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FILE:

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Office: VERMONT SERVICE CENTER

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Petitioner:

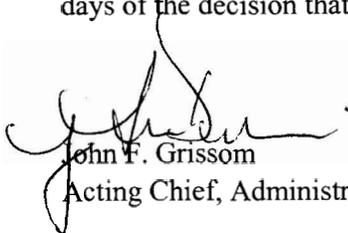
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(B)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(B)(ii)

ON BEHALF OF PETITIONER:

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)(B)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a United States lawful permanent resident.

We concur with the director’s determination that the petitioner has not established that she resided with the lawful permanent resident. We also find, beyond the decision of the director, that the record does not include sufficient evidence to establish: that the petitioner has been subjected to battery or extreme cruelty by the lawful permanent resident; and that the petitioner entered the marriage in good faith.

On December 14, 2007, the director denied the petition, finding that the petitioner failed to establish that she married a lawful permanent resident of the United States and thus is eligible for preference immigrant classification based on such a relationship. Upon review of the record including information submitted in response to a Notice of Intent to Deny (NOID) the petition, the director also found that the petitioner had not established that she had resided with the lawful permanent resident.

On appeal, counsel asserts that a marriage certificate had been submitted with the Form I-485 and re-submits the marriage certificate on appeal. Counsel also asserts that the electric bills and other documents submitted under the petitioner’s name show that she has a common address with the claimed abuser. Counsel also notes that the petitioner and W-R-¹ have three children together and United States Citizenship and Immigration Services (USCIS) did not clarify why this information is insufficient to establish a *bona fide* marriage.

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, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security]:

- (aa) the marriage or the intent to marry the lawful permanent resident was entered into in good faith by the alien; and
- (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien’s spouse or intended spouse.

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

¹ Name withheld to protect the individual’s identity.

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

The eligibility requirements are also explained 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.

(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)(B)(ii) 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.

* * *

(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 the Dominican Republic. The record includes a photocopy of a marriage certificate issued to the petitioner and W-R- on January 26, 2001 that shows the date of the marriage as January 26, 2001 in Providence, Rhode Island. The marriage certificate shows that W-R- was born in the Dominican Republic. The record includes a translated divorce decree issued in the Dominican Republic terminating W-R-'s marriage to E-G-C- on February 20, 1997. United States Citizenship and Immigration Services' (USCIS) records show that W-R- is a lawful permanent resident of the United States. The record also includes: a birth certificate for the petitioner and W-R-'s first child, born February 2, 1992 in the Dominican Republic; the birth certificate for the petitioner and W-R-'s second child, born April 19, 1996 in the Dominican Republic; and the birth

certificate of the petitioner and W-R-'s third child, born September 19, 1999 in Puerto Rico.

The petitioner filed the Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on October 9, 2006. The petitioner indicated on the Form I-360 that she had resided with W-R- from 1991 to July 2005 and that their last address was in [REDACTED], San Juan, Puerto Rico. The director issued a Request for Further Evidence (RFE) on July 23, 2007 and a NOID on October 4, 2007. Upon review of the record, including the responses to the RFE and the NOID, the director denied the petition on December 14, 2007 for the reasons detailed above.

Eligibility for Immigrant Classification

The AAO finds that the record is sufficient to establish that the petitioner is eligible for immigrant classification as an immediate relative based on her marriage to W-R-. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the abusive lawful permanent resident. The AAO finds that the marriage certificate and W-R-'s lawful permanent resident status sufficient to establish this element. The director's determination on this issue is withdrawn.

Residence

The AAO has reviewed the documents submitted to establish that the petitioner resided with W-R- 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 W-R- from 1991 to July 2005. In support of her joint residence with W-R- the petitioner submitted:

- Photocopies of utility bills issued to the petitioner at the [REDACTED] address, dated November 10, 2006, December 12, 2006, and March 15, 2007.
- A photocopy of a partial earnings statement addressed to W-R- at the [REDACTED] address, dated August 19, 2004.
- A photocopy of a deposit slip dated December 30, 2003 that includes W-R-'s name and a part of the [REDACTED] address.

As the director found, these documents do not substantiate that the petitioner and W-R- resided together at a specific address. Receiving mail at a particular address does not establish residence. In addition, the AAO observes that the petitioner has provided inconsistent information regarding her address. In the petitioner's October 31, 2006 sworn affidavit, the petitioner declares: "[t]hat I reside in Puerto Rico since seven years and before in Dominican Republic." The petitioner stated in her October 31, 2006 affidavit that she had lived in Puerto Rico for the last seven years. The petitioner's marriage certificate issued in Rhode Island in January 2001 indicates that both the petitioner and W-R- reside on [REDACTED] in Providence, Rhode Island. The petitioner indicated in her June 10, 2008 affidavit: that she lived in the house of her mother-in-law; that her mother-in-law disconnected the water, electric, and telephone service that were in her son's name; and when the petitioner went

to court, the Judge ordered the services reconnected. The translated court document is of a resolution order determining that there is no probable cause for W-R-'s request for a protection order against the petitioner. The court document does not identify a particular address and does not include information that the judge ordered the utility services reconnected to a particular address. The AAO is unable to reconcile the petitioner's statements and the court document with the utility bills solely in the petitioner's name for dates in November and December 2006 and March 2007, subsequent to termination of the claimed joint residence. The record in this matter also shows that although the petitioner claims to have resided with W-R- since 1991, during part of this time W-R- was married to another woman and that the petitioner bore two of her children with W-R- in the Dominican Republic, while W-R- was married to another woman. Although neither the birth of the children nor W-R-'s marriage to someone other than the petitioner precludes a finding of joint residency while the petitioner and W-R- were married, these two events raise questions regarding the circumstances of the petitioner's relationship and claimed residency with W-R- during the entire time frame the petitioner claimed joint residency. 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. 582, 591 (BIA 1988). Similarly, the birth of a child during marriage does not establish that the couple resided together. The record in this matter does not include sufficient evidence that the petitioner and W-R- resided together as required pursuant to the statute and the regulations.

