preparer did not require a signature for personal copies and that the 1998 IRS Form W-2 was altered by the tax preparer to reflect her current address at the time. The petitioner explained that she did not have further documentation because [REDACTED] kept all the financial records and [REDACTED] did not allow her to take anything but her clothes when she separated. She noted she came across the Form 1040X by chance in a storage box.

In the petitioner's February 10, 2009 affidavit, the petitioner claims that she and [REDACTED] did reside together and states that when she left New York, [REDACTED] refused to allow her to take any belongings or documentation other than her clothes. The petitioner notes that she wanted her name put on bills and accounts because "they were a married couple" but that [REDACTED] refused.

In the October 9, 2008 affidavit of [REDACTED], in the October 9, 2008 affidavit of [REDACTED] and in the October 9, 2008 affidavit of [REDACTED] each affiant indicated they knew the petitioner and [REDACTED] married and lived together but they do not provide any details regarding the couple's residence(s). In the February 9, 2009 affidavit of [REDACTED] in the March 9, 2009 affidavit of [REDACTED], and in the March 11, 2009 affidavit of [REDACTED] each affiant states that during the time the petitioner and [REDACTED] were separated, the petitioner had a child with another man. The AAO notes that the petitioner's child by someone other than [REDACTED] was born May 17, 2001. The affidavits do not reflect the petitioner's residence(s).

The petitioner provides no detailed statement of the dates and addresses of, or other probative information regarding, her residence with [REDACTED]. The petitioner claims that the couple moved back and forth between various addresses in New York until residing in Hempstead, New York for an indefinite length of time. However, there is no information comprehensively describing the petitioner's residence with [REDACTED] from 1996 to 2000 or from 1996 to 2002. In addition, the petitioner states on the Form I-360 that she began residing with [REDACTED] in January 1996, almost ten months prior to their marriage on October 15, 1996. The petitioner's affidavits do not provide any information regarding the location of her residence with [REDACTED] prior to her marriage and instead indicates that [REDACTED] moved into her cousin's house for a month when they married. The petitioner's inconsistent testimony regarding her first "residence" with [REDACTED] has not been explained. The petitioner's inconsistent testimony that she moved out of the marital home in 2000 or 2002 is not resolved by her explanation that she did not change her address because she hoped that she and [REDACTED] would reconcile. Such an explanation is not consistent with other elements of the case and it does not conform to external facts. The AAO notes that the

affiants testifying on the petitioner's behalf appear under the impression that the petitioner was living apart from [REDACTED] when she engaged in an affair with another man, conflicting with the petitioner's statement in response to the NOID that she moved back and forth between her Jamaica, New York address and the claimed joint residence in Hempstead, New York between 2000 and 2002. The AAO also observes that the petitioner's 2001 IRS Form 1040, with her Florida address, was processed in March 2002 further compromising the petitioner's statements that she moved to Florida in July 2002 as she stated in her affidavit in response to the NOID. The petitioner must provide some probative and consistent evidence indicating where she lived and with whom in order to establish this element of eligibility. In this matter, the petitioner has not provided a consistent account and has not provided any of the necessary detail regarding addresses, types of homes, or even the general lengths of the couple's stay at each location. There is insufficient consistent, probative evidence, based on the petitioner's testimony to determine that she resided with [REDACTED] during the marriage.

The AAO has also considered the undated envelope from the [REDACTED] and Finance, the September 5, 1997 letter issued by the [REDACTED] indicating that the petitioner's address is in Brooklyn, New York, the amended IRS Form 1040X which has yet another city handwritten on the document, a Brooklyn address listed for [REDACTED] in the paternity suit against him, an altered 1998 IRS Form W-2 issued to the petitioner, the 1999 IRS Form W-2 issued to the petitioner at the Hempstead, New York address and the two [REDACTED] bank statement issued for periods of time when the petitioner indicated she was moving back and forth between the claimed joint residence in Hempstead, New York, and the printouts from the IRS for 2001 to 2006 showing the petitioner's address in Florida. The AAO finds that the undated envelope from the [REDACTED] and Finance is not probative in establishing that the petitioner resided with [REDACTED]. This envelope, like the letters from [REDACTED] the three bank statements, and the 1999 IRS Form W-2 show that the petitioner occasionally received mail at the Hempstead address, but are insufficient indicia to establish that the petitioner resided with [REDACTED] at the address. In addition, the petitioner's explanation that she does not have further documentary evidence to support her claim of joint residence: (1) because [REDACTED] kept all the financial records and did not allow her to take anything but her clothes when they separated as stated in the response to the NOID; or (2) because [REDACTED] refused to allow her to take any belongings or documentation other than her clothes when she left New York is inconsistent with the petitioner's claim that she and [REDACTED] tried to reconcile and that she moved back and forth between the two residences throughout the years 2000, 2001, and 2002. That is the petitioner's claim continues to be inconsistent regarding her "separation date" from [REDACTED] and thus, when and under what circumstances [REDACTED] refused to allow her to take anything but her clothes.

