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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



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FILE:

[REDACTED]  
EAC 06 173 50184

Office: VERMONT SERVICE CENTER

Date APR 15 2009

IN RE:

Petitioner: [REDACTED]

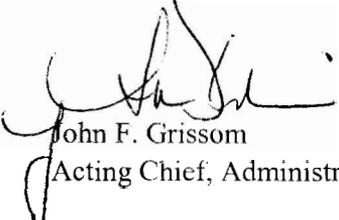
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

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).

  
John 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 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.

On February 4, 2008, the director denied the petition, finding that the petitioner failed to establish that she had been subjected to battery or extreme cruelty as set out in the statute and regulations and had failed to establish that she had entered into the marriage in good faith.

On appeal, counsel for the petitioner submits a brief and additional documentation.

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 explained 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 citizen

... spouse, must have been perpetrated against the self-petitioner ... and must have taken place during the self-petitioner's marriage to the abuser.

\* \* \*

(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.

\* \* \*

(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.

\* \* \*

(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 citizen of Trinidad. The petitioner married C-W-<sup>1</sup> initially on May 11, 1998. The petitioner and C-W- remarried on November 11, 2004, after C-W- obtained a divorce from his wife on March 21, 2002. C-W- filed a Form I-130, Petition for Alien Relative on the petitioner's behalf on June 29, 2005, which was denied April 28, 2006. The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on May 23, 2006. The director issued a Request for Further Evidence (RFE) on November 6, 2006 and a Notice of Intent to Deny (NOID) the petition on January 30, 2007. Upon review of the record, including the response to the RFE and the rebuttal to the NOID, the director denied the petition on February 4, 2008 for the reasons detailed above.

On appeal, counsel asserts that the petitioner was unable to establish joint accounts with her spouse because of his criminal record and was unable to provide evidence of insurance together because she did not have a job that provided this benefit and she did not have enough money for insurance or property. Counsel asserts that the petitioner and her husband were involved socially and had a good relationship with each other's family, as evidenced by the pictures provided. Counsel contends that the petitioner entered into the marriage in good faith. Counsel claims that the petitioner suffered emotional abuse at the hands of C-W- , was forced to participate in deviant sexual activity with her husband, that her husband behaved irrationally because of his drug habit, and that he had multiple affairs and was arrested for statutory rape which further shows his abusive and possessive nature.

#### *Battery or Extreme Cruelty*

The AAO has reviewed the petitioner's undated personal statement, submitted in response to the director's RFE or NOID. The petitioner provided information stating how she met C-W-, that she fell in love with him, and although he slept with other women and stole from her, she married him on May 12, 1998. She indicated that even after their marriage C-W- continued to have affairs and had a child by another woman. She noted that he was arrested at one point and in April 2000 he was in put in jail. She also noted that she moved to her apartment on [REDACTED] in 2000 and that C-W- did not see this apartment until his release from jail in 2004. She further noted that she visited C-W- in jail until he was released in 2004. The petitioner indicated that while C-W- was in jail she discovered that he had not divorced his previous wife and so she helped him with a simple dissolution of his prior marriage which was granted March 21, 2002. The petitioner indicated that when C-W- was released from prison he came to see her and she thought he was trying to change; but she realized that he was continuing to engage in affairs. Despite her apparent knowledge of this, the petitioner indicated that she and C-W- married again in November 2004 in Miami, Florida. She stated that he

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<sup>1</sup> Name withheld to protect the individual's identity and that of his family.

was arrested again and put back in jail and she has barely spoken with him since he was returned to jail. The petitioner also stated that despite the turmoil of her relationship with C-W- there were good times too.

On appeal, the petitioner for the first time declares that she was abused by C-W-. She noted that in 1998 she tried to call the police when she and C-W- were having an argument but he hung up the phone and had left by the time the police arrived. She notes that she did not press charges and that evening when he returned he kicked down the door, broke a microwave, and pulled a large kitchen knife on her. She declares that she felt ashamed, defeated, and isolated and could not tell her parents or friends. The petitioner also reports that her husband was a sexual deviant and forced her to have sex with him in deviant ways. She reports that when C-W- was released from jail in 2005, she was still not completely free from his control or influence and she fell into the trap again, not because she loved him but because she felt she had no other recourse but to do his bidding.

The record also includes a psychological evaluation prepared by [REDACTED] on December 9, 2006. [REDACTED] offers his opinion that C-W-'s behavior, legal and illegal, resulted in an extreme financial burden for the petitioner and her parents and contributed to the severe psychological stress endured by the petitioner. [REDACTED] indicates that the petitioner suffers from dysthymic disorder apparently from her legal difficulties regarding her immigration status. [REDACTED] finds that the petitioner would have a very difficult time returning to Trinidad/Tobago if she were deported. The AAO observes that [REDACTED] does not provide any chronological, clinical, or substantive details of the abuser's alleged abuse and its direct effects on the petitioner. [REDACTED] does not provide an analysis that substantiates that the petitioner suffered battery or extreme cruelty at the hands of C-W-. The AAO finds that the break up of a marriage and the resulting emotional turmoil from the break-up is not sufficient to establish abuse as set out in the regulations and the statute. Moreover, [REDACTED] appears to acknowledge in his report that the petitioner's fear is related to the consequences of deportation, not of C-W-.

