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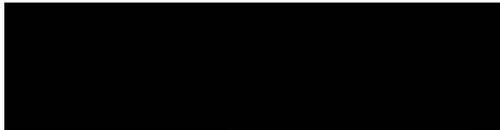
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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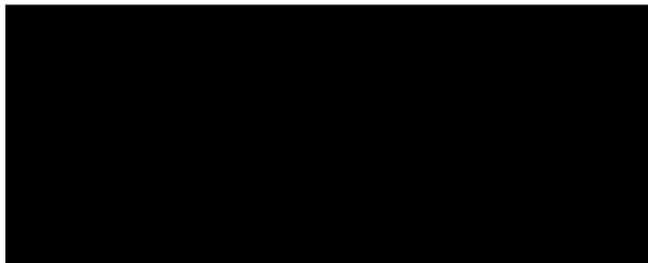
EAC 06 156 51427

Office: VERMONT SERVICE CENTER

Date: **FEB 05 2009**

IN RE:

Petitioner:



PETITION: Petition for Special 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 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 because the petitioner did not establish that she had a qualifying relationship as the spouse of a United States citizen, that she was eligible for immigrant classification based upon that relationship, that she was battered or subjected to extreme cruelty by her United States citizen spouse, and that she was a person of good moral character.

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

(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.

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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of ... the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of ... the self-petitioner

* * *

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ghana who entered the United States on August 22, 1991, as a B-2 nonimmigrant visitor for pleasure. On April 12, 1993, the petitioner applied for political asylum, and withdrew her application on August 29, 1998, upon her July 1, 1998 marriage to D- M-¹ at Bronx, New York. On January 15, 2000, a Form I-130, Petition for Alien Relative, which was filed by D- M- on behalf of the petitioner, was approved. On December 4, 2002, the Form I-485, Application to Register Permanent Residence or Adjust Status, that was filed by the petitioner on July 24, 1998, was denied, due to abandonment. On April 21, 2005, the marriage between the petitioner and D- M- was dissolved.

On April 24, 2006, the petitioner filed the instant Form I-360. On October 11, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of evidence of, *inter alia*, the requisite qualifying relationship, eligibility for immigrant classification based on the qualifying relationship, battery or extreme cruelty, and good moral character. The petitioner failed to submit a timely response to the NOID. The director denied the petition on February 20, 2007, finding that the petitioner failed to establish that she had a qualifying relationship as the spouse of a United States citizen, her eligibility for immigrant classification based upon that relationship, that she was battered or subjected to extreme cruelty by her citizen spouse, and that she was a person of good moral character. It is noted that on February 26, 2007, after the February 20, 2007 filing date, the petitioner's untimely response to the NOID was received.

¹ Name withheld to protect identity.

On appeal, the petitioner submits copies of the documentation she submitted in response to the NOID. The documentation submitted on appeal and in response to the NOID includes: a copy of the April 21, 2005 dissolution of the marriage between the petitioner and D- M-; a copy of the birth certificate of the petitioner's daughter, [REDACTED], born on February 8, 1987; copies of documentation related to the petitioner's request for political asylum; a Good Conduct Certificate, dated February 7, 2007, issued to the petitioner from the New York City Police Department letter, reflecting no criminal record "within the environs of New York City only"; a second statement, dated February 2, 2007, from [REDACTED]; a second personal statement from the petitioner, undated; a letter and photos from [REDACTED] MD, FACS, dated February 10, 2007; and a "Declaration Confirming the Dissolution of a Customary Marriage between [REDACTED] and [REDACTED]" As will be discussed below, we concur with the ultimate determination of the director that the petitioner has failed to establish her eligibility for immigrant classification.

