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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B9

[REDACTED]

FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: **AUG 18 2010**

EAC 03 213 53923

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

[REDACTED]

Chief, Administrative Appeals Office

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DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequently filed appeal and dismissed a motion to reopen and reconsider its previous decision. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted. The petition will be denied.

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 December 15, 2008. The director determined that the petitioner did not establish that her spouse subjected her to battery or extreme cruelty and that she is a person of good moral character. The director also determined that the petitioner failed to overcome the bar to approval of the petition under section 204(c) of the Act, 8 U.S.C. § 1154(c), due to the petitioner's attempt to enter into a prior marriage for the purpose of evading the immigration laws.

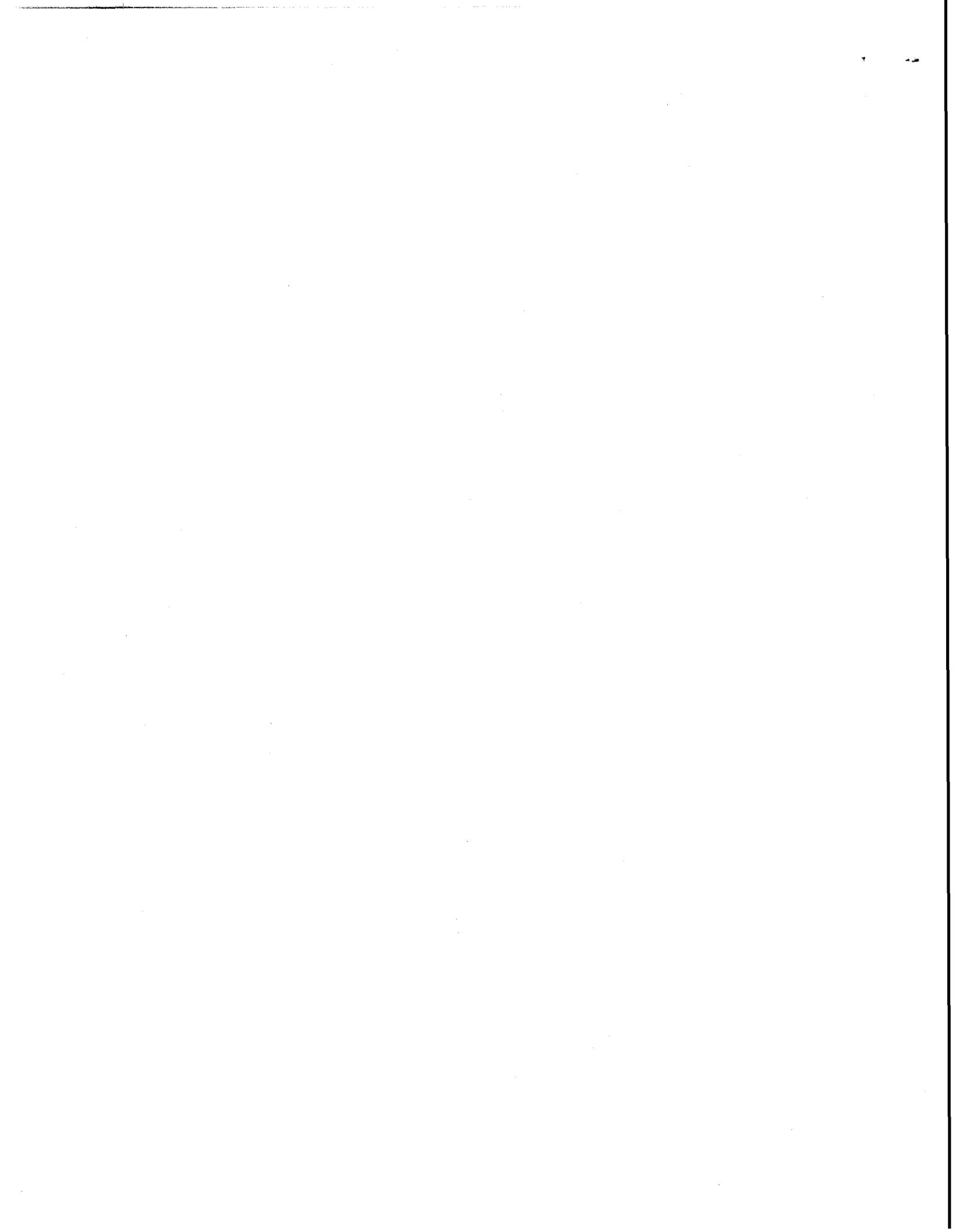
The AAO concurred with the director's decision regarding the petitioner's failure to establish that her spouse had subjected her to battery or extreme cruelty and that she is a person of good moral character. The AAO also, upon independent review of the evidence, found that the petitioner had failed to overcome the bar to approval of the petition under section 204(c) of the Act, 8 U.S.C. § 1154(c), due to her attempt to enter into a prior marriage for the purpose of evading the immigration laws.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." In the instant matter, the petitioner submits a brief in which she states that she had been subjected to abuse by her United States citizen spouse, that there is insufficient evidence to establish that her first marriage was fraudulent, and that she did not have adequate representation for filing the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. Accordingly, the AAO shall grant the motion and enter a new decision into the record.

