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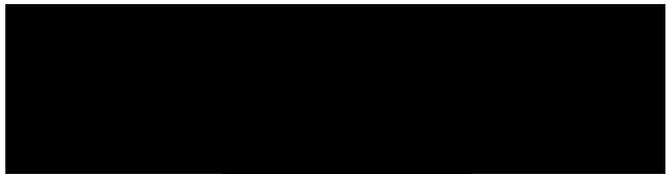
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**

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FILE: [Redacted]  
EAC 07 238 51430

Office: VERMONT SERVICE CENTER

Date: APR 02 2009

IN RE: Petitioner:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

// ✓

hn F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The matter is now before the Administration Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition is denied.

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.

We concur with the director’s determination that the petitioner has not established that she entered into the qualifying relationship in good faith. We also find, beyond the decision of the director, that the record does not include sufficient evidence to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by her spouse, C-T-<sup>1</sup>, that the petitioner established that she resided with C-T-, and that the petitioner established that she is a person of good moral character. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

On January 9, 2008, the director denied the petition, finding that the petitioner failed to provide evidence that she had entered into the qualifying relationship in good faith. On appeal, counsel for the petitioner provides documents and asserts that the documents establish that the petitioner entered into the qualifying relationship in good faith.

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 also explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

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

(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 . . . spouse, 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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

(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 explained 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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she 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 matter provides the following pertinent facts and procedural history. The petitioner in this matter is a native and citizen of Jamaica. The petitioner married C-T- on March 7, 2002 in the State of Florida. The petitioner's spouse filed a Form I-130, Petition for Alien Relative, which was denied on December 10, 2004 for failure of the petitioner's spouse to appear. The denial decision of the Form I-130 was re-issued on August 9, 2007, for failure of the petitioner's spouse to appear at an interview scheduled on August 7, 2007. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on July 31, 2007. She indicated on the Form I-360 that she resided with C-T- from October 2001 to October 2004 at an address on [REDACTED] in Boynton Beach, Florida. The record also includes a Form G-325A, Biographical Information, dated January 30, 2003 showing the petitioner's address at the [REDACTED] address from March 2002 to the date of the Form G-325A and a Form G-325A dated July 12, 2007 showing the petitioner's address at the [REDACTED] address from June 2002 to the date of the Form G-325A. The director issued a Request for Further Evidence (RFE) on October 11, 2007. Upon review of the record, including the response to the RFE, the director denied the petition on January 9, 2008.

*Good Faith Marriage*

The petitioner initially provided no information regarding her relationship with C-T- other than letters from individuals alluding to the abuse the petitioner claimed she suffered. In response to the director's RFE, the petitioner provided a personal statement in which she claimed: that she met C-T- at a train station where they waited for the same train; that they became closer each time they met; **kept company** for awhile; and decided to get married. The petitioner also submitted letters from [REDACTED] and [REDACTED] who indicated that the petitioner had met a man at the train station. Each letter-writer refers to having been introduced to C-T- and indicates her belief that the couple were in love and happy together. The petitioner also provided copies of three generic rental receipts for rent of a residence on [REDACTED] in Boynton, dated December 30, 2002, June 1, 2003, and August 1, 2003. The December 30, 2002 receipt was issued to both the petitioner and C-T-, the June 1, 2003 receipt was issued to the petitioner, and the August 1, 2003 receipt was issued to C-T-. The petitioner also submitted a photocopy of a utility bill issued to C-T- at the [REDACTED] address in January 2004.

On appeal, the petitioner provided a second personal statement in which she states that she met C-T- at the train station in 2001, that they dated for some time until they married in March 2002. The petitioner declares that she entered into the marriage in good faith with the intention of having a lasting marriage and that she, C-T-, and her daughter lived together as a family unit until C-T- began to abuse her. The petitioner also submitted: a photocopy of a one-year lease for the [REDACTED] premises dated December 30, 2002; photocopies of jointly filed 2002 and 2003 Internal Revenue Service (IRS) Forms 1040, showing the address of the couple at the [REDACTED] residence; and photocopies of a receipt issued to the petitioner in April 2003, a receipt issued to C-T- in May 2003, a utility bill issued to the petitioner in November 2003, and a previously submitted utility bill.

The AAO has reviewed the letters, IRS Forms, and the photocopies of various receipts submitted to establish the petitioner's intent upon entering the qualifying relationship. The letters submitted on the petitioner's behalf are general and lack detail sufficient to establish that the letter-writers had actual knowledge of the legitimacy of the marriage and of the petitioner's intent upon entering the marriage. The photocopies of the IRS Forms submitted are not certified and thus are insufficient to establish that the forms were actually filed. The petitioner has also submitted inconsistent information regarding the time she and C-T- purportedly resided together. The petitioner indicates that she resided with C-T- at the [REDACTED] address from October 2001 to October 2004 on the Form I-360; however, the petitioner indicates on the Forms G-325A that she did not live at the [REDACTED] address until March 2002 or June 2002. 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). Similarly, the petitioner provides a photocopy of a one-year lease for the [REDACTED] address for a period of time beginning in January 2003. The photocopied receipts and utility bills provided are also generic, are intermittent, and none are addressed to both the petitioner and C-T-. Going on record without

supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence also fails to support a finding that she entered into the relationship with C-T- in good faith. The petitioner has not provided any of the detail that would assist in establishing her intent upon entering the marriage. The petitioner's statements provide little background information relating to the couple's courtship and subsequent interactions prior to and including their marriage. The AAO is without the detail necessary to ascertain that the petitioner, C-T-, and the petitioner's daughter lived together as a family unit. The record as presented does not establish the petitioner's intent upon entering the qualifying relationship. Accordingly, the AAO finds that the petitioner has failed to establish that she entered into her relationship with C-T- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the petitioner has also failed to establish that she resided with C-T-, that she was subjected to abuse perpetrated by C-T-, and that she is a person of good moral character.

