



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy**

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[Redacted]

FILE: [Redacted]
EAC 05 084 52797

Office: VERMONT SERVICE CENTER

Date: SEP 12 2007

IN RE: Petitioner:

[Redacted]

PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

[Redacted]

PUBLIC COPY

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 Deadrick
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 pursuant to section 204(a)(1)(B)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as the abused spouse of a lawful permanent resident of the United States.

The director denied the petition due to the petitioner's permanent ineligibility for any immigration benefits pursuant to section 208(d)(6) of the Act and for lack of a qualifying relationship with a U.S. lawful permanent resident, entry into such a relationship in good faith, the requisite battery or extreme cruelty and good moral character.

On appeal, counsel submits a brief and additional evidence.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Iraq who states in these proceedings that she arrived in the United States in 2000. The petitioner claims to have married I-A-¹, a lawful permanent resident of the United States, on January 1, 1989 in Iraq.

Citizenship and Immigration Services (CIS) records show that I-A- was admitted to the United States as a refugee in 1994. I-A- subsequently filed a Form I-730, Refugee/Asylee Relative Petition, on the petitioner's behalf, which was denied on January 12, 1999. In 2000, the petitioner filed a Form I-589, Application for Asylum and Withholding of Removal, under an assumed name. The petitioner's asylum case was referred to the Executive Office for Immigration Review and she was placed in removal proceedings. On January 28, 2005, an immigration judge denied the petitioner's applications for asylum, voluntary departure, withholding of removal under the Act and the Convention Against Torture. The immigration judge further determined that the petitioner had knowingly filed a frivolous asylum application after proper notice of the consequences. The immigration judge also pretermitted the petitioner's application for cancellation of removal under section 240A(b) of the Act (special rule for abused spouses and children) and ordered the petitioner removed to Iraq. On February 17, 2006, the Board of Immigration Appeals (BIA) dismissed the petitioner's appeal. On March 1, 2007, the United States Court of Appeals for the Eighth Circuit (hereinafter "Eight Circuit") denied her petition for review of the BIA's decision. *Aziz v. Gonzales*, 478 F.3d 854 (8th Cir. 2007). On May 10, 2007, the Eighth Circuit denied her petition for rehearing.

The petitioner filed the instant Form I-360 on January 28, 2005. On March 1, 2006, the director issued a Notice of Intent to Deny (NOID) the petition pursuant to section 208(d)(6) of the Act, which renders any alien who has knowingly filed a frivolous asylum application permanently ineligible for any benefits under the Act. The petitioner, through counsel, timely responded with evidence that her

¹ Name withheld to protect individual's identity.

petition for review of the BIA's decision was pending before the Eighth Circuit. On August 8, 2006, the director issued a second NOID acknowledging the petitioner's response and notifying the petitioner of numerous discrepancies between her claims and evidence in the record. The August 8, 2006 NOID requested the petitioner to submit further evidence to establish her eligibility under four additional grounds for intended denial: qualifying relationship with a lawful permanent resident of the United States, entry into such a relationship in good faith, battery or extreme cruelty perpetrated against the petitioner or any of her children by her U.S. lawful permanent resident spouse, and good moral character. The director stated, "This Service will not make a final decision until provided with the decision of the 8th Circuit Court of Appeals. Please forward the court decision and any evidence that you feel will overcome the above stated reasons for denial." On April 3, 2007, having received no response from the petitioner or counsel, the director denied the petition on the five grounds cited in the two NOIDs. In his decision, the director noted that the Eighth Circuit had denied the petitioner's petition for review on March 1, 2007.

The petitioner, through counsel, filed a timely appeal with a supporting brief and additional evidence. On appeal, counsel claims that the director "erred by denying [the petitioner] a full opportunity to respond and issuing a premature, adverse decision." We find no error in the director's decision and the appeal will be dismissed for the following reasons.