Qualifying Relationship and Eligibility for Immediate Relative Classification

The record contains a marriage certificate indicating that the petitioner and D- M- were married at Bronx, New York on July 1, 1998, and a divorce judgment reflecting that the petitioner and D- M- were divorced on April 21, 2005. The record also contains a notarized "joint statutory declaration," dated February 7, 2007, from [REDACTED] and [REDACTED] the reported fathers of [REDACTED] and the petitioner, respectively, declaring that on December 25, 1981, [REDACTED] and the petitioner "contracted a Customary Marriage in accordance with the Ghanaian Customary Marriage Laws and Usages in the presence of witnesses of both couple," that "on the 15th day of May, 1988 at Accra in the Greater Accra Region of the Republic of Ghana, the Marriage was dissolved in the presence of witnesses of both couple and they all gave their consent and approval to the dissolution," and that "as the Marriage is No longer in existence, each of them is therefore free to re-marry any person of their choice from any part of the world." This declaration was notarized by notary public [REDACTED]. The record also contains a February 8, 2007 letter from [REDACTED] the Chief Registrar of the Judicial Service of Ghana, certifying that [REDACTED] is a notary public of Ghana, and a February 9, 2007 letter from [REDACTED] the Acting Director, Legal and Consular Bureau, Ministry of Foreign Affairs of the Republic of Ghana, certifying that the signature of [REDACTED] on the February 8, 2007 letter is [REDACTED] true and certified signature.

Upon review of the evidence, we concur with the director's determination that the petitioner failed to establish that she had a qualifying relationship as the spouse of a United States citizen and that she was eligible for classification based upon that relationship. A review of *Matter of Francis Kodwo*, 24 I&N Dec. 479 (BIA 2008)(citing *Matter of Kumah*, 19 I&N Dec. 290 (BIA 1985), modified, and *Matter of DaBaase*, 16 I&N Dec. 39 (BIA 1976)) finds that, while the desirable proper documentation continues to be a court decree, affidavits executed by heads of households may be sufficient under Ghanaian law to establish the dissolution of a customary tribal marriage as long as the affidavits meet specified evidentiary requirements. A person who seeks to prove the validity of a customary divorce must present evidence that establishes (1) the tribe to which he belongs, (2) the current

customary divorce law of that tribe, and (3) the fact that the pertinent ceremonial procedures were followed. Affidavits must include all relevant information, including, but not limited to, the following: the full names and birth dates of the parties; the date of the customary marriage; the names, birth dates of, and custody agreement for any children born of the marriage; and a description of the tribal formalities that were observed, including the names of the tribal leaders, the name of the tribe, the place, and the type of divorce. In the affidavit submitted to establish the petitioner's divorce, the birth dates of the petitioner and her first spouse are missing. In addition, there is no mention of the tribal formalities that were observed in granting the divorce, or any information relating to the name of each party's tribe, the names of the tribal leaders, or the customary divorce laws of each tribe. As presented above, the facts do not establish the petitioner and [REDACTED] were divorced in accordance with the laws of Ghana. Therefore, at the time the instant petition was filed, the petitioner's prior marriage to D- M- would not be considered legal, as the petitioner would still have been married to [REDACTED].

In view of the foregoing, we concur with the director's determination that the petitioner failed to establish that she had a qualifying relationship as the spouse of a United States citizen and that she is eligible for classification based upon that relationship, as required by sections 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa),(cc).

Battery or Extreme Cruelty

With her initial submission on April 24, 2006, the petitioner submitted a notarized "personal statement of abuse," dated February 17, 2006, claiming that about two years into her marriage to D- M-, she "started experiencing serious and persistent domestic abuse" and verbal abuse from her husband. She claimed that her husband "smoked Marijuana from time to time," that he "also engaged in excessive drinking," and that he was jealous, controlled her finances, isolated her from friends and family, and threatened to "deal" with her and have her deported. The petitioner did not provide any incidents of physical abuse.

The petitioner also submitted a notarized statement, dated February 18, 2006, from Anas Abbas, who claimed that she had "in the past played the role of adviser to the family and mediated in resolving 'dispute' and abuse of [the petitioner] by her husband."

In his NOID, the director found that the evidence was vague and lacked details and did not establish that the petitioner's abuse qualified as extreme cruelty.

In her untimely response to the director's RFE, and on appeal, the petitioner submitted a second notarized statement, undated, claiming that abuse from her husband began in 2000, when she discovered that he was smoking marijuana and drinking excessively. She claimed further that he physically and verbally abused her, and described an incident that occurred in April 2002, when during her birthday celebration with friends and family, he pushed her down, causing her to hit the table and bruise her leg on the chair. She described another incident of abuse by her husband, during which he

called her names and burned her arm with a cigarette. As corroborating evidence, the petitioner submitted photos of her arm and leg taken by [REDACTED], who documents an “oval scar of the [petitioner’s] left forearm” and “hyperpigmented areas of the right thigh . . . and calf.” [REDACTED] concludes as follows:

This patient has evidence of trauma. The scars are consistent with the [petitioner’s] History and may have been from torture as described by the patient.

