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U.S. Citizenship
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FILE:

EAC 05 244 50410

Office: VERMONT SERVICE CENTER

Date:

FEB 16 2007

IN RE:

Petitioner:

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:

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.


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 her husband battered or subjected her or her child to extreme cruelty, that she resided with her husband, entered into their marriage in good faith and that she was a person of good moral character.

On appeal, the petitioner 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.

(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 . . . , 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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

* * *

(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 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.

(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. . . . 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.

* * *

(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 facts and procedural history. The petitioner is a native and citizen of the Republic of Georgia who entered the United States on June 10, 1997 as a nonimmigrant visitor (B-2). On December 31, 2002 the petitioner was placed in removal proceedings before the New Jersey Immigration Court. On April 28, 2003, the petitioner married E-P-¹, a U.S. citizen, in New York. On May 24, 2006, the immigration judge granted the petitioner voluntary departure until September 21, 2006 with an alternate order of removal to Georgia. The petitioner filed this Form I-360 on September 6, 2005. On March 21, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite battery or extreme cruelty, joint residence, good faith marriage and good moral character. The petitioner did not respond. On July 28, 2006, the director denied the petition on the grounds cited in the NOID. The petitioner timely appealed.

¹ Name withheld to protect individual's identity.

The petitioner states her reason for appeal as "My application for green card was declined." The petitioner submits additional documents and copies of documents previously submitted. We concur with the director's determinations. The evidence submitted on appeal fails to overcome the grounds for denial. Beyond the director's decision, the record shows that section 204(g) of the Act also warrants denial of this petition.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- The petitioner's October 29, 2005 affidavit;
- A psychiatric evaluation of the petitioner by [REDACTED] dated November 22, 2004;
- Copy of a Victim Notification Form dated March 29, 2004, which identifies the petitioner as the victim and her husband as the defendant, and a corresponding note from the Jersey City Police Department that a police report was prepared and can be obtained from the police records room;
- Copies of a Temporary Restraining Order issued on March 29, 2004 against the petitioner's husband for the protection of the petitioner and a Final Restraining Order granted in default on April 6, 2004 due to the petitioner's husband's failure to appear; and
- A letter dated April 5, 2004 addressed to the petitioner from a Victim/Witness Coordinator from the Office of the Hudson County, New Jersey Prosecutor, which explains the services that the office can provide to survivors of domestic violence.

In her affidavit, the petitioner states that a few months after their marriage, she discovered that her husband was involved in criminal activity. She reports that her husband threatened to kill her while showing her his gun, threatened to get her sent back to Georgia if she went to the police, shoved her on more than one occasion in front of her son, and tried to keep her from leaving the apartment. The petitioner does not describe any specific incidents of battery or extreme cruelty in any detail and her general statements alone are insufficient to establish her claim.

[REDACTED] states that he examined the petitioner on October 15 and 20, 2004 for five hours in English and again on November 11, 2004 for one hour with an interpreter. [REDACTED] states that the petitioner reported that on one occasion, her husband hit her so hard that she hit the wall and fell down and that when her son appeared, her husband left the apartment, but later called and told her that he would have someone kill her if she told the police. The petitioner does not discuss this incident in her own affidavit. [REDACTED] further states:

During my examination she manifested anxiety, anguish and psychological distress at thoughts of allowing this man to return to her home. She did not report insomnia, distressing dreams, nor a loss of energy or appetite, nor a sense of major hopelessness after the abuse started.

She did show psychological distress at exposure to cues that reminded her of aspects of her relationship with her husband, but no hyperarousal symptoms were present during the examination.

further states that the petitioner's marital relationship, as described by her:

does not fit the . . . pattern of gratuitous abuse based on dominance/submission by an inadequate husband. In this case, [the petitioner's] account seems better explained as exploitation of a naïve wife by a criminally oriented husband. The portrait she painted was of a man involved in criminal activities inside and outside the home, and who exploited her to protect his criminal behavior. She did not report a pattern of enforced isolation. . . . He threatened her life only when she indicated that she might expose him.

diagnoses the petitioner with adjustment disorder. Although refers to the petitioner as having suffered past abuse from her husband, his evaluation does not establish that the petitioner's husband battered or subjected her or her son to extreme cruelty. Rather, indicates that the petitioner's anxiety was largely caused by her husband's criminal behavior, which the record does not indicate was directed at the petitioner or her son, except to threaten the petitioner if she reported his activities. The single incident of battery described by is not discussed in the petitioner's own affidavit. Numerous other events that identifies as "exploitation and abuse," as reported to him by the petitioner, do not constitute battery or extreme cruelty. For example, states that the petitioner reported that her husband got drunk every other day and asked her for money for alcohol; that he drove without a driver's license, got into an accident and failed to go to court when summoned; and that a woman identifying herself as the girlfriend of the petitioner's husband repeatedly called their home.