I. Section 208(d)(6) of the Act Bars Approval of the Instant Petition

Section 208(d)(6) of the Act states:

Frivolous applications

If the Attorney General determines that an alien has knowingly made a frivolous application for asylum and the alien has received the notice under paragraph (4)(A) [of the right to representation by counsel and the consequences of knowingly filing a frivolous asylum application], the alien shall be permanently ineligible for any benefits under this Act, effective as of the date of a final determination on such application.

8 U.S.C. § 1159(d)(6) (2007).

The record shows that the petitioner filed an asylum application under an assumed name and gave false testimony to the asylum officer during her interview after having been properly warned of the consequences of knowingly filing a frivolous asylum application. The transcript of the petitioner's removal proceedings shows that she also falsely testified under oath regarding her identity, marriage and the basis of her asylum claim before the immigration judge. The petitioner recanted her testimony only after being confronted with the records of the Form I-730 previously filed by I-A-. The immigration judge determined that the petitioner knowingly made a frivolous application for asylum and the BIA upheld that determination in its dismissal of the petitioner's appeal.

Accordingly, the petitioner is permanently ineligible for any benefits under the Act, including immigrant classification as an abused spouse under section 204(a)(1)(B)(ii) of the Act.

II. The Director's Actions were Not Erroneous

On appeal, counsel claims that the director denied the instant petition "without affording [the petitioner] due process and a fair opportunity to respond to its Notice of Intent to Deny the Petition, dated August 8, 2006." The record does not support counsel's claim. Counsel asserts that the petitioner did not provide CIS with a copy of the Eighth Circuit's dismissal of her petition for review because "she intended to file a Petition for Rehearing En Banc with the Eighth Circuit." The record contains no evidence that the petitioner notified CIS of her intention or otherwise responded to the August 8, 2006 NOID.² Moreover, in the August 8, 2006 NOID, the director identified four grounds of denial apart from section 208(d)(6) of the Act and explicitly requested the petitioner to submit any evidence she felt would overcome those four grounds. Counsel has not shown that, (apart from the documentation of the petition for rehearing filed with the Eighth Circuit on April 13, 2007), the "new, material evidence" submitted for the first time on appeal was not available or obtainable during the eight months between the director's issuance of the second NOID on August 8, 2006 and his decision on April 3, 2007. Nonetheless, we address the evidence submitted on appeal in our following discussion of the petitioner's eligibility for immigrant classification as an abused spouse under section 204(a)(1)(B)(ii) of the Act.

III. The Petitioner is Ineligible for Immigrant Classification under Section 204(a)(1)(B)(ii) of the Act

Section 204(a)(1)(B)(ii) of the Act provides, in pertinent part, that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for preference immigrant classification if the alien demonstrates that he or she entered into the marriage with the lawful permanent resident spouse in good faith and that during the marriage, the alien or a child of the alien was battered by or was the subject of extreme cruelty perpetrated by the alien's spouse. Section 204(a)(1)(B)(ii)(I) of the Act, 8 U.S.C. §1154(a)(1)(B)(ii)(I) (2007). In addition, the alien must show that he or she is eligible to be classified as a preference immigrant under section 203(a)(2)(A) of the Act, resided with the spouse,

² Moreover, section 208(d)(6) of the Act becomes effective on "the date of a final determination" on the alien's asylum application. 8 U.S.C. § 1159(d)(6) (2007). The pertinent regulation clearly specifies that upon appeal to the BIA, the Board's decision shall be the final determination on an asylum application. 8 C.F.R. § 1003.1(d)(7). Accordingly, the bar to any further immigration benefit pursuant to section 208(d)(6) of the Act was effective on February 17, 2006, the date the BIA affirmed the immigration judge's determination that the petitioner had knowingly made a frivolous application for asylum. The director was under no obligation to hold the adjudication of the instant petition in abeyance pending the outcome of the petitioner's case before the Eighth Circuit. Rather, the director did so as a courtesy to the petitioner. Having apprised that the Eighth Circuit had denied the petition for review, the director reasonably concluded that the petitioner's proceedings before that court had concluded.

and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II) (2007).

