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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: [Redacted]  
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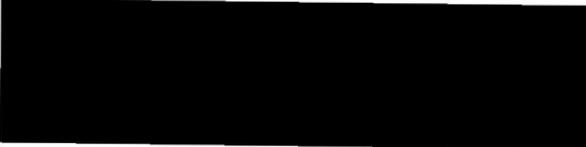
Date: MAY 25 2007

IN RE: Petitioner:



PETITION: Petition for 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:



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*  
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 entered into marriage with her husband in good faith.

On appeal, counsel submits a brief.

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:

(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.

\* \* \*

(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 Lithuania who states in these proceedings that she last entered the United States on June 3, 1996. On December 1, 2001, the petitioner married M-S-<sup>1</sup>, a U.S. citizen, in Chicago. The petitioner filed this Form I-360 on January 12, 2006. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite good-faith entry into the marriage. The petitioner, through counsel, requested additional time to respond to the RFE. The director then issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite good-faith entry into the marriage and granted the petitioner an additional 60 days to respond. The petitioner, through counsel, responded to the NOID with additional evidence. The director denied the petition on October 16, 2006 due to the petitioner's failure to demonstrate that she entered into marriage with M-S- in good faith.

On appeal, counsel claims the petitioner would face extreme hardship if she was removed from the United States to Lithuania, but counsel does not address the ground for denial. We concur with the director's determination. Counsel's claims are irrelevant to the single issue on appeal.

*Good-Faith Entry into Marriage*

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

- The petitioner's January 3, 2006 affidavit and her August 16, 2006 personal statement;
- Affidavit of the friend of the petitioner's husband, Salah Khatib;

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<sup>1</sup> Name withheld to protect individual's identity.

- One electricity bill jointly addressed to the petitioner and her husband and six corresponding bills listing her husband individually, all of which are dated after the petitioner states that she and her husband separated in November 2003;
- Copies of two pairs of credit cards for joint accounts of the petitioner and her husband, one of which was effective March 2002 and the second of which states that the petitioner's card was not valid until February 2004, after the former couple's separation;
- June 14, 2004 letter from Midway Furniture, which states that the petitioner and her husband purchased items for the past two years, although the petitioner states that her husband abandoned her in November 2003; and
- Psychological evaluation of the petitioner by [REDACTED] dated August 2, 2004.

In his decision, the director discussed in detail why the relevant evidence did not establish the petitioner's entry into marriage with her husband in good faith. We do not repeat his discussion here. On appeal, counsel claims that the director did not mention [REDACTED] evaluation and did not give proper weight to the affidavits of the petitioner and [REDACTED]. We find no error in the director's assessment of this evidence. In her affidavit, the petitioner simply states that she met her husband in 2001, that he seemed "nice and caring," that they shared common interests and similar views, that they dated for a year and then got married. The petitioner provides no further, probative details regarding how she met her husband, their courtship, wedding, joint residence or any of their shared experiences, apart from her husband's abuse. In her second statement submitted in response to the NOID, the petitioner offers no additional probative information and states, "I really don't remember any good times after my marriage[.]" As explained by the director, [REDACTED] evaluation is based on three interviews with the petitioner and provides no further, probative information regarding her alleged good-faith entry into the marriage. In the NOID, the director also explained that [REDACTED] affidavit described the behavior of the petitioner's husband when the former couple met and during their courtship and wedding, but [REDACTED] testimony provided no evidence of the petitioner's own good-faith entry into the marriage.

On appeal, counsel does not further discuss the ground for denial or submit any additional evidence. Instead, counsel devotes the majority of his brief to his irrelevant claim that the petitioner would face extreme hardship if removed from the United States to Lithuania. The first self-petitioning provisions for abused spouses enacted in 1994 required the alien to demonstrate that his or her "deportation, in the opinion of the Attorney General, would result in extreme hardship to the alien or a child of the alien." P.L. No. 103-322, § 40701 (1994). However, the extreme hardship requirement was eliminated by the enactment of the Violence Against Women Act of 2000. P.L. No. 106-386, § 1503 (2000).

On appeal, counsel fails to substantively address the ground for denial and instead discusses the petitioner's eligibility under a requirement that was eliminated from the statute over six years ago. 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. 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.

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.