The AAO has also reviewed the affidavits of [REDACTED] for any evidence that would assist in confirming the petitioner's actual residences from 1996 to 2002; however, the affiants do not provide any information indicating when or where the petitioner resided with [REDACTED]. Although the affiants claim to have visited the petitioner when she resided with [REDACTED], they do not provide evidentiary detail regarding the location or description of the places the petitioner and [REDACTED] resided together.

Upon review of the evidence submitted, the AAO finds that the petitioner has submitted conflicting statements regarding her residences that have not been resolved by credible explanations, that the petitioner has not provided sufficient detail regarding her residences to allow USCIS to ascertain the truth of the claims asserted, and has not provided any other evidence sufficient to meet her burden of proof regarding her claimed joint residence with N-W-. Accordingly, the petitioner has failed to establish that she resided with N-W-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

At the time of filing, the petitioner submitted a personal affidavit claiming that she met ██████ in May 1995 when her aunt introduced him to her. The petitioner stated that they exchanged phone numbers and began talking on the phone. The petitioner noted that she and ██████ had similar likes and that he made her laugh and that she was impressed with his involvement with his children from his previous marriage. The petitioner stated further that she first met ██████ children on Labor Day weekend in 1995 and ██████ asked her to marry him in the fall of the same year. As noted above, the petitioner stated on the Form I-360 that the couple resided together beginning in January of 1996 but indicated in her October 11, 2007 affidavit that ██████ moved into her cousin's house, apparently where the petitioner was living, when the couple married. The couple married on October 15, 1996.

In addition to the evidence listed above regarding the petitioner's claimed joint residence, the petitioner also provided a beneficiary list for her pension and life insurance benefits prepared October 11, 2007 showing the petitioner's beneficiaries as her two children with a 90 percent share and ██████ with a 10 percent share. The director pointed out in the NOID issued September 8, 2008 that the IRS printouts of the petitioner's tax returns showed the petitioner as "single" in 2000 and that each subsequent tax return in the record showed that she filed as "head of household." The director also noted that ██████ initially filed his 1996 tax return as "head of household" and amended the tax return in 1997 to show that his 1996 tax return should have been filed as "married." The record does not include evidence of the petitioner's 1997, 1998, or 1999 tax filings, although the record includes an altered 1998 IRS Form W-2 issued to the petitioner, as well as a 1999 IRS Form W-2, issued to the petitioner.

In her affidavit in response to the director's NOID, the petitioner explains that she filed as "single" in 2000 on the advice of a tax preparer as she was separated from ██████ and otherwise ██████ could potentially obtain her refund. The petitioner explains that she subsequently filed as "head of household" for similar reasons.

Counsel for the petitioner also submitted affidavits from ██████ the petitioner's "close friend," from ██████ her cousin, and from ██████ in response to the NOID. In Ms. ██████ October 9, 2008 affidavit she averred: "I can attest that the marriage between [the petitioner] and ██████ was genuine and was for love" and "[w]hen they were together, I visited them in their home in New York and socialized with them on numerous occasions." In ██████ October 9, 2008 affidavit, ██████ averred: "in regards to my observation that ██████ and [the

petitioner] lived happily together as husband and wife;" "I have been a close friend of [the petitioner] and [redacted] for over 11 years;" and "[t]o the best of my knowledge, they seem to operate as a very happy couple" and "appeared to be very devoted to one another each time I visited their home." In Ms. [redacted] October 9, 2008 affidavit, she averred that she had known the petitioner and [redacted] for 12 years and that when the petitioner met [redacted] she was very happy and "I can verify that [the petitioner] and [redacted] had a sincere marriage but they also had sincere problems like many married couples."