Section 204(a)(1)(J) of the Act further states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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].

8 U.S.C. § 1154(a)(1)(J) (2007).

The eligibility requirements are explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 . . . lawful permanent resident spouse, must have been perpetrated against the self-petitioner or the self-petitioner’s child, 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 standard and guidelines for a self-petition under section 204(a)(1)(B)(ii) 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

* * *

(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.

* * *

A. Qualifying Relationship

In her January 25, 2005 affidavit, the petitioner states, "I have been married to [I-A-] since 1989." With her Form I-360, the petitioner submitted a translation of a "Marriage Certification" from the Iraq Ministry of Justice, which states that the marriage between the petitioner and I-J-Y-³ was registered on April 20, 1989. However, the copy of the original document in Arabic identifies the year of the certification as "1999." Although the director noted this discrepancy in the August 8, 2006 NOID and the April 3, 2007 denial, the petitioner did not explain the discrepant dates below and offers no explanation on appeal.

To explain the different name of her alleged spouse on the marriage certificate, the petitioner submits, on appeal, letters from I-A- and two other individuals explaining that in Iraq, men use their fathers' and grandfathers' names after their own given name. Yet the three letters provide no consistent explanation for why I-A-subsequently used only his own first and last names.⁴

The record contains no further documentary evidence of the petitioner's purported marriage to I-A-. To the contrary, numerous documents indicate that the petitioner was not married to I-A- and may have been married to another individual. The record contains:

- Two Forms G-325A, Biographic Information, signed by the petitioner on June 14, 2004 and January 27, 2005, which identify different spouses for the petitioner, but state that she has no former spouses;

³ Name withheld to protect individual's identity.

⁴ We note that the record contains copies of I-A-'s Iraqi identity card, which lists his father's and grandfather's names as J-Y-. Although not determinative of our own finding, the Nebraska Service Center director, in her denial of I-A-'s Form I-730, found the identity card, combined with the petitioner's identity card and the alleged couple's marriage certificate, to be insufficient to establish their relationship and overcome I-A-'s failure to identify the petitioner as his wife during his interview for refugee status.

- Form I-213, Record of Deportable/Inadmissible Alien, dated January 29, 2003, which lists the petitioner's spouse as [REDACTED];
- The petitioner's Forms I-589, Applications for Asylum and Withholding of Removal, dated October 16, 2000 and August 20, 2002, which list the petitioner's spouse as [REDACTED] "Agla" and [REDACTED];
- Numerous hospital and medical records dated between 2001 and 2003, which identify the petitioner's marital status as single and variously identify I-A- as the petitioner's cousin,⁵ significant other, friend and boyfriend;
- Numerous records regarding the petitioner's receipt of public assistance from the Minnesota Department of Human Services dated between 2001 and 2004, which state that the petitioner indicated that I-A- was not her husband and that [REDACTED] was her husband and the father of her first child; and
- Transcripts of the petitioner's testimony before the immigration judge in which she stated on May 26, 2004 that she initially met I-A- in 2001 in the United States and never married him.

In these proceedings, the petitioner claims that her husband compelled her to file an asylum application under an assumed name and to falsely testify in support of that application. In her January 25, 2005 affidavit, the petitioner states:

My previous affidavit . . . in support of my asylum . . . was all false and done because my husband urged me to say so. In fact, I entered the United States, using [another name] on the instructions of my husband. . . . Throughout this process, I was simply a 'willing horse' being led by my husband. I had no knowledge of the Immigration procedure, I did everything I was asked to do thinking that my husband was doing everything by the book. My entire asylum application was based on what I was asked to say by my husband who in his own desperation wanted me to by him [sic].

In her March 20, 2007 affidavit submitted on appeal, the petitioner states that she "never entered into legal marriage with [REDACTED] which is a fictitious name for a non-existent person." The petitioner also further explains why she obeyed I-A- and believes it is impossible for her to leave or "stand up" to him. The petitioner does not, however, explain why she repeatedly stated that she was not married to I-A- and that I-A- was not the father of her eldest child, as reported on her hospital and public assistance records.