The record also includes affidavits submitted from the petitioner's friends and parents. As the director determined, the affiants reference C-W-'s infidelity, lack of responsibility, and his rare appearances with the petitioner in public. The affiants do not provide detailed probative evidence that they witnessed battery or extreme cruelty perpetrated by C-W-. There is insufficient information in the affidavits submitted to conclude that these affiants personally observed C-W- subjecting the petitioner to any abuse that should be characterized as 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.

Upon review of the petitioner's statements, the AAO finds that the petitioner initially detailed the heartbreak she felt as a result of her two marriages to C-W- and C-W-'s irresponsible behavior and infidelity. She does not provide any specific accounts of incidents that constitute battery or extreme cruelty and ends her statement with an indication that she enjoyed good times with C-W- as well as suffering from his constant philandering and drug addiction. The AAO also observes that the

petitioner's statement does not provide specific chronological detail and when she does provide a general timeline it differs from other information in the record. For example, the petitioner stated that she lived at an address on [REDACTED] in 2000 and that she visited C-W- in prison until his release in 2004. The record includes C-W-'s incarceration history showing that he was incarcerated from December 13, 2002 to September 7, 2004 in Georgia and currently is serving a term that started in March 15, 2006. The petitioner provides a copy of a lease dated March 26, 2004 for the address on [REDACTED] that lists C-W- as an occupant. This does not correspond with the incarceration of C-W- in March 2004 and does not correspond with the petitioner's statement that C-W- had not seen the apartment she had been living in since 2000 until he was released in September 2004.

In the petitioner's statement on appeal she adds information regarding an incident in 1998 when C-W- exhibited aggressive behavior by pulling a kitchen knife. The AAO notes that the record includes an offense report regarding an incident on July 25, 1998 wherein she told a police officer that C-W- grabbed her by the hair and threw her on the bed. The police officer reports that she did not have any signs of injury and did not want to make a police report. The petitioner's statement fails to specify the particular time period of C-W-'s aggressive behavior so it is not possible to relate this incident to the offense report and the offense report describes the incident differently. Thus, it is unclear if it is the same incident. In addition, the petitioner does not pursue the matter with the police or courts and does not suffer any injury; thus it is not possible to conclude that either offense occurred as described. Moreover, the information in both the offense report and the petitioner's statement on appeal is insufficient to establish that the petitioner suffered battery. Similarly, the petitioner does not provide sufficient information regarding C-W-'s claimed deviant sexual behavior to substantiate that she was battered. The AAO acknowledges the difficulty in relating certain incidents to friends and family but finds the petitioner's failure to be forthcoming to her psychologist questionable. The AAO notes as well that the petitioner indicates on appeal that C-W- was released from jail in 2005, not 2004. The AAO further observes that there are large gaps in the petitioner and C-W-'s life together. For example, the petitioner does not adequately explain the events of the relationship between 2000 and 2002. When the record is reviewed in totality, the record includes unexplained behavior, circumstances, and events, provides little chronological information regarding the circumstances of specific events, and relies mainly on a general story of the petitioner's heartbreak in connection with C-W-'s bad behavior. There is insufficient consistent, credible evidence in the record either initially or on appeal that demonstrates that the petitioner was subjected to battery or extreme cruelty.

The claims made by the petitioner and the general statements submitted on her behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that C-W-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. The AAO declines to accept generic information with little chronological timeline, no medical evaluations, and inherent inconsistencies to establish eligibility for this benefit. As discussed above, the evidence contained in the record is insufficient to establish the petitioner's claim of abuse. Accordingly, the petitioner has failed to establish that she was battered or subjected to extreme cruelty by C-W- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Good Faith Marriage*

The AAO has also reviewed the petitioner's statements regarding her love for C-W- and her initial marriage and remarriage to C-W-. The AAO finds that the inconsistencies in the record and the lack of any indicia of a joint life together preclude a finding that the petitioner entered into the qualifying relationship in good faith. It is the lack of consistent, credible information supplemented by chronological detail that undermines the petitioner's statements regarding the couple's relationship and the petitioner's intent in entering into the relationship. The record does not provide any credible supporting information demonstrating the petitioner's intent. The AAO has reviewed the photographs submitted and notes that photographs although showing the petitioner with C-W- and others identified as family, do not establish the petitioner's intent. Similarly, the affidavits submitted on her behalf lack the probative detail of the couple's interactions and fail to demonstrate the petitioner's intent. Likewise, the greeting cards are not accompanied with probative detail and do not establish that the petitioner intended to establish a life together with C-W-. The record is void of evidence that establishes the qualifying relationship was entered into in good faith.

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. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.