Beyond the decision of the director, the AAO finds that the petitioner has not established that she has been subjected to battery or extreme cruelty and has not established that she entered into the marriage in good faith.

Battery or Extreme Cruelty

The AAO has reviewed the petitioner's August 1, 2007 personal statement wherein she stated: she married her husband in January 2001; that they separated in September 2005; that her husband drank a lot and always insulted her; that he also threatened her with a machete, hit her all the time and forced her to have sex with him without her consent; that he threatened to deport her and keep her children; and that he abandoned them in September 2005 and went to Providence, Rhode Island to live with another woman. The petitioner also indicated that W-R- returned to Puerto Rico in May 2006 and wanted to live with her again but she did not want that. She reported that she asked the Court for a protection order but was told that for the Court to provide this protection, W-R- would have to live in Puerto Rico.

The AAO has also reviewed the petitioner's personal statement dated June 10, 2008 in which she stated: that when she married W-R- he used abusive terms; that he threatened to call immigration to deport her and take her children away; that he "lived his life drinking without control, mistreating [her] physically and raped [her] constantly." The petitioner stated further that in 2005 the battering got worse and when she decided "to file for a Law 54" he became afraid and abandoned the house and went to the United States for some time. The petitioner also indicated that when W-R- returned

to Puerto Rico he mistreated her again as he could enter her house at any time because she lived in the house of her mother-in-law. The petitioner also reported that her mother-in-law disconnected the water, electric, and telephone service that were in her son's name and when the petitioner went to court, the Judge ordered the services reconnected. The petitioner further reported that W-R- and his mother filed custody petitions for the children and an order of protection against her but these were denied. The record includes a translation of a resolution order identifying the plaintiff as W-R and J-R- and determining that there is no probable cause for the September 16, 2006 request for the protection order. The petitioner also stated that the Court referred her to the Center for Dominican Women where she was helped and supported.

The record includes a statement from [REDACTED] indicating that the petitioner came to their office on September 26, 2006, that she was visibly affected emotionally and they referred her to [REDACTED]. The record also includes statements prepared by [REDACTED] indicating that the petitioner participated in economic development and transitory housing programs and had obtained individual and group counseling and was in the process of starting a small business. On appeal, counsel for the petitioner provides a copy of a newspaper article and a translation of an excerpt of the article. The translated portion indicates that the petitioner told a reporter that she knew for a long time that her life was in danger and that the petitioner stated: "Sometimes the women are afraid to get out of the violence cycle."

The information provided by the petitioner in regards to battery and/or extreme cruelty is general. The record does not include any specific incidents of battery or extreme cruelty described in detail and identified at specific points in time. The petitioner's personal statements are not substantiated by witnesses who might have seen the abuse. The record does not contain medical, police, or court documents identifying specific incidents of battery. The information in the record is insufficient to establish that W-R-'s behavior, including infidelity and abandonment, rose to the level of 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.

The statements provided by [REDACTED] and [REDACTED] do not include personal accounts of the alleged abuse. The record does not include medical evaluations of the petitioner's mental health and there are no examples of a causal relationship of any "abuse" perpetrated by W-R- to the petitioner's mental health or physical condition. Again, the record does not include police reports or court documents establishing that the petitioner was subjected to battery or extreme cruelty. The statements made by [REDACTED] and by [REDACTED] are general and insufficient to establish that the petitioner suffered either battery or extreme cruelty perpetrated by W-R-. The statements do not provide a detailed account of the petitioner and the circumstances of her situation.

As discussed above, the documentary evidence contained in 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 W-R- during their marriage.

Good Faith Marriage

The AAO has also reviewed the petitioner's personal statements to determine whether the petitioner has provided evidence of her intent upon entering the marriage. The petitioner's statements provide little background information relating to the couple's courtship, subsequent interactions except as related to the claimed abuse, or other information that would assist in establishing good faith in entering the marriage. The record does not include any of the suggested information outlined in the regulations that would assist with establishing intent in entering a marriage, except for the birth of the couple's three children. In this instance, however, because of the lack of information detailing the complete circumstances of the petitioner's relationship with W-R-, the AAO finds the birth certificates of children of the marriage do not establish the requisite good faith intent necessary to establish eligibility. The record does not include sufficient probative details about the petitioner's initial relationship with W-R- and the subsequent interactions with W-R- that allow a conclusion that the petitioner entered into the marriage in good faith. The AAO does not find a marriage in Rhode Island when the petitioner has resided in and apparently continued to reside in Puerto Rico, a marriage entered into with the intent to establish a life together. Accordingly, the AAO finds that the petitioner has failed to establish that she entered into the qualifying relationship with W-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) 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).

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.