As will be discussed below, we affirm the director's determination that the petitioner's husband did not subject her or any of her children to battery or extreme cruelty. Yet even if we credited the petitioner's claim that her husband abusively compelled her to provide false testimony, the petitioner has not resolved the remaining discrepancies in the record regarding her alleged marriage to I-A-. The copy of the translation of the petitioner's marriage certificate identifies her spouse by

⁵ On appeal, the petitioner states that I-A- is her cousin and counsel submits a newspaper article regarding the common practice of marriage between cousins in Iraq.

another name and the original document appears to list the date of the marriage certification as 1999, rather than 1989, as stated in the translation. Numerous hospital and medical records further identify the petitioner as not being married to I-A-. None of these discrepancies have been resolved on appeal and the record contains no further documentary evidence of the purported marriage. Accordingly, the petitioner has not demonstrated that she has a qualifying relationship with I-A-, as required by section 204(a)(1)(B)(ii)(II)(aa) of the Act.

B. Eligibility for Preference Immigrant Classification

Beyond the director's decision, the record also fails to establish that the petitioner was eligible for preference immigrant classification based on her relationship with I-A-. 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 regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for preference immigrant classification under section 203(a)(2)(A) of the Act based on his or her relationship to the abusive spouse. As the petitioner has not established her marriage to I-A- (as well as his battery or extreme cruelty), she has also failed to demonstrate that she is eligible for preference immigrant classification based on their marriage, as required by section 204(a)(1)(B)(ii)(II)(cc) of the Act.

C. Entry into the Marriage in Good Faith

In her January 25, 2005 affidavit, the petitioner states that she married I-A- in Iraq in 1989, that her husband came to the United States as a refugee and returned to see her in Syria in 2000. She states, "It was a bittersweet encounter for both of us as the circumstances really tested ou[r] love and affection for each other." The petitioner also states that she and her husband have three children together and that their fourth child was stillborn. In her appeal affidavit, the petitioner states, "I do not deny that I am emotionally close with my husband. My dependent relationship on him is a way for me to survive in this country." The petitioner does not state how she met her husband and she does not describe their courtship or describe in probative detail any of their shared, marital experiences, apart from the alleged abuse.

The copied birth certificates of three of the petitioner's children list the name she assumed on her asylum application. Two of the copied birth certificates list I-A- as the children's father, but the third copied certificate (for the petitioner's oldest child) does not identify a father. On appeal, the petitioner submits documentation of parentage testing from Memorial Blood Centers in Minneapolis dated September 27, 2006, which indicates that the petitioner and I-A- are the parents of two children, Sophan and Apotorib. The petitioner also submits Notices of Health Plan Enrollment dated November 20, 2006, which show that the petitioner, I-A- and four children are

covered by the same insurance policy. The petitioner does not, however, explain the discrepancies between the documentation submitted on appeal and the record showing that on October 18, 2001, she informed the Minnesota Department of Human Services that [REDACTED] was the father of her first child, as well as the numerous hospital and medical records stating that she was "single" and not married to I-A-.

Even if the petitioner had resolved these discrepancies and the evidence submitted on appeal was sufficient to show that the petitioner entered into a relationship with I-A- in good faith, the statute requires that such intent be shown upon entry into "the marriage." Section 204(a)(1)(B)(ii)(I)(aa) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(I)(aa) (2007). As the petitioner has not demonstrated that she was ever legally married to I-A-, she also has not established that she entered into their marriage in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

D. Battery or Extreme Cruelty

As previously noted, the petitioner initially stated that she filed a false asylum application because her husband told her to do so and that she was "simply a 'willing horse'" throughout the entire process. The petitioner explained, "I feel in some way used and abused and at the same time torn between apparently desperate attempts of a husband to preserve his family. I now realize that he was using the process to illegally keep his wife and children in the United States. I was not complicit in the entire scheme, but just an ignorant participant." Yet the petitioner does not state that she failed to understand the warnings repeatedly made to her of the consequences of providing false testimony in her asylum case and during her removal proceedings. She also does not indicate that her compliance with I-A-'s "instructions" to file a false asylum application was secured through, for example, I-A-'s physical abuse, threats of violence or harm to her or any of her children, or through other abusive behavior that would constitute battery or extreme cruelty pursuant to 8 C.F.R. § 204.2(c)(1)(vi).