The temporary restraining order, final restraining order, the Victim Notification Form, police note and the letter from the Victim/Witness Coordinator also fail to establish the petitioner's claim. The temporary restraining order was granted based solely on the petitioner's allegations and the final restraining order was granted in default because the petitioner's husband did not appear for the hearing. The record contains no evidence that the petitioner's husband was served with a copy of the temporary restraining order. The final restraining order states, "Deft [sic] to be served by HC Sheriff Dept." Yet the record contains no evidence that the petitioner's husband was actually served with a copy of the final restraining order. The letter from the Victim/Witness Coordinator does not discuss any aspects of the petitioner's case and merely indicates that the petitioner had some contact with, or was known to the Office of the Hudson County, New Jersey Prosecutor. Similarly, the Victim Notification Form and the note from the Jersey City Police Department simply show that the petitioner contacted the police on March 29, 2004 regarding her allegations against her husband. The petitioner did not submit the corresponding police report.

On appeal, the petitioner submits medical records pertaining to her treatment for abdominal pain, vertigo and dizziness at the Emergency Department of Jersey City Medical Center on November 8,

2005, nearly two years after she separated from her husband. The record is devoid of any evidence that the petitioner's medical care was necessitated by or related to her husband's battery or extreme cruelty.

On appeal, the petitioner also submits a copy of a notice of warrant for arrest of the petitioner's husband for contempt of court as a result of an unanswered traffic summons and a notice of levy of the bank account of the petitioner's husband for his past-due child support. The petitioner provides no explanation and the record is devoid of any evidence that the warrant or the notice of levy caused, or is related to, abusive actions of the petitioner's husband directed against her or her child.

The petitioner's general allegations of abuse are not sufficiently corroborated by the remaining relevant evidence and the record fails to establish that the petitioner's husband battered or subjected her or her child to extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb).

Good Faith Entry into Marriage

The petitioner submitted the following evidence relevant to her alleged good faith entry into marriage with her husband:

- The petitioner's October 29, 2005 affidavit;
- Two gas and electric bills and one notice dated October 2003, January and February 23, 2004, which list the petitioner and her husband as joint holders of the account;
- A letter dated October 31, 2003 from Fleet Community Bank, which states that the petitioner and her husband opened a joint account on March 17, 2003;
- A telephone bill dated August 25, 2003 addressed to the petitioner's husband individually at the former couple's allegedly joint residence;
- A copy of a residential lease dated March 1, 2003 for the petitioner and her son, which bears visible signs of being altered to include the name of the petitioner's husband; and
- A letter from the petitioner's landlord dated October 4, 2005.

In her affidavit, the petitioner states, "When I met [my husband], it was at a social gathering at the home of a friend. He was very nice to me and we dated. When he asked me to marry him, I accepted and we got married." The petitioner does not further describe how she met her husband, their courtship, wedding, honeymoon (if any), joint residence or any of their shared experiences, apart from her husband's alleged abuse.

The petitioner also fails to acknowledge and explain the fact, as evidenced in the record, that she divorced her second husband on April 15, 2003, just two weeks before she married her current husband (the marriage on which this petition is based). In her affidavit, the petitioner does not state the date that she separated from her second husband and the date she met her current husband and she provides no explanation for her rapid entry into her present marriage.

The joint gas and electric account documents, the letter from the bank and the telephone bill fail to show that the petitioner and her husband shared financial assets and liabilities throughout their marriage. Although the bank letter states that the petitioner and her husband opened their joint account a month before their marriage, the petitioner submitted no monthly account statements or other evidence that both she and her husband used the account throughout their marriage. Moreover, the February 23, 2004 gas and electric account notice is dated a month after the petitioner states that she and her husband separated. The single telephone bill is addressed to the petitioner's husband individually and the petitioner submits no other evidence that the former couple shared responsibility for the telephone service account.

The copied residential lease contains visible lines indicating that the name of the petitioner's husband was added to the original document. The name of the petitioner's husband is printed in handwriting that is visibly different from that in which the names of the petitioner and her son, as well as other information on the form lease, is written. In addition, the letter from the petitioner's landlord states that the petitioner has lived at the purported marital residence since 2002. The petitioner's landlord does not state that the petitioner's husband resided with her at any time.

