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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 06 051 50033

Office: VERMONT SERVICE CENTER

Date:

DEC 11 2007

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.

Naura Deasnick
Robert P. Wiemann, 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 resided with her former husband,¹ married him in good faith and that her former husband subjected her or her child to battery or extreme cruelty during their marriage.

On appeal, counsel submits additional evidence.

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.

¹ The record does not contain documentation of the legal termination of the petitioner's marriage. However, on appeal, counsel refers to the petitioner's "former husband." In addition, the April 11, 2006 Brockton Hospital Emergency Department Registration Form states the petitioner's marital status as divorced. Accordingly, in this decision we refer to the petitioner's spouse as her former husband.

(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 Trinidad and Tobago who entered the United States on July 24, 1998 without inspection. On September 24, 2002, the petitioner married D-D-², a U.S. citizen, in Massachusetts. D-D- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied as abandoned on October 1, 2004. That same date, the petitioner was served with a Notice to Appear for removal proceedings charging her under section 212(a)(6)(A)(i) of the Act as an alien present without having been admitted or paroled. The petitioner remains in proceedings before the Boston Immigration Court.

The petitioner filed this Form I-360 on December 6, 2005. The director subsequently issued a Request for Evidence (RFE) of the requisite battery or extreme cruelty, residence, good faith marriage and good moral character. The petitioner, through counsel, timely responded with further documentation. On August 21, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of evidence of the requisite battery or extreme cruelty, residence and good faith marriage, but found that the petitioner had established her good moral character. Neither counsel nor petitioner responded to the NOID. The director denied the petition on December 20, 2006 on the grounds cited in the NOID and counsel timely appealed.

On appeal, counsel does not cite any errors in the director's decision, but submits further, relevant evidence. Counsel provides no explanation for why the evidence submitted on appeal was not submitted below. We generally do not consider evidence previously requested below but submitted for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533, 537 (BIA 1988). However, the record in this case shows that the petitioner was hospitalized for psychiatric treatment shortly before the NOID was issued and was scheduled for follow-up care at an outpatient clinic. Accordingly, we have considered the evidence submitted on appeal because the petitioner's medical records indicate that her mental health condition may have compromised her ability to pursue her case at the time the NOID was issued.

² Name withheld to protect individual's identity.

The evidence submitted on appeal demonstrates that the petitioner married her former husband in good faith, but does not establish the requisite joint residence and battery or extreme cruelty. The petitioner consequently remains ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and the appeal will be dismissed.

Good Faith Entry into Marriage

On appeal, the petitioner submits a handwritten statement dated February 20, 2007 in which she describes in probative detail how she met her former husband, her feelings for him, their courtship, the birth of their son on January 28, 2002 and their subsequent marriage. The petitioner also submits family court documents and a genetic testing report which show that the petitioner and her former husband are the parents of their son. Through this evidence, the petitioner has established that she entered into marriage with her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The evidence submitted on appeal does not, however, demonstrate that the petitioner resided with her former husband. On the Form I-360, the petitioner stated that she lived with her former husband from September 2002 until July 2003 and that the former couple last resided together at [REDACTED] in Malden, Massachusetts. The petitioner submitted no documentary evidence of the former couple's joint residence. The statements of the petitioner, her family and friends contain inconsistencies and fail to provide probative details sufficient to establish the requisite residence.

In her initial affidavit dated June 19, 2006, the petitioner stated that when she met the petitioner she "lived on [REDACTED] and [he] lived on [REDACTED] in Malden." She further stated:

By 1999 . . . I lived at his mom's house on Lap Street and he stayed with my mom on Salem street. . . . By 2001, I moved to Boston and [D-D-] stayed in Malden. . . . During the early months of our marriage, we lived back and forth with the families in Brockton and Malden. When [D-D-'s] mother finally moved we all left her house too. I saw [D-D-] occasionally on holidays but we were separated at the time. The last time we spent time together was January 28, 2003 [our son's] Birthday.

The petitioner did not explain the discrepancy between her statement on the I-360 that she lived with her former husband from September 2002 until July 2003 and her statement in her affidavit that she began living with him in 1999 and last saw her former husband on January 28, 2003. The petitioner also provided no detailed description of the exact addresses and dates of her alleged residence with her former husband.

In his June 9, 2003 affidavit submitted with the petitioner's Form I-601, Application for Waiver of Ground of Excludability, the petitioner's former husband stated, "I live with my wife and our one-year

old son . . . at [REDACTED], Brockton, Massachusetts.” His statement is also inconsistent with the petitioner’s attestation that the former couple separated in January 2003. The affidavits of the petitioner’s mother, stepfather and brother submitted below all focused on the alleged abuse and did not discuss the petitioner’s purported residence with her former husband.