Moreover, as discussed by the director, the record contradicts the petitioner's claim. A psychological evaluation of the petitioner dated January 20, 2005 and submitted with the Form I-360 diagnoses the petitioner with major depressive disorder and posttraumatic stress disorder, but states that her "high psychosocial stressors" were "related to events happening to her in the past (war experiences, loss of parents, and separation from her husband for 9 years), and present situation (Immigration status, recent situation in Iraq, and loss of her baby after being born)." The evaluator confirms that he has been providing psychotherapy services to the petitioner and I-A- jointly on a weekly basis for over a month and further states, "[The petitioner] is very afraid of losing her 3 sons and being separated from her husband again." The evaluator does not identify any abusive behavior of I-A- or indicate that any actions of I-A- were causative factors of the petitioner's mental health condition.

In her appeal affidavit, the petitioner states that I-A- accompanied her to the psychological evaluation "because he wanted to control" what she said. The petitioner states that I-A- "would not permit me to see the therapist without his presence or a male relative or friend's presence. I cannot say anything bad

about [I-A-] because I depend on him for my emotional well-being and financial support. He controls what I do and who I see and talk to.” The petitioner further states:

I am not allowed to work and I have to ask my husband for money to pay for basic needs. He controls all the money in our family and, as a strict Muslim, I was raised to obey and honor my husband at all times. . . . I am also afraid that I will lose my children if I do not stay with [I-A-]. . . . It is impossible for me to leave my husband or stand up to him when I do not believe that I could survive in this world without him.

On appeal, counsel claims that the petitioner is a “victim of abuse or extreme cruelty” because:

Her husband uses isolation, economic power, and male privilege to control and intimidate her. Because [the petitioner] is a strict Muslim who obeys and honors her husband at all costs and is completely dependent on him emotionally, psychologically and financially, she must meet all his demands and agree with everything he does and tells her to do. Furthermore, [the petitioner] fears that she will lose her four children if she does not stay with [I-A-].

The record does not support the claim that I-A-’s behavior was abusive when considered in the context of the petitioner’s religious and cultural background. Counsel submitted the U.S. Department of State’s 2001 Country Report on Human Rights Practices in Iraq which states, “Domestic violence against women occurs but little is known about its extent. Such abuse customarily is addressed within the tightly knit family structure. There is no public discussion of the subject, and no statistics are published.” Counsel also submitted a document entitled “Human Rights in Arab Countries” from the Jewish Virtual Library, which states, “Domestic violence occurs in Iraq, but no statistics exist to account for its frequency. Honor crimes are legitimate under Iraqi law” Counsel further submitted a document entitled “Islamic Republic of Iran.” Counsel fails to articulate how these three documents support the petitioner’s claim.

Counsel also submitted an article entitled, “Wife Abuse in the Muslim Community” printed from the website of geocities.com, which states that the most common form of abuse of Muslim women is emotional and mental and that:

In Muslim homes, this includes verbal threats to divorce the wife, to remarry, or to take the kids away if she does not do exactly as she is told; intimidation and threats of harm; degradation, humiliation, insults, ridicule, name-calling, and criticism; false accusations and blaming her for everything; ignoring, dismissing, or ridiculing her needs; neglect and the silent treatment; spying on her; telling her she is a failure and will go to hell; twisting Islamic teachings to make her feel worthless because she is a woman; restricting her access to transportation, health care, food, clothing, money, friends, or social services; physical and social isolation; extreme jealousy and possessiveness; lying, breaking promises, destroying trust; etc.

