

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



B9

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: **MAY 18 2006**  
EAC 98 167 52690

IN RE: Petitioner: [Redacted]

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:  
[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.

for  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center following the issuance of a notice of intent to deny. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of the Dominican Republic who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

- (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
- (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided . . . with the citizen or lawful permanent resident spouse;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
- (F) Is a person of good moral character; [and]

\* \* \*

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

*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 abused 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.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

*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 . . . 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

According to the evidence in the record, the petitioner wed United States citizen, Jose Luis Alvarado, on September 29, 1994, in Bronx, New York.<sup>1</sup> The petitioner's citizen spouse filed a Form I-130 on the petitioner's behalf on July 29, 1996. The petitioner concurrently filed a Form I-485 on that same date. The Form I-130 and Form I-485 were denied by the District Director, New York, New York on July 11, 1997.

The petitioner filed the instant Form I-360 petition on May 4, 1998, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her U.S. citizen spouse during their marriage. The petition was initially denied on December 16, 1999, for abandonment, based upon the director's determination that the petitioner failed to respond to a request for evidence. On January 27, 2000, the director reopened the proceedings and afforded the petitioner another opportunity to submit the requested evidence. The director issued a notice of intent to deny on July 11, 2000, indicating that the record contained insufficient evidence that the petitioner had been battered by or subjected to extreme cruelty by her spouse, that she resided with her spouse, and that she is a person of good moral character. The petition was denied on October 13, 2000.

---

<sup>1</sup> Although multiple forms submitted by the petitioner and her spouse, including a Form I-130 and Forms G-325A, indicate the petitioner's date of marriage as "9-24-94" and "4-24-94," the marriage certificate contained in the record indicates the date of marriage as September 29, 1994.

The petitioner submitted a timely appeal, dated November 15, 2000. On appeal, the petitioner states:

After having complied with all of the [S]ervice's request[s] they now reach the conclusion that not sufficient proof has been presented to establish abuse or good faith marriage. This one sentence conclusion is void of any reasonable explanation as to how this conclusion was reached. It further fails to state why the evidence submitted does not reach the Service's standards of eligibility. This form letter is inadequate to advise the respondent of the alleged failure to meet its burden. There is no mention if any weight was given to the documents previously submitted and in what respect they were found to be deficient.

*We are not persuaded by the petitioner's initial statement. While it is true that the director must consider any credible evidence, the mere submission of credible evidence does not de facto establish eligibility. Pursuant to the regulation at 8 C.F.R. § 204.2(2)(i), the determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service. The fact that the petitioner "complied with" all of the director's requests for evidence, does not mean that such evidence is sufficient to establish eligibility.*

The portion of the petitioner's statement that we do find persuasive relates to her claim that the director failed to adequately address the evidence contained in the record and to provide any discussion as to why such evidence was not sufficient. While the denial notice refers to information contained in the notice of intent to deny, the notice of intent to deny also lacks a discussion of the evidence contained in the record. However, rather than remanding the case for the director to properly review and discuss the evidence and enter a new decision, we will conduct a de novo review of this case on appeal.

The director's notice of intent to deny indicated that the record did not contain sufficient evidence to establish that the petitioner is a person of good moral character, that she resided with her spouse, and that she was battered by or subjected to extreme cruelty by her citizen spouse. The director's denial, however, indicated that the record did not establish that the petitioner was battered by or subjected to extreme cruelty by her spouse and that she entered into the marriage in good faith. Given the lack of clarity regarding the reasons for denial, all four of these eligibility requirements will be discussed in this proceeding.

First, as it relates to whether the petitioner has established that she is a person of good moral character, the regulation at 8 C.F.R. § 204.2(c)(i) indicates that primary evidence of the petitioner's good moral character is *an affidavit from the petitioner accompanied by a police clearance* from each place the petitioner has lived for at least six months during "the 3-year period immediately preceding the filing of the self-petition." Although the record contains a fingerprint clearance from the New York City police department which indicates that the petitioner does not have a record within the city of New York, the petitioner's statement does not address her good moral character.

As it relates to whether the petitioner entered into the marriage in good faith and whether she resided with her spouse, the record contains the petitioner's statement, the petitioner's sister's statement, the petitioner's marriage certificate, and the birth certificate for the petitioner's child. In her statement the petitioner gives no indication as to why she married her spouse. She provides no details about how they met, how long they dated, or her intent at the time of the marriage. Instead, the petitioner states only, "shortly after my arrival in the United States I married the man who I thought would be with [sic] the rest of my life." Further, the petitioner provides no information regarding her residence with her spouse, such as where they lived together

or how long they resided together. The petitioner's sister's statement provides no further details regarding the petitioner's intent at the time of her marriage or of her residence with her spouse. Although the petitioner submits a birth certificate for her United States citizen child, the birth certificate does not identify the father of the child. Accordingly, the birth certificate does not support the petitioner's claim of a good faith marriage or that she resided with her spouse. Similarly, while the petitioner's marriage certificate is evidence that she entered into a *legal* marriage with her spouse, it is not evidence that she entered into the marriage in good faith.

Finally, as it relates to her claim of abuse, the record contains a psychological evaluation, the petitioner's statement, and a statement from the petitioner's sister. In her statement, the petitioner claims that her spouse was "looking for a slave," that he was "overbearing," "expected [her] to cook, clean and attend to him constantly," and ultimately left her. The petitioner's sister indicates that it was "difficult for [her] to spend quality time" with the petitioner, that the petitioner "was not happy" and had "lost [her] youthful zest." Such claims do not rise to the level of extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

It is noted that although the record contains a "list of witnesses," which includes the petitioner's sister and two friends of the petitioner, the record contains no statement from either of the petitioner's friends and only the general statement of the petitioner's sister that is discussed above.

While the petitioner also claims that she was subjected to physical abuse and her sister states that when the petitioner was physically abused she would call her sister crying, neither statement provides any specific details about the purported physical abuse or any specific incident. The psychiatric evaluation submitted by [REDACTED] provides no further details. The evaluation does not indicate the length of time the petitioner has been receiving treatment and states only that the petitioner was emotionally and physically abused by her spouse and "eventually abandoned by him." Like the statements submitted by the petitioner and the petitioner's sister, the evaluation provides only general claims regarding the purported abuse. Without a specific description of a particular incident or occurrence, we are unable to determine whether the claims made satisfy the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

Accordingly, although we find fault with the quality of the director's decision, we agree with his ultimate decision to deny the petition. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The record does not contain sufficient evidence to establish that the petitioner is a person of good moral character, that she resided with her spouse, that she entered into the marriage in good faith, and that she was battered by or subjected to extreme cruelty by her citizen spouse. 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.