The petitioner's brief statement of how she met and married her husband does not provide credible evidence that she entered into their marriage in good faith. The remaining relevant documents also fail to document a history of shared residence, financial assets or liabilities that would support the petitioner's claim. Accordingly, the record does not demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Section 204(g) of the Act

Beyond the director's decision, section 204(g) of the Act also bars the approval of this petition. The record shows that the petitioner married her husband while removal proceedings were pending against her. Consequently, she is subject to section 204(g) of the Act, which states:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after her marriage. The record also does not indicate that the petitioner has satisfied the bona fide marriage exception to section 204(g) of the Act, pursuant to section 245(e) of the Act, which states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph(1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exemption at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging "clear and convincing evidence" as an "exacting standard.") To demonstrate good faith entry into the qualifying relationship for a self-petition under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. 8 C.F.R. § 204.2(c)(2)(i); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to

be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As the petitioner has failed to establish that she entered into marriage with her husband in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act, she has also failed to demonstrate that she qualifies for the bona fide marriage exemption under the heightened standard of proof required by section 245(e) of the Act. Accordingly, section 204(g) of the Act requires the denial of this 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).

Joint Residence

In her affidavit, the petitioner states that she and her husband lived together in Jersey City. She provides no further information about their purported joint residence. On the Form I-360, the petitioner states that she resided with her husband from February 14, 2003 until January 2004. However, the copied residential lease for the former couple’s purported marital residence bears visible signs of alteration to include the name of the petitioner’s husband and the letter from the petitioner’s landlord does not state that her husband resided with her at any time. Although jointly addressed to the petitioner and her husband, the two gas and electric bills and the bank letter are insufficient to demonstrate that the petitioner actually resided with her husband. Accordingly, the record fails to establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Moral Character

The record indicates that the petitioner entered into marriage with her second husband² solely to evade the immigration laws. On December 10, 2002, the petitioner’s second husband withdrew his Form I-130, petition for alien relative, that he filed on the petitioner’s behalf. In connection with his withdrawal of the Form I-130 petition, the petitioner’s second husband signed a Record of Sworn Statement in which he admits that he never lived with the petitioner as husband and wife and that the

² The record shows that the petitioner has been married three times. As previously discussed, the petitioner divorced her second husband, E-M- (name withheld to protect individual’s identity), just two weeks before she married her current and third husband, E-P-, the marriage on which this petition is based.

primary purpose of their marriage was to help the petitioner and her son receive “green cards.” In the NOID, the director informed the petitioner of the existence of and quoted from the Record of Sworn Statement and advised the petitioner that the document indicated that she lacked good moral character. The petitioner did not respond to the NOID with any evidence or explanation to overcome the derogatory evidence of her second husband’s statement.

The sworn statements of the petitioner’s second husband indicate that the petitioner may have violated two sections of the Act. Section 275(a) of the Act states that any alien who “attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact” is subject to imprisonment and a fine, or both. Section 275(a) of the Act, 8 U.S.C. § 1325(a). Section 275(c) of the Act states that “[a]ny alien who knowingly enters into a marriage for the purpose of evading any provision of the immigration laws shall be imprisoned for not more than 5 years, or fined not more than \$250,000, or both.” Section 275(c) of the Act, 8 U.S.C. § 1325(c). Although the petitioner has not been convicted of either of these offenses, she has provided no evidence or testimony to rebut the sworn statements of her second husband, which indicate that she engaged in misrepresentation and marriage fraud.

On appeal, the petitioner simply resubmits a copy of the New Jersey criminal background check showing that she has no criminal record in that state. The nonexistence of a criminal record does not in itself establish an alien’s good moral character. The regulation at 8 C.F.R. § 204.2(c)(1)(vii) prescribes that “[a] self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . committed unlawful acts that adversely reflect upon his or her moral character . . . although the acts do not require an automatic finding of lack of good moral character.” The petitioner does not claim, and the record does not indicate, that extenuating circumstances caused her to marry her second husband solely to obtain immigration benefits. Accordingly, the record does not establish that the petitioner is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petitioner has failed to demonstrate that her husband battered or subjected her or her child to extreme cruelty, that she entered into their marriage in good faith, that she resided with her husband and that she is a person of good moral character. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. Section 204(g) of the Act also bars approval of this petition because the petitioner has not established that she resided outside of the United States for two years after her marriage or satisfied the bona fide marriage exemption at section 245(e) of the Act.

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.