The testimony submitted on appeal fails to resolve the discrepancies regarding the dates of the former couple’s allegedly joint residence and provides no further probative information sufficient to establish the petitioner’s claim. In her February 20, 2007 statement, the petitioner indicates that when she was 16 years old, she began living with her former husband at his mother’s home. In 1999, the petitioner states that her parents moved to Dorchester and she “lived with [D-D-] and [her] parents at the same time. [She] went back and forth.” The petitioner then describes the alleged abuse and the former couple’s separation, but states, “In 2000, I got pregnant with [our son].³ In the beginning, [D-D-] and I lived with my mother in Dorchester” until her former husband “started staying away from [her]” during her fourth or fifth month of pregnancy. When the former couple’s son was about five months old, the petitioner states that her former husband moved back in with her and her family and the former couple was later married. The petitioner states that at some unspecified time, “we lived at [REDACTED] t. in Dorchester[.]” The petitioner does not describe the former couple’s shared residence at this address in any detail and she provides no other addresses or specific dates of her alleged residence with her former husband.

In her February 20, 2007 statement, the petitioner’s mother says that the petitioner:

would stay with [D-D-] in his mother’s home on and off when we lived in Malden. . . . Later that year, we moved to Dorchester. [The petitioner] . . . asked for the two of them to live with us in Dorchester. . . . When things got bad and the two would fight, I would ask [D-D-] to leave and [the petitioner] would take it up on [sic] herself to leave with him. They would usually go to his mother’s home.

The petitioner’s mother states that the petitioner’s former husband “lived at [REDACTED] during the beginning of the pregnancy,” but she does not specify whose residence was at this address. After the former couple’s marriage, the petitioner’s mother states that they “moved in with us when we bought the house on [REDACTED], in bockton [sic], but no soon we had moved in [D-D-] moved out [sic], they went back and forth till [D-D-] finally move out completely.” The petitioner’s mother provides no detailed statement of the specific addresses and dates of the former couple’s allegedly joint residence.

The affidavits of the petitioner’s friends also fail to provide any probative details. [REDACTED] merely states, “I believe they lived in Malden together.” [REDACTED] simply states that she remembers visiting the former couple “at their house, which was on Beach Street.” Yet neither the petitioner nor any of the other affiants mention any residence on Beach Street.

³ The petitioner appears to refer to the year 2000 in error. The birth certificate of her son shows that he was born on January 28, 2002.

In addition, the record contains copies of the 2002 federal income tax returns of the petitioner's former husband and her mother which indicate that the former couple did not live together. The tax return of the petitioner's former husband lists his address as [REDACTED] in Malden and he filed the return as Head of Household listing his daughter (from another relationship) as his only dependent. The tax return of the petitioner's mother lists her address as [REDACTED] in Brockton and lists the petitioner as one of her dependents. The petitioner is also listed as her mother's dependent on her mother's 2001 and 2000 federal income tax returns.

The record contains no documentary evidence of the petitioner's residence with her former husband. The petitioner submitted inconsistent statements regarding the dates that she allegedly lived with her former husband. The testimony of the petitioner's mother, friends and former husband provides no detailed account of the specific addresses and dates of the former couple's allegedly joint residence. The tax returns of the petitioner's husband and mother further indicate that the former couple did not reside together. Accordingly, the petitioner has not established that she resided with her former husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

In her June 19, 2006 affidavit, the petitioner stated, "In 1999 I became pregnant . . . and had an ectopic pregnancy. This happened when [D-D-] fought me and kicked me in my stomach." The petitioner did not further describe this or any other incidents of abuse. In her February 20, 2007 statement submitted on appeal, the petitioner reports that when she was 16 years old, her former husband began to call her derogatory names and pushed her several times. In 1999 when she became pregnant, the petitioner states that her former husband accused her of cheating on him and he hit, punched and kicked the petitioner. She reports that the police came and took her former husband into custody and her family took her to the hospital where she discovered that her pregnancy was ectopic and she had an operation. The petitioner states that she became depressed and the former couple separated, but later reconciled. The petitioner states that she was afraid to leave her former husband because he promised "to really hurt" her if she did so. The petitioner explains that her husband left her after she became pregnant with their son, but returned after his birth. The petitioner states that "the abuse started back again" and she "continued to get beatings in front of friends." The petitioner further states that due to her husband's abuse, she has been diagnosed with "Post Traumatic Disorder."