In her appeal affidavit, the petitioner states that I-A- controls all of the family's money and "makes all the big decisions." The petitioner does not indicate, however, that her husband ever deprived her or her children access to money, food, clothing, transportation, health care or social services. To the contrary, the record shows that the petitioner and her children had health insurance, received medical treatment and social services. Although the petitioner states that she obeys and honors her husband due to her religion and beliefs, the record does not demonstrate that I-A- ever threatened the petitioner with harm, divorce, intimidation or "twisted Islamic teachings" to make her feel worthless as a woman. The petitioner states that she is afraid that she would lose her children if she did not stay with I-A-, but she does not state that I-A- ever threatened to take the children away from her. The record contains no evidence that I-A- subjected the petitioner or her children to any of the remaining forms of emotional and mental abuse listed in the above-cited passage.

On appeal, counsel submits an article entitled "Love and Stockholm Syndrome: The Mystery of Loving an Abuser," which states that "emotional bonding with an abuser is actually a strategy for survival for victims of abuse and intimidation." We do not discredit this statement nor deny the petitioner's emotional bond to I-A-, who is the father of at least two of her children. The article, does not, however, establish that I-A- subjected the petitioner or any of her children to battery or extreme cruelty.

In addition, on appeal, both the petitioner and counsel fail to explain the discrepancy between the petitioner's claim that I-A- abused her and her testimony before the immigration judge. The transcript of the petitioner's removal proceedings shows that I-A- accompanied the petitioner to immigration court. On January 28, 2005, the immigration judge had I-A- removed from the court room and then proceeded to ask the petitioner, "Ma'am, are you afraid of [I-A-] harming you in any way?" The petitioner answered, "No, I'm not afraid of him, but I respect him." The judge then asked, "Okay. Has he ever threatened to harm you or do anything bad to you?" The petitioner responded, "No." The judge also asked the petitioner, "Ma'am, do you have fear of your husband harming you or abusing you in any way if you don't do what he tells you to do." The petitioner replied, "No." The judge further inquired whether I-A- had come to the court that day with the petitioner's approval and the petitioner answered, "Yes." These uncontested statements indicate that I-A- did not subject the petitioner or any of her children to battery or extreme cruelty. Moreover, the petitioner's failure to explain the discrepancies between her present claim of abuse and her testimony before the immigration judge (on the same day that this petition was filed) greatly compromises the credibility of her statements in these proceedings regarding I-A-'s allegedly abusive behavior.

Even if the petitioner had established I-A-'s battery or extreme cruelty, she would still not satisfy the statutory requirement that the abuse occur "during the marriage." Section 204(a)(1)(B)(ii)(I)(bb) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(I)(bb) (2007). As previously determined, the petitioner has not demonstrated that she had a valid marriage or other qualifying relationship with I-A-. Accordingly, the petitioner has not demonstrated that she or any of her children were battered or subjected to extreme cruelty by I-A- during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

E. Good Moral Character

The petitioner initially submitted no evidence of her good moral character. On appeal, the petitioner submits eight letters from the Minnesota Department of Public Safety stating that no criminal records were found under the petitioner's name and seven of her aliases. The petitioner also submits letters from six individuals attesting to her religiousness and character. Yet the regulation prescribes that "[p]rimary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit." 8 C.F.R. § 204.2(c)(2)(v). The petitioner does not discuss her moral character in either of her affidavits. Accordingly, the petitioner submitted insufficient evidence to demonstrate her good moral character.

We are also barred from finding the petitioner to be a person of good moral character due to her prior false testimony. Section 101(f) of the Act states, in pertinent part:

For the purposes of this Act – No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was

* * *

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act[.]