In the petitioner's affidavit submitted on appeal, she states that she married [redacted] for love and because she wanted to establish a life together with him. In the February 9, 2009 affidavit of [redacted] in the March 9, 2009 affidavit of [redacted] and in the March 11, 2009 affidavit of Marjorie Steele, each affiant states her belief that the petitioner entered into her marriage with [redacted] in good faith and for love.

Although the petitioner provides general information on how she met [redacted] and provides a glimpse of their courtship in her initial affidavit, she provides no further testimony regarding their marriage, joint residence or any of their shared experiences, apart from the alleged abuse, in her subsequent affidavits. The petitioner does not discuss her initial interactions with [redacted] in any probative detail. The record contains scant information regarding the petitioner and [redacted] from 1995, when they allegedly met to 2000 when they separated. The petitioner's inconsistent information regarding when the couple first resided together also undermines the petitioner's testimony regarding her "relationship" with [redacted]. There is insufficient information in the petitioner's affidavits to establish that she entered into the marriage in good faith.

The AAO acknowledges the affidavits submitted from family members and friends. However, the affiants attest only to the fact that the petitioner and [redacted] seemed happy and that the petitioner married [redacted] for love. The affidavits from family and friends do not provide any probative details about the petitioner's relationship with [redacted], such as a description of their interactions with each other, except as it relates to abuse as noted in the affidavits submitted on appeal. Despite stating that they knew the petitioner for 11 or 12 years or in one instance was related to the petitioner, the affiants do not provide information regarding the places the petitioner resided with her husband, do not discuss or otherwise relate what the petitioner did while staying with [redacted] in any probative detail, or otherwise provide detailed testimony regarding the circumstances of the petitioner's allegedly good-faith entry into the marriage. The affiants do not describe particular occasions with any specificity where they observed the *bona fides* of the petitioner's marriage.

The AAO has also reviewed the petitioner's pension and insurance plan and notes that the petitioner has included [redacted] as a beneficiary with a 10 percent share. The record does not include evidence regarding when the petitioner enrolled in the pension and insurance plan or whether the enrollment was before or after one of the many times the couple separated. This document does not assist in establishing that the petitioner entered into the marriage in 1996 in good faith. The AAO further reviewed the bank statements issued for a time period when the couple had "separated." These documents are not accompanied by evidence that [redacted] used the account throughout the marriage,

that the accounts existed throughout the marriage, or that the accounts were used to maintain the household.

A finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage, to determine if this was a marriage of two people intending to share a life together. For immigration purposes, evidence of good faith should demonstrate the emotional ties, commingling of resources, and shared financial responsibilities often associated with a *bona fide* marriage. In this matter, the AAO again observes that the petitioner has not provided consistent evidence regarding her relationship with [REDACTED]. For example, the petitioner acknowledges that she attended an immigration interview in 2004 and 2005 in New York, at a time she was not residing with and was separated from [REDACTED]. The petitioner's willingness to participate in such implicit misrepresentations to USCIS undermines the veracity of the remainder of the petitioner's claims. The AAO has reviewed the petitioner's explanations regarding her "on and off" again relationship with [REDACTED] but does not find the explanations reasonable in light of the scant detail regarding the petitioner's actual courtship and marriage to [REDACTED], as well as her continuous misrepresentations to the IRS each time she filed a tax return with an improper filing status.

As discussed above, the record contains little documentary evidence to support a finding that the petitioner entered into her marriage in good faith. While the AAO acknowledges the petitioner's explanations that she did not have access to documentary evidence, the AAO finds that such explanations do not comport with the petitioner's claims that she and [REDACTED] continued to enjoy a "relationship" much later than the petitioner's separation in 2000 or 2002. Further, while the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on her behalf also fail to support a finding that she entered into this marriage in good faith. The affidavits submitted on her behalf are general and bare of the necessary detail required to establish that the affiants had actual knowledge of the legitimacy of the marriage. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that her husband subjected her to battery or extreme cruelty during their marriage:

- The petitioner's three affidavits dated October 11, 2007, October 10, 2008, and February 10, 2009;
- Affidavits from [REDACTED] the petitioner's "close friend," from [REDACTED] her cousin, from [REDACTED] the father of the petitioner's son born in 2001;
- An undated psychological report prepared by [REDACTED] a licensed clinical psychologist, based on an October 6, 2007 evaluation of the petitioner.

