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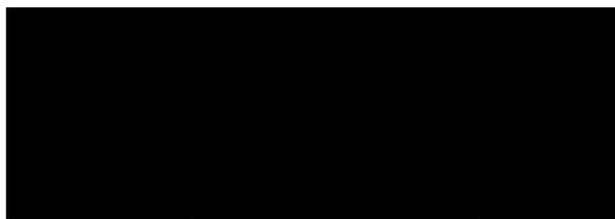
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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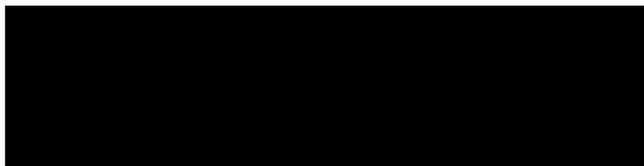
Office: VERMONT SERVICE CENTER

Date: **JUL 29 2008**

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:



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.

*Mauna 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)(A)(iii) of the Immigration and Nationality Act (“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 finding that the petitioner failed to establish that she entered into her marriage in good faith.

The petitioner, through counsel, submits a timely appeal with 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, 8 U.S.C. § 1154(a)(1)(J) 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.

\* \* \*

(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.

\* \* \*

(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 Iraq, who entered the United States on April 2, 2004 as the K-1 nonimmigrant fiancée of D-G-,<sup>1</sup> a United States citizen. On June 4, 2004, the petitioner married D-G- in Van Nuys, California. On April 14, 2005, the marriage between the petitioner and D-G- ended in a divorce.<sup>2</sup>

The petitioner filed the instant Form I-360 on February 6, 2006. On February 28, 2006, the director issued a Request for Evidence (RFE) of the termination of the petitioner's first marriage, her good moral character and good faith entry into her marriage. The petitioner, through counsel, requested additional time to respond. On May 22, 2006, the director issued a Notice of Intent to Deny (NOID), which notified the petitioner of the deficiencies in the record regarding her failure to establish the termination of her first marriage and her good moral character. The petitioner responded to the NOID

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Name withheld to protect individual's identity.

Superior Court of California, County of Los Angeles, Case Number: [REDACTED]

on July 17, 2006. The director issued a second NOID on August 21, 2006. In the NOID, the director acknowledged the petitioner's submission of evidence of her good moral character, but notified her that the record failed to establish the termination of her prior marriage and that she entered into her marriage with D-G- in good faith. The petitioner responded to the NOID on October 20, 2006. In his decision dated December 8, 2006, although the director found the petitioner had established the termination of her first marriage, he denied the petition based on the petitioner's failure to establish that she entered into her marriage in good faith. The petitioner, through counsel, timely appealed with additional evidence. As will be discussed, we concur with the determination of the director and find that the petitioner has failed to establish her eligibility on appeal.

At the time of filing, the petitioner submitted a personal declaration, dated October 10, 2005, declarations from her friends and family, and her marriage certificate. In her declaration, the petitioner states that she came to the United States on April 2, 2004, immediately moved in with her spouse and got married on June 4, 2004. The petitioner does not provide any specific details regarding her courtship and relationship with D-G- prior to their marriage, such as a description of how she met him, how long they dated prior to their marriage, her reasons for marrying him, or any other probative information to establish that she intended to establish a life with D-G- and entered into her marriage in good faith.

The declarations of the petitioner's friends and family do not provide any further probative information regarding the petitioner's relationship with D-G- or of her good faith entry into her marriage. The declarations all contain the same general statement that the petitioner "was married to [D-G- and] ... lived with him shortly after her arrival to the United States which was April 4, 2004." The declarations do not contain any probative information relating to the petitioner's relationship with D-G-, their activities together or the petitioner's intent in marrying him.

In response to the director's August 21, 2006 NOID, counsel claimed that the petitioner did not have an insurance policy, bank statements, tax records or evidence of joint property because of the short duration that they resided together. While the short duration of their relationship may explain the lack of documentary evidence, the petitioner herself submits no further statement regarding her good faith marriage and an explanation for the lack of documentary evidence. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The remaining relevant evidence submitted by the petitioner in response to the second NOID fails to establish the petitioner's good faith entry into her marriage. Although the petitioner submitted several photographs of what is purported to be her engagement ceremony, those pictures do not establish the petitioner's feelings or intentions in marrying D-G-. The petitioner fails to describe the remaining photographs, the date of the occasion, the event depicted or to provide any other details to support her claim of a good faith marriage. In addition, as noted by the director the compact disc (CD) which purports to document the petitioner's engagement party and ceremony is not decipherable viewable and therefore is of no evidentiary value.

