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20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529-2090

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U.S. Citizenship  
and Immigration  
Services

[REDACTED]

B9

FILE:

EAC 06 193 51238

Office: VERMONT SERVICE CENTER

Date:

**FEB 02 2009**

IN RE:

Petitioner: [REDACTED]

PETITION: Petition for Immigrant Battered 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.

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, as required by 8 C.F.R. 103.5(a)(1)(i).

  
John F. Grissom, Acting 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 classification pursuant to 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 her United States citizen spouse.

The director denied the petition because the petitioner did not establish that she entered into marriage with her husband in good faith.

The petitioner, through counsel, submitted 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 the Dominican Republic who entered the United States on May 10, 1998 without inspection. On June 9, 2001, the petitioner married A-D-<sup>1</sup>, a U.S. citizen, in Nashua, New Hampshire. The petitioner filed this Form I-360 on June 12, 2006. The director subsequently issued a Request for Evidence (RFE) of the requisite

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

battery or extreme cruelty, good-faith entry into the marriage, and good moral character. The petitioner, through counsel, responded with further documentation. On April 17, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite battery or extreme cruelty, good-faith entry into the marriage, and good moral character. The petitioner, through counsel, responded to the NOID with evidence previously submitted in response to the RFE. The director denied the petition on July 10, 2007 on the ground that the evidence submitted was not sufficient to demonstrate that the petitioner married A-D- in good faith.

On appeal, counsel submits an affidavit from the petitioner. As discussed below, the evidence submitted on appeal fails to overcome the ground for denial.

The record contains the following evidence relevant to the petitioner's claim that she entered into marriage with her husband in good faith:

- A copy of the petitioner's marriage certificate indicating that she married A-D- in Nashua, New Hampshire on June 9, 2001;
- The petitioner's March 27, 2007 and August 10, 2007 affidavits submitted with the instant petition and on appeal;
- A letter from [REDACTED] dated March 1, 2006 stating that the petitioner and A-D- leased an apartment from [REDACTED] and lived together in the apartment;
- A copy of a lease for a period beginning on May 1, 2004 and ending on May 1, 2005 listing the petitioner and A-D- as tenants; and
- Affidavits from [REDACTED] and [REDACTED]

In response to the RFE, the petitioner submitted an affidavit dated March 27, 2007 in which she states that she met A-D- in the "Spring of 2000" and "exchanged telephone numbers and started to build a relationship." The petitioner also states that "after a year of dating[, A-D-] ask[ed] [her] to marry him." On appeal, the petitioner submits an affidavit in which she states that the marriage ceremony was "held at [A-D-'s] mother's house in Nashua, New Hampshire" and that "the wedding was attended by [A-D-'s mother], and two of [the petitioner's friends], [REDACTED] and [REDACTED]." The AAO notes that the record of proceeding contains no statements from any of the wedding guests. Although the petitioner's affidavit mentions meeting A-D-, the affidavit does not contain any discussion regarding how the petitioner met her spouse, their courtship, her feelings for her spouse or reasons for marrying him and offers no details of their life together after their marriage except as it relates to the claimed abuse. Although the petitioner also submitted several affidavits from acquaintances, the majority of the affidavits refer only to the alleged abuse. The affidavits from [REDACTED], [REDACTED], and [REDACTED] contain only general statements regarding the petitioner's relationship with her former spouse, such as stating that each has knowledge that the petitioner and A-D- have been married for a period of time and lived together for a period of time. Most of the affidavits also state that the petitioner and her spouse last lived at [REDACTED]. However, the affidavits provide no probative details regarding the petitioner's relationship with her spouse and interactions with each other.

The petitioner also submitted a letter from her landlord, [REDACTED]. The letter is dated March 1, 2006 and states that the petitioner and her spouse "leased [the] premises located at [REDACTED] [REDACTED]." Mr. [REDACTED] also states that A-D- "lived at the premises and no longer lives at the premises with [the petitioner]." Mr. [REDACTED] does not state when the petitioner and her spouse moved into the apartment, when A-D- moved out, or when the petitioner moved out of the apartment. As documentary evidence, the petitioner

submitted a copy of a lease for the apartment with the term of lease beginning on May 1, 2004 and ending on May 1, 2005. On appeal the petitioner does not provide a date for when she and her spouse moved into the apartment at [REDACTED], but states that they lived “there together for about 2 – 3 years” and that “it was at the end of that period that the conflicts started and we separated.” The record of proceeding only contains the lease mentioned above and the lease makes no provision for a month-to-month tenancy. The petitioner’s March 27, 2007 affidavit states that “in late 2004, [the petitioner] finally had the courage to move away from [A-D].” [REDACTED]’s statement implies the opposite - that A-D- moved out of the apartment and left the petitioner. 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. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Although the lack of documentary evidence of a good faith marriage is not automatically disqualifying, as discussed above, the testimonial evidence submitted by the petitioner does not establish that she entered into the marriage in good faith. Accordingly, the petitioner 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.

The record does not demonstrate that the petitioner entered into marriage with her husband in good faith. 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 reason. 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.