The AAO will review the petitioner's statement included in the brief regarding the claimed abuse and the information submitted regarding the petitioner's claim that she was ineffectively represented by counsel. As the petitioner fails once again to produce a local police clearance from Houston, Texas where she resided for more than six months during the 3-year period immediately preceding the filing of the petition, the AAO and director's decision regarding the petitioner's failure to establish that she is a person of good moral character is affirmed. 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.

In her brief submitted on motion, the petitioner states: that her husband would deliberately start arguments with her; that he would yell at her; that he refused to have sex with her because he thought she was not worth it and he thought she was trying to get pregnant; that he called her



derogatory names; that he constantly monitored her movements; and that due to the physical and emotional abuse she was subjected to, she felt humiliated, intimidated, fearful, had difficulty focusing and sleeping, and also lacked motivation. The petitioner noted that she did not have funds to see a psychiatrist. The petitioner claims that only one police report was filed and other physical abuses went unreported because no police officer would write a report on emotional and/or psychological abuse. The petitioner also notes that other photographs of abuse existed but were destroyed by Hurricane Katrina. As the AAO detailed the deficiencies of the police report and the previous information submitted by the petitioner, those deficiencies will not be repeated here.

Upon review of the petitioner's statement on motion, the AAO finds that the petitioner has failed to provide a detailed description of specific incidents of battery or extreme cruelty. The AAO notes that photographs of abuse, while sometimes helpful, are not necessary to establish that an individual has been subjected to abuse. The petitioner's claim in this matter that she had been subjected to battery or extreme cruelty fails because the petitioner has not described in probative detail any specific threatening or controlling behavior of her husband. Nor has the petitioner demonstrated that her spouse's nonviolent actions and rejection of intimacy constituted psychological or sexual abuse or were otherwise part of an overall pattern of violence. As noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." The petitioner has failed to establish that her spouse's actions rose 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 fail to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty.

When evaluating the record as a whole, the AAO finds the record lacks definitive consistent information regarding specific instances of abuse that could be categorized as battery or extreme cruelty. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that she has been subjected to battery or extreme cruelty perpetrated by her spouse in order to meet her burden of proof. In this matter, she has failed to do so. The petitioner's general statements on motion do not provide the necessary detailed, consistent testimony establishing that she has been subjected to battery or extreme cruelty by her former spouse.

The AAO has also reviewed the petitioner's claim that insufficient evidence exists to find that her first marriage was fraudulent and thus the bar to approval of the petition under section 204(c) of the Act does not apply. As the AAO articulated in its January 7, 2009 decision, the petitioner failed to provide evidence sufficient to establish that her first marriage was entered into in good faith; and also failed to establish that her subsequent marriage to a United States citizen was entered into in good faith. The record on motion does not include any further information or evidence that overcomes the AAO's January 7, 2009 decision or its February 25, 2010 decision to dismiss the petitioner's first filed motion. The petitioner has not submitted any new relevant and probative facts regarding her first marriage. The petitioner seems to assert that her first spouse's entry into marriage with her when he

was already married does not establish her own lack of good faith when entering into the marriage. The [REDACTED] that the fact that the petitioner's first husband was a bigamist is insufficient to demonstrate that she lacked good faith intent when entering into the marriage; however, the fact that her former spouse was a bigamist does not absolve the petitioner from establishing the bona fides of her first marriage. To do so, the petitioner must address the deficiencies set out in the AAO's January 7, 2009 decision regarding her failure to establish the bona fides of her first marriage. The petitioner has failed to provide her own detailed testimony or testimony from other individuals regarding how she met her first husband, their courtship, wedding, shared residence, and experiences. Thus, the record is bare of the essential information necessary to conclude that the petitioner's first marriage was entered into in good faith.

The AAO acknowledges the petitioner's claim that she received ineffective assistance of counsel; however despite citing *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988), the petitioner fails to provide the required documentation to prevail upon an ineffective assistance of counsel claim. As the petitioner noted, a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. [REDACTED] 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Although the petitioner provided an excerpt from the Texas Bar Journal showing that her prior counsel had received a public reprimand in February 2006 for failing to verify crucial dates in a divorce action, the petitioner does not explain in relevant and pertinent detail how or what her counsel failed to do to protect her interests in this matter. The record on motion is insufficient to establish that the petitioner received ineffective assistance of counsel under [REDACTED]

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. The petitioner has not sustained that burden.

ORDER: The AAO's decision, dated March 25, 2010 is affirmed. The petition is denied.