The petitioner also submitted a second notarized statement, dated February 2, 2007, from [REDACTED] claiming that she had to comfort the petitioner “during many times of abuse,” and that she remembered when the petitioner’s husband “pushed her down between a table which caused a terrible bruise on her leg” during the petitioner’s birthday celebration. She also claimed to have offered the petitioner comfort and shelter “during times of his rage so that she would not get hurt.”

The evidence submitted by the petitioner initially and in response to the NOID contains inconsistencies. For example, in her initial notarized statement, the petitioner claimed that her husband abandoned their home and his marital responsibility on February 27, 2002, which conflicts with the petitioner’s claim in her second notarized statement, submitted in response to the NOID and on appeal, claiming that in April 2002, she and her husband invited friends and family to their home to celebrate her birthday. In addition, in her initial statement, the petitioner claimed that after about a month of living together in the Bronx (where they lived at the time of their marriage in 1998, according to the Form G-325 signed by the petitioner on July 17, 1998), she discovered his marijuana smoking and excessive drinking, which conflicts with her claim in her second statement that the abuse began in 2000, when she discovered that her husband smoked marijuana and drank excessive amounts of alcohol. Also, in contrast to her second statement, the petitioner did not claim any physical abuse in her initial statement. 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).

The initial notarized statement from [REDACTED] also describes no specific abuse to the petitioner by her husband, whereas in her second statement, she alluded to “many times of abuse,” “many bruising to her body” and to the petitioner’s birthday celebration, during which the petitioner was allegedly pushed down by her husband, resulting in a “terrible bruise on her leg.” Given the unresolved discrepancies noted in the record above, including the dates provided by the petitioner indicating that her husband had abandoned their home prior to the alleged birthday celebration, the evidentiary value assigned to the statement of [REDACTED] is lessened.

The letter from [REDACTED] is dated February 10, 2007, approximately five years after the petitioner’s alleged abandonment by her husband. As discussed above, [REDACTED] concluded that the petitioner has evidence of trauma that is consistent with her description of abuse by her husband. In his report, [REDACTED] states that the petitioner’s husband burned the petitioner’s arm during an argument on December

25, 2002. Again, it is noted that the petitioner did not describe any specific physical abuse in her first statement, and in her second statement, although the petitioner claimed that her husband burned her with a cigarette, she did not provide a date. The December 25, 2002 date provided by [REDACTED] is the first time the alleged incident is assigned a date. Moreover, the date is after February 27, 2002, which is the date of the husband's abandonment, according to the petitioner's initial notarized statement. It is also noted that [REDACTED] states that the petitioner reported the alleged abuse by her husband to her mother-in-law. The petitioner, however, did not mention this in either of her notarized statements. In fact, nowhere in her statements is her mother-in-law even mentioned. Again, the record contains no explanation for these inconsistencies and discrepancies. 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).

In view of the foregoing, the weight of the relevant evidence does not satisfy the petitioner's standard of proof. We, therefore, concur with the finding of the director that the petitioner failed to establish that she was battered or subjected to extreme cruelty by her spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good 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. The petitioner submitted no police clearance or state-issued criminal background check at the time of filing. In her untimely response to the director's NOID and on appeal, the petitioner submitted a Good Conduct Certificate, dated February 7, 2007, issued to the petitioner from the New York City Police Department letter, reflecting no criminal record "within the environs of New York City only."

A review of the record reveals ambiguous evidence regarding the petitioner's exact residence during the three-year period immediately preceding the filing of her petition. The Form G-325, Biographic Information, indicates that in the last five years, the petitioner resided in New York and New Jersey. She does not, however, provide the exact dates of her residences, as required on the form. The Good Conduct Certificate issued from the New York City Police Department, is noted. The petitioner, however, fails to provide evidence regarding the dates of her residence in New Jersey or clearances from the State of New Jersey, where she indicated she resided until an unspecified date in the last five years at the time of filing. 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

The petitioner has not demonstrated that she had a qualifying relationship as the spouse of a United States citizen, that she was eligible for immigrant classification based upon that relationship, that she was battered or subjected to extreme cruelty by her United States citizen spouse, and that she was a

person of good moral character. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his 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.