8 U.S.C. § 1101(f) (2007).

The immigration judge determined that the petitioner gave false testimony for the purposes of obtaining asylum and other relief from removal. On January 28, 2005, the immigration judge stated to counsel, "Your client has admitted under oath that she lied in her prior hearing. . . . She can not establish good moral character because she provided false testimony under oath in an Immigration proceeding." The BIA affirmed the immigration judge's decision and stated in their February 17, 2006 decision:

The Immigration Judge correctly found that the [petitioner] provided false testimony and knowingly made a frivolous application for asylum. . . . The [petitioner] gave herself an entirely new identity and claimed to fear an "honor killing" if returned to Iraq based upon a marriage which never existed. . . . The [petitioner] admitted that she provided a false story . . . only after the Department of Homeland Security (DHS) presented a copy of the Refugee/Asylee Relative Petition (Form I-730) filed by [I-A-] on [her] behalf . . .⁶

The BIA's decision was upheld by the Eighth Circuit, which found that the immigration judge's "determination that [the petitioner's] asylum application was frivolous is supported by substantial evidence." *Aziz v. Gonzales*, 478 F.3d at 857. The court explained:

⁶ The BIA also found no error in the immigration judge's pre-termination of the petitioner's application for cancellation of removal under the special rule for abused spouses because the petitioner testified that I-A- had never threatened to harm her and that she had no fear of him harming or abusing her in any way.

When confronted with evidence of her deception, [the petitioner] admitted that she had lied to the IJ [immigration judge] and had submitted fraudulent evidence. . . . Finally, when she filed her asylum application, an interpreter informed her – and [the petitioner] provided her signature indicating that she understood – that she would be permanently ineligible for any benefits under the INA [the Act] if she knowingly made a frivolous application for asylum.

While [the petitioner] now admits her involvement in the deceit, she challenges the frivolousness determination by alleging that her actions were compelled by her husband and therefore lacked the requisite deliberateness. The IJ, however, determined that “[the petitioner] and her husband [were] working together to perpetrate the fraud that was brought before this Court on the asylum application.” With respect to the deliberateness determination, we are constrained by the IJ’s finding as to credibility and his rejection of [the petitioner’s] claim that her husband overpowered her will, as these findings were supported by substantial evidence.

Id.

Accordingly, the record clearly demonstrates that the petitioner gave false testimony for the purpose of obtaining immigration benefits and section 101(f)(6) of the Act bars a finding of her good moral character.

The petitioner is also ineligible for a discretionary determination of her good moral character despite her false testimony pursuant to section 204(a)(1)(C) of the Act, which permits such a finding if: 1) the alien’s act is waivable for the purposes of determining admissibility or deportability under section 212(a) or section 237(a) of the Act; and 2) the conviction was connected to the alien’s battery or subsection to extreme cruelty by his or her lawful permanent resident spouse or parent. Section 204(a)(1)(C) of the Act, 8 U.S.C. § 1154(a)(1)(C) (2007). Although section 212(i) of the Act provides a waiver of inadmissibility due to fraud or willful misrepresentation of a material fact for self-petitioners (under section 204(a)(1)(B)(ii) of the Act), the petitioner has not established that I-A- is her spouse and that he subjected her to battery or extreme cruelty. Accordingly, the petitioner is incapable of demonstrating the requisite connection between her false testimony and I-A-’s alleged abuse.

The petitioner has failed to demonstrate that she is a person of good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act.

In summary, the petition will be denied on six grounds: 1) section 208(d)(6) of the Act renders the petitioner permanently ineligible for any immigration benefits due to the final determination that she knowingly made a frivolous application for asylum; 2) the petitioner did not demonstrate that she has a qualifying relationship with I-A-; 3) that she is eligible for preference immigrant classification based on such a relationship; 4) that she entered into such a relationship in good faith; 5) that I-A- subjected her or any of her children to battery or extreme cruelty during such a relationship; and 6) that she is a

person of good moral character. The petitioner is consequently ineligible for immigrant classification as an abused spouse under section 204(a)(1)(B)(ii) 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 (2007). Here, that burden has not been met.

ORDER: The petition is denied.