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U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
EAC 06 234 50075

Office: VERMONT SERVICE CENTER

Date: FEB 11 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)

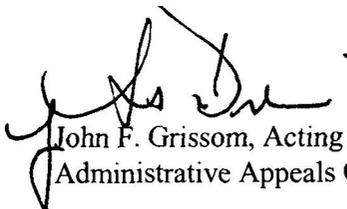
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 or reopen, 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of 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 because the petitioner did not establish that she entered into marriage with her U.S. citizen husband in good faith, that she resided with him and that he subjected her or any of her children to battery or extreme cruelty.

On appeal, the petitioner submits a statement, additional evidence and copies of documents previously filed.

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.

(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 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.

(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 case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who entered the United States (U.S.) on February 23, 1994. On January 4, 2003, the petitioner married F-B-<sup>1</sup>, a U.S. citizen, in California. F-B- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on July 29, 2005. The petitioner's concurrently filed Form I-485, Application to Adjust Status, was denied on June 23, 2006.

The petitioner filed this Form I-360 and a Form I-485 application<sup>2</sup> on August 7, 2006. On March 8, 2007, the director issued a Notice of Intent to Deny (NOID) the Form I-360 petition for lack of, *inter alia*, the requisite good-faith entry into the marriage, joint residence and battery or extreme cruelty. The petitioner responded to the NOID with additional evidence, which the director found insufficient to establish her eligibility. The director denied the Form I-360 petition and the corresponding Form I-485 application on June 18, 2007, and the petitioner timely appealed the denial of the Form I-360.

On appeal, the petitioner reasserts her eligibility and reiterates her inability to provide further documentation. We concur with the director's determinations. The petitioner's statements and the evidence submitted on appeal do not overcome the grounds for denial and the appeal will be dismissed.

#### *Entry into the Marriage in Good Faith*

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with F-B- in good faith:

- The petitioner's April 6, 2007 statement and undated declaration regarding her alias submitted in response to the NOID and her July 10, 2007 statement submitted on appeal;
- Bank and insurance documents, receipts and copies of postmarked envelopes addressed to the petitioner individually;
- Electricity bills, an invoice and copies of postmarked envelopes addressed to F-B- individually and unsigned copies of 2001, 2002 and 2003 income tax returns filed by F-B- as single or head of household;
- Copies of cancelled checks signed by F-B-, drawn on a business account and dated in 2003;
- Copies of unsigned 2002 and 2003 income tax returns for [REDACTED] filed as head of household;
- Health insurance certificate dated April 20, 2005 for [REDACTED] listing F-B- and the petitioner's children as [REDACTED] dependents; and

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

<sup>2</sup> Receipt number EAC 06 234 50028.

- Photocopies of photographs of the petitioner and F-B-.

In her April 6, 2007 statement the petitioner explained that she “knew [her] husband through telephonic conversations” until they met on an unspecified date and began dating. The petitioner states that she invited her husband to her home to meet her children and that nine months later they became engaged. The petitioner explains that she and her children moved in with F-B- and six months later they were married. The petitioner states that her husband was a “caring person” and she “loved the way he was.” She does not, however, further describe how the former couple met, their courtship, wedding, shared residence and experiences (apart from the alleged abuse) in any probative detail.

As explained by the director in the NOID and his June 18, 2007 decision, the documents addressed to the petitioner and her husband individually do not indicate that they shared assets and liabilities or otherwise shared responsibilities and were viewed by third parties as a married couple. The tax returns indicate that during their marriage, the petitioner and her husband filed separately as either single or head of household. In addition, as also explained by the director, the tax returns and health insurance certificate were not filed or issued in the petitioner’s name, but under the alias of M [REDACTED].

In her undated declaration, the petitioner explained that after she arrived in the U.S. she was unable to get a job because she did not have a social security number. She states that a neighbor helped her obtain employment using the name [REDACTED] and she began filing her taxes under that name in 1995. Yet even if credible, the documents issued under the petitioner’s alias do not establish her good faith in entering the marriage. The health insurance certificate is the only document which includes both the petitioner and F-B-. However, the certificate indicates that F-B- was covered by the petitioner’s insurance beginning in December 2001, over a year before their marriage on January 4, 2003. The petitioner does not explain how F-B- could have been covered under her insurance as her dependent over a year before their marriage and eight months before she states that they began living together in July 2002. The record also contains no evidence that F-B- ever used the petitioner’s health insurance. The health insurance certificate is consequently of little probative value.

The photocopied photographs show that the petitioner and her husband were pictured together on three unspecified occasions. The pictures alone do not demonstrate that the petitioner entered into marriage with F-B- in good faith.

In her April 6, 2007 statement, the petitioner explained that she asked her husband to open a bank account for both of them, buy a house and file their taxes together, but he did not and told her he would never do so. On appeal, the petitioner reiterates that her husband kept the utility bills under his name and never included her in those or any other “‘personal’ matters.” The petitioner further states that she can not provide additional documents “because they have all been destroyed.” The petitioner does not, however, describe what documents were destroyed or that she was unable to obtain alternate evidence from third parties. On appeal, the petitioner also does not submit further, detailed testimony regarding how she met her husband, their courtship, wedding, shared residence and experiences.

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with F-B- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Joint Residence*

The evidence listed in the preceding section is also relevant to the petitioner's alleged residence with F-B- with the addition of the following:

- The Forms G-325A, Biographic Information, of the petitioner and F-B- submitted with the petitioner's first Form I-485 application and F-B-'s Form I-130 petition;
- The petitioner's Form G-325A submitted with her second Form I-485 application (concurrently filed with the Form I-360);
- Copy of a Form AR-11, Change of Address Card, signed by the petitioner on September 16, 2005; and
- Printouts from the websites of Closing Point and Investors Title Company, which list F-B- as the owner of the house on [REDACTED] in La Puente, California.

The petitioner has failed to provide a clear statement of the addresses and dates of her joint residence with F-B-. On Section B of the Form I-360, the petitioner did not respond to the question, "When did you live with