The additional declarations submitted in response to the NOID from the petitioner's friends, [REDACTED]

[REDACTED] fail to establish that the petitioner entered into her marriage in good faith. These declarations, as in the prior declarations, all contain the same general statement regarding the fact that the petitioner was married to D-G-, but provide no specific details regarding her relationship with D-G- or other information to establish that she entered into her marriage in good faith.

On appeal, counsel submitted a brief and additional testimonial evidence from the petitioner's friends and family. In his brief, counsel repeats the assertions he made in response to NOID, that because the petitioner and her spouse were married for a short period of time, the petitioner was unable to obtain any joint documents. Counsel then referred to the declarations of the petitioner's friends and relatives, the photographs, the certificate from the Armenian Church in Amman, Jordan and the CD, which were previously submitted as sufficient evidence of the petitioner's good faith entry into her marriage to D-G-. Although counsel also provides the facts regarding how the petitioner met D-G-, the petitioner herself fails to submit any additional statement describing first meeting D-G-, her feelings for him, the reasons she married him, details regarding their relationship other than it relates to the claimed abuse, or any other information to establish that she entered into the marriage in good faith. Counsel's statements, without any explanation or discussion from the petitioner are not sufficient to establish the petitioner's claims. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The additional statements submitted on appeal provide no further probative information to establish that the petitioner intended to establish a life with D-G- at the time of her marriage. The statement from the petitioner's brother, [REDACTED] describes how D-G-'s mother approached Mr. [REDACTED] at church because she was "looking to find a wife" for D-G-. Mr. [REDACTED] then indicates the petitioner and D-G- met "briefly at the airport for a few hours," then in May 2003 they spent five days together, after which "they decided to get engaged . . ." Mr. [REDACTED] provides no further details relevant to a claim of good faith marriage other than to state that he heard that the petitioner and D-G- "liked each other." The remaining statements from the petitioner's friends and family indicate that they were present at the petitioner's and D-G-'s engagement ceremony and that the petitioner "was very happy" when she first got married, but provide no specific details regarding the petitioner's feelings or intent at the time of her marriage.

Finally, the petitioner submitted a videotape and four photographs on appeal, two of which were already contained in the record. The petitioner again fails to provide any information regarding the photographs, a description of the events depicted, or any other testimony regarding the relevance of the photographs to the petitioner's claim of a good faith marriage. Similarly, the videotape shows the petitioner and D-G- during a church ceremony and at several other locations. However, notwithstanding the fact that we are unable to verify the time or date that the recordings were made, the videotape also contains on foreign language with no English translation or transcript.

Accordingly, we are unable to determine whether the evidence is what the petitioner purports it to be. *See, e.g.* 8 C.F.R. § 103.2(b)(3).

As discussed above, the petitioner provided no detailed description of how she met her husband, their courtship, wedding, and shared experiences, apart from her husband's alleged abuse. The relevant testimonial and documentary evidence submitted on the petitioner's behalf also fails to provide probative information sufficient to establish the petitioner's claim. Accordingly, we concur with the director's finding that the petitioner failed to establish that she entered into marriage with D-G- in good faith, as required by section 204(a)(1)(iii)(I)(aa) of the Act.

Beyond the director's decision, the petitioner has also failed to demonstrate that she resided with her spouse during their marriage. The record contains vague and inconsistent evidence of the petitioner's joint residence with D-G-. In her declaration, the petitioner states that she came to the United States on April 2, 2004 and "immediately thereafter moved in with my husband [at his home] before we got married on June 4, 2004." On the Form I-360, the petitioner states that she resided with her spouse from April 14, 2004 until August 5, 2004, and that they last resided together at [REDACTED]. The petitioner does not provide any further testimonial evidence such as a description of their residence or shared possessions or documentary evidence to support her claim of residence with D-G-.

Further, contrary to the petitioner's claim that after arriving in the United States, she "immediately" moved into D-G-'s home before their marriage, on her marriage license, signed by the petitioner on May 28, 2004, nearly two months after her arrival in the United States, the petitioner listed her address as "[REDACTED]". It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The remaining testimonial evidence, which consists of declarations from the petitioner's friends and family, all generally state that the petitioner lived with D-G- "shortly after her arrival" to the United States on April 4, 2004 and that she lived with D-G- at the claimed address. The declarations contain no probative information to support the petitioner's claim of residence with D-G-.

As discussed above, the petitioner has submitted no documentary evidence to support her claim of residence with D-G-. While counsel (not the petitioner) explains that the petitioner has no documentary evidence due to the short duration of their marriage, the testimonial evidence submitted by the petitioner and on her behalf contains little probative information regarding the petitioner's residence with D-G-. Moreover, the petitioner's testimony is contradicted by the information she provided on her marriage license. Given this discrepancy and the lack of specific and probative testimonial evidence or documentary evidence, the petitioner has failed to establish that she resided with her spouse. We therefore, withdraw the director's finding in this regard.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.