In her October 11, 2007 affidavit appended to the petition, the petitioner stated that “things started getting bad between us on or about 1998 – two years after we were married.” She indicated that [REDACTED] started lying to her and when she would confront him he would call her derogatory names and tell her he would have her deported if she said anything about his behavior. The petitioner also stated that [REDACTED] would force her to have sex, including oral sex, and though she begged him to stop he would not. The petitioner indicated that after the forced sex, she would bathe because she felt so awful, that [REDACTED] would tell her he was sorry, she would forgive him, and then it would happen over and over again. The petitioner noted that [REDACTED] did not hit her but he became menacing and threatening in his looks and body language. The petitioner noted her belief that [REDACTED] had a gambling problem, that he tried to control what she wore to work, and that he controlled all the decision making. The petitioner stated that she was afraid to confront [REDACTED] about anything and only stood up for herself during telephone conversations. The petitioner noted that [REDACTED] was a “picture perfect” guy in front of others but when they were alone he would be mean and menacing. The petitioner noted that once when she went to stay with her cousin for a few days, [REDACTED] followed her and stood behind her when she opened the door to her cousin’s house and it gave her the creeps. The petitioner indicated that she tried to leave [REDACTED] many times but he would always call and get her to come back to him and the cycle would repeat itself.

In the petitioner’s October 10, 2008 affidavit, the petitioner reiterated [REDACTED] menacing behavior, his threats to have her deported, and his sexual assaults. She noted that he had an affair with her friend, that he gambled, that he was possessive, and that he isolated her from her friends and family. The petitioner indicated that she cried all the time, she felt restricted and controlled, unhappy, and shut down. The petitioner stated that when her job was eliminated she applied for a transfer from New York to Florida and that [REDACTED] was opposed to her move but she convinced him the distance would help the marriage by allowing them to reflect on the marriage. The petitioner noted that she used the move as an excuse to get away from [REDACTED]. The petitioner also noted that [REDACTED] did not want to leave New York because of his job and his children but that he eventually wanted to move to Florida but she discouraged him. The petitioner then indicated that when [REDACTED] did visit her in Florida they reconciled but she thought he was trying to control her all the way from New York.

In the petitioner’s February 10, 2009 affidavit, the petitioner acknowledges that the individuals who wrote the affidavits on her behalf did not witness the abuse personally and that [REDACTED] was usually on his best behavior when other people were around. The petitioner states that any time she tried to voice an opinion they would get into a big argument and he would attack her verbally and demand to have sex even though he had hurt and upset her.

In the October 9, 2008 affidavit of [REDACTED] stated that about two years after the petitioner’s marriage she noticed that the petitioner became quiet and introverted but when asked about her situation the petitioner would always indicate she was fine. She noted that later in telephone conversations, the petitioner would cry and tell her that [REDACTED] called her derogatory names. [REDACTED] further noted that after two or three years, the petitioner became more verbal and told her that [REDACTED] would demand sex from her and would call her names during intercourse and would threaten to have her deported. In [REDACTED] February 9, 2009 affidavit, [REDACTED] acknowledges that she

never witnessed [REDACTED] abuse but knew that the petitioner suffered severe emotional and psychological abuse from her husband. [REDACTED] notes that the petitioner became withdrawn, quiet and began isolating herself and that her mannerisms and behavior changed dramatically during her marriage.

The October 9, 2008 affidavit of [REDACTED] does not reference any abuse and notes that over the 11 years she had known the couple, they operated like a happy couple. In a March 9, 2009 affidavit, [REDACTED] states that she did not know that it was permissible to mention the dark side of the petitioner and [REDACTED] marriage in her earlier affidavit. In her second affidavit, [REDACTED] avers that in public the couple appeared happy but as she became closer to the petitioner, the petitioner told her "horrible and disturbing things about the way [REDACTED] treated her behind closed doors." [REDACTED] indicates that there were several occasions when the petitioner called her and told her that [REDACTED] forced her to have sex with him.

In the October 9, 2008 affidavit of [REDACTED] stated that at some point when she visited the couple's home, she noticed that the petitioner did not seem herself and when she persisted in asking the petitioner what was wrong, the petitioner told her that [REDACTED] would force himself on her sexually in a way the petitioner thought was embarrassing. In [REDACTED] March 11, 2009 affidavit she avers that when the petitioner and [REDACTED] first got together, they seemed very happy; "however shortly thereafter she did start to behave differently." [REDACTED] avers further that when she insisted on the petitioner telling her what was going on, the petitioner disclosed that [REDACTED] forced himself upon her sexually when she did not want to have sex and would use foul and demeaning language. [REDACTED] acknowledges that she did not witness [REDACTED] doing anything that the petitioner said, but stated that she believed the petitioner completely.