#### *Battery or Extreme Cruelty*

The petitioner initially provided letters from [REDACTED], an individual identified as her employer, [REDACTED] (no last name provided), [REDACTED] (no last name provided), and her daughter to establish that she had been subjected to abuse by C-T-. [REDACTED] indicates that she saw a black and blue mark on the petitioner's cheek and the petitioner told her that her husband had hit her and had left and then had returned to get money and when the petitioner refused was physically abused again. [REDACTED] writes to the petitioner that the petitioner deserved to be treated better and that "he" did not have to hit her. [REDACTED] writes to the petitioner that she cannot believe that "he" hit her. The petitioner's daughter indicates that in April of 2004 she came home early from school and heard her stepfather yelling as she came to the door and when she opened the door she saw her stepfather slap her mother.

In response to the director's RFE, the petitioner noted: when she and C-T- were playing, he punched her in the face and she thought it was an accident because C-T- had said he was sorry; that after that her husband became distant and would complain because they did not have money and as a result would yell at her, grab her by the front of her clothes, and hit her on the head, shoulders, or slap her; that she became scared of her husband; that every time he would hit her he would go away and stay away longer and longer each time; and that it was in January 2004 that he went away for the first time after he hit her. The petitioner also indicated that she was scared of C-T- but she did not want to call the police because she did not want him to go away again. The petitioner related that after her daughter saw her slapped, C-T- went away but came back later and said he was sorry, although he always reminded her that she was not a citizen. The petitioner also reported that in October (no year given) she suspected that her husband was having an affair and one day when she came home from

work all his clothes were gone. The petitioner also indicated that she learned that C-T- was in jail and was released at the end of January 2005.

Also in response to the director's RFE, the petitioner provided a letter from [REDACTED] who indicated that she saw the petitioner when her face was swollen and the petitioner told her that C-T- hit her but it was an accident. [REDACTED] also indicated that the petitioner and the petitioner's daughter told her that C-T- would yell at the petitioner and complain that they did not have money. The petitioner also provided a letter from [REDACTED] who reported that her mother told her that the petitioner's husband had been beating the petitioner up.

Upon review of the petitioner's personal statement, the AAO does not find that it includes sufficient definitive details to conclude that the petitioner was subjected to battery or extreme cruelty. The AAO acknowledges the petitioner's claim that her husband slapped her, pushed her, hit and punched her; however, the petitioner did not report these actions to the police. The petitioner's friend, [REDACTED] who claims she saw the petitioner's swollen face on one occasion was told by the petitioner that it was the result of an accident. The petitioner's employer and other friends remark that they learned that the petitioner had been subjected to abuse from the petitioner and do not provide any evidence that they had personal knowledge of or witnessed any event of abuse. The petitioner's daughter states that she saw her mother being yelled at and slapped, but does not provide sufficient detailed information so that her statements may be evaluated for their veracity. Upon review of the petitioner's personal statement and the letters and statements submitted on her behalf, the AAO finds that the information provided is general, vague, and lacks probative detail. The record does not include sufficient evidence to establish that the petitioner was subjected to battery or extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

As discussed above, the record is insufficient to establish the petitioner's claim of abuse. Accordingly, the petitioner failed to establish that she was battered or subjected to extreme cruelty by C-T- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Residence*

The AAO has reviewed the documents submitted to establish that the petitioner resided with C-T- as required by 8 C.F.R. § 204.2(c)(1)(v). As noted above, the petitioner indicated on the Form I-360 that she resided with C-T- at an address on [REDACTED] from October 2001 to October 2004. As determined above, this information is inconsistent with the information the petitioner provided on the Forms G-325A and the photocopy of the lease that she provided. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591. Similarly, as noted above, the AAO finds that the photocopied receipts and utility bills provided are generic, are intermittent, and are not addressed to both the petitioner and C-T-, thus lack probative

value to establish that the petitioner and C-T- resided together. The IRS Forms showing the petitioner and C-T- filed joint returns in 2002 and 2003 are not certified and thus the AAO is unable to ascertain that the Forms were actually filed. Again, the statements provided by the petitioner's friends are general and do not provide sufficient detail to establish that the couple resided together. Moreover, the petitioner's statements do not provide sufficient detail regarding C-T- and their interactions at the residence, other than the claimed abuse, to establish that the couple actually resided together.

Upon review of the documents submitted, the AAO finds the petitioner has submitted inconsistent and insufficient information to demonstrate that she resided with C-T- during their qualifying relationship.

*Good Moral Character*

As the AAO has noted, the petitioner has assumed several different names while living in the United States. Although she has provided generic affidavits from friends to show that she is a person of good moral character, she has not provided a personal affidavit accompanied by local police clearances or a state-issued criminal background check from each locality or state in the United States in which she has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition and in the various names she has used. As the petitioner failed to submit her affidavit and police clearances, the AAO is precluded from finding that the petitioner has established good moral character. Accordingly, the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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).

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed. The petition is denied.