The testimonial evidence of the petitioner's family and friends also does not establish the petitioner's claim of abuse. The petitioner's stepfather states that he recalls "several times" that he and his wife met the petitioner "in the hospital emergency room due to fights she had with [D-D-]." He does not, however, describe any of these incidents in detail and the petitioner herself discusses only one incident where she was hospitalized due to her former husband's abuse. The petitioner's brother states that he "accompanied [his] parents several times to the emergency room where [the petitioner] was admitted due to physical fights with [D-D-]" and that he went to the police station

with his mother to report “an incident where [D-D-] kicked [the petitioner] in her stomach.” The petitioner’s brother provides no detailed description of any of these incidents.

In her December 1, 2005 affidavit, the petitioner’s mother states that the petitioner called her at unspecified times when the petitioner’s former husband was being abusive. The petitioner’s mother reports that she and her family took the petitioner to “Melrose Hospital emergency” on two unspecified occasions. In her February 20, 2007 statement submitted on appeal, the petitioner’s mother states that the petitioner showed signs of withdrawal and depression after she became involved with her former husband. She reports that on several unspecified occasions, the petitioner would call her saying she was being beaten and the petitioner’s mother would hear D-D- yelling in the background. The petitioner’s mother further describes the incident when the petitioner was hospitalized for her ectopic pregnancy and states that she and her family picked up the petitioner and took her to the hospital and D-D- was taken into police custody. The petitioner’s mother further states that the family filed a police report the same day.

Although the petitioner states that her friends witnessed numerous incidents of abuse, her friends provide little, probative information regarding the claimed abuse. Ms. [REDACTED] states that she “saw and heard a lot of verbal and physical abuse” and she “saw them smacking each other and yelling.”

[REDACTED] further states that on one unspecified occasion the petitioner’s face was injured when she went to [REDACTED]’s home after getting into a fight with her former husband. [REDACTED] states that the petitioner and her mother told him of unspecified occasions when D-D- abused the petitioner, but [REDACTED] reports that he only saw the petitioner on one unspecified occasion when the petitioner was “physically upset” as she told him of the abuse. Ms. [REDACTED] states that she remembers three or four unspecified incidents where the petitioner’s former husband “hit her,” but Ms. [REDACTED] does not describe any of the incidents in detail.

Although the petitioner and her mother state that her former husband was taken into police custody after the incident where the petitioner was hospitalized for her ectopic pregnancy and the petitioner’s mother and brother state that the family filed a police report, the petitioner submitted no police or hospital records regarding this incident.⁴ The records submitted from Brockton Hospital date from 2006, over three years after the petitioner states that she and her former husband separated. The records show that the petitioner was hospitalized on two occasions in 2006. The petitioner was first treated at the emergency room for a self-inflicted injury and was admitted for psychiatric treatment the next month due to “agitation and basically verbally threatening.” The Brockton Hospital records contain no reference to past or present abuse. The Initial Assessment Record states that the petitioner’s response to the question, “Has someone you cared about threatened or harmed you?” was “[REDACTED].” The petitioner’s Discharge Summary states that she was diagnosed with Post Traumatic Stress Disorder, but does not identify the source of the underlying trauma. Rather, the

⁴ In his response to the RFE, counsel indicated that he was trying to obtain records from the petitioner’s hospitalization due to her former husband’s alleged abuse, yet counsel provides no explanation for the failure to submit such records in response to the NOID or on appeal.

Discharge Summary states, “the patient does have irritability and rage, which is mainly from post traumatic stress disorder. Also, she is status post intoxication with Ecstasy and amphetamines. . . . The patient also has difficulty dealing with interpersonal relationships.” While the Brockton Hospital records indicate that the petitioner’s health was significantly compromised in 2006 and may have impacted her ability to pursue her case at the time the NOID was issued, the records provide no evidence linking her health problems to the alleged abuse of her former husband.

In sum, the evidence fails to demonstrate that the petitioner’s husband subjected her to battery or extreme cruelty during their marriage. The petitioner and her supporting affiants attest to her former husband’s abuse in general terms, but describe only one incident in particular. Although the petitioner and her family state that the petitioner was hospitalized and a police report was filed due to this incident, the record contains no corresponding documentation from medical institutions or law enforcement agencies. While she is not required to do so, the petitioner does not explain why such records no longer exist or are unobtainable. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The medical records submitted post date the petitioner’s divorce and provide no evidence that her health problems were related to her former husband’s abuse. The petitioner has thus failed to establish that her former husband subjected her or her child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that she resided with her husband and that her husband subjected her or her child to battery or extreme cruelty during their marriage. 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.