In the March 9, 2008 affidavit of [REDACTED] indicated that it was clear to him when he met the petitioner that she was not in a happy marriage. [REDACTED] indicated further that the petitioner confided in him and told him of the verbal and mental abuse against her and that she was in fear many times.

The record also includes the psychological report prepared by [REDACTED] a licensed clinical psychologist, based on an evaluation of the petitioner on October 6, 2007. [REDACTED] notes that the evaluation is based on a clinical interview, behavioral observations, and mental status examination. Dr. [REDACTED] noted that the petitioner reported: that she had given [REDACTED] over a \$1,000 in loans during the period they were together; that when the relationship began to sour, [REDACTED] interest in the petitioner's activities became menacing and threatening; that [REDACTED] would listen in on the petitioner's phone conversations; and that when [REDACTED] physically and sexually assaulted the petitioner, he told the petitioner that if she did anything he would have her deported. [REDACTED] also noted that the petitioner did not understand that it was illegal for a man to rape his wife and that the petitioner "spoke of repeated instances in which her husband raped her when she indicated that she was not interested in sexual relations." [REDACTED] further noted that the petitioner disclosed that after being raped by her husband, her vaginal area would be very sore and there was often blood on the bed sheets after being attacked and her thighs would have [REDACTED] handprints from him holding her down. [REDACTED]

indicated that the petitioner developed a sexually transmitted disease from her husband and although [REDACTED] denied being the carrier he took the medication prescribed without question. [REDACTED] also noted that the petitioner indicated that [REDACTED] made her feel like less of a person. [REDACTED] also reveals that the petitioner was alone throughout her labor and delivery of her son born in 2001.

[REDACTED] at [sic] presented with Symptoms of Posttraumatic Stress Disorder, depression and anxiety which were corroborated by objective and projective psychological testing” and that testing “revealed considerable depression and anxiety” and “revealed a person who is in acute distress, desperately trying to cope with severe problems.” [REDACTED] opines: “[the petitioner’s] self image has been largely destroyed during her marriage to [REDACTED].” [REDACTED] does not find the petitioner’s failure to disclose the abuse in her marriage to the immigration officials who interviewed her surprising because the petitioner was visibly ashamed and mortified when discussing the abuse she suffered during her marriage. [REDACTED] provides her professional opinion that the petitioner was subjected to cruel and inhumane treatment by [REDACTED] and that “[REDACTED] reportedly was physically, sexually and emotionally abusive to [the petitioner].” [REDACTED] suggested that the petitioner seek services for victims of domestic violence.

The AAO observes that the petitioner’s account of “abuse” related to [REDACTED] adds information not disclosed in her affidavit. For example, the petitioner does not indicate in her affidavits that [REDACTED] would listen in on her telephone conversations. This is at odds with the petitioner’s willingness to discuss the alleged abuse with her friends and family telephonically. Also, the AAO does not find lending money to one’s husband who allegedly is on a joint bank account, credible and undermines any allegations of financial control by the husband. In addition, the petitioner indicates that after she revealed her pregnancy with another man’s child to her husband, they reconciled and determined to work things out. This information is at odds with her statement to [REDACTED] that she was alone when she delivered her second child. Further, the petitioner does not provide any information regarding a sexually transmitted disease, bloody bed sheets, or any detail regarding specific attacks in her affidavits.

The AAO finds that the detail provided to [REDACTED] regarding the alleged incidents of rape completely lacking in the petitioner’s own testimony. The information included in the petitioner’s affidavits recounting the abuse allegedly suffered by her at the hands of [REDACTED] is general. It does not provide detail regarding specific dates, times, or circumstances, other than generally “when we had a big fight”. The information in the petitioner’s affidavits is insufficient to establish that the petitioner was battered or suffered extreme cruelty by [REDACTED]. The AAO is aware that rape and abuse often occurs behind closed doors; however, the petitioner must provide some evidence other than general statements that she was forced to have sex against her will or to provide oral sex against her will or that her husband’s behavior was menacing or threatening. Upon review of the petitioner’s affidavits, there is little specific information regarding battery or extreme cruelty committed by [REDACTED] on the petitioner. The petitioner has provided general statements that are sufficiently vague as to not lend themselves to evaluations regarding credibility.

The AAO also finds that the petitioner’s statements are not fully supported by the remaining, relevant

evidence. The affidavits submitted on the petitioner's behalf fail to discuss the alleged abuse suffered by the petitioner. The affidavits refer generally to the petitioner's conversations that she was in an unhappy marriage and that the petitioner disclosed to the affiants that she was forced to have sex against her will and that [REDACTED] called her derogatory names. The affiants do not disclose when these conversations took place. In [REDACTED] March 11, 2009 affidavit, for example, she avers that when the petitioner and [REDACTED] first got together, they seemed very happy; "however shortly thereafter she did start to behave differently." According to the petitioner and to [REDACTED] the alleged abuse did not begin to occur until about two years after the couple were married. The AAO does not find [REDACTED] omission of abuse in her first affidavit adequately explained by her subsequent statement that she thought it that it was impermissible to mention the dark side of the petitioner's marriage. Such a statement suggests that [REDACTED] affidavits were tailored to aide the petitioner's obtaining immigration benefits with a lack of regard for the truth. Moreover, the affiants' statements do not comport with the petitioner's indication in her affidavits that [REDACTED] isolated her from friends and family.

Regarding the opinion submitted by [REDACTED] the AAO notes that the opinion is based on one interview of unspecified length with the petitioner, several years after she physically separated from [REDACTED] by a considerable distance. [REDACTED] diagnoses the petitioner with major depressive disorder, recurrent and posttraumatic stress disorder. Although [REDACTED] opines: "[the petitioner's] self image has been largely destroyed during her marriage to [REDACTED] and that the petitioner was subjected to cruel and inhumane treatment by [REDACTED] [REDACTED] does not specifically state that the petitioner's major depressive disorder, recurrent and posttraumatic stress disorder arises from the psychological or physical abuse of [REDACTED]. Moreover, [REDACTED] does not recommend any medical treatment for the petitioner's depression or post traumatic stress disorder, other than to seek services for victims of domestic violence. The AAO will accept that [REDACTED] diagnosis was based, not simply on the petitioner's statements, but also upon her clinical observations of the petitioner's behavior and affect during the evaluation and on her professional training and experience. Nonetheless, while we do not question [REDACTED]'s expertise, as noted above there are significant discrepancies between her evaluation and the petitioner's testimony. In addition, to the discrepancies noted above, [REDACTED] finds that the petitioner "revealed paramount amounts of shame in relation to her failed marriage" and "was visibly ashamed and mortified when discussing the abuse she suffered during her marriage." Although the petitioner discusses the effects of her husband's mistreatment on her self-esteem and mental health, the petitioner never mentions any feelings of shame in her affidavits. In addition, the petitioner fails to provide specific time frames for the alleged abuse to [REDACTED]. The unresolved discrepancies and inconsistencies regarding significant portions of the petitioner's testimony and the corresponding descriptions given to Dr. [REDACTED] as previously discussed, detract from the credibility of the petitioner's description of the alleged abuse.

The petitioner in this matter has provided inconsistent accounts of the alleged abuse. The affidavits provided by friends and family do not indicate that they ever witnessed a particular incident of abuse. The affidavits do not include detailed information regarding specific incidents of abuse. The affidavits

do not provide probative detail establishing that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. Similarly, the evaluation authored by [REDACTED] relies on information provided by the petitioner that is either inconsistent or lacking in detail regarding when specific instances of the alleged abuse occurred. The AAO finds that [REDACTED] evaluation does not provide examples of the causal relationship of specific abuse that is consistently detailed to the petitioner's depression/post traumatic stress disorder.

As discussed above, the evidence contained in the record is insufficient to establish the petitioner's claim of abuse. The petitioner has provided inconsistent information relating to the alleged abuse. The unresolved discrepancies and inconsistencies regarding significant portions of the petitioner's testimony, as previously discussed, detract from the credibility of the petitioner's description of the alleged abuse. The petitioner's failure to describe in probative detail the verbal and physical abuse and the conflicting testimony diminish the petitioner's claim. Further, as the petitioner's account lacks specific and detailed testimonial evidence regarding the alleged abuse perpetrated against her by [REDACTED] the petitioner has not demonstrated that his behavior amounted to extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Accordingly, the petitioner failed to establish that she was battered or subjected to extreme cruelty by [REDACTED] during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The record does not demonstrate that the petitioner entered into marriage with her husband in good faith, that her husband subjected her to battery or extreme cruelty during their marriage and that she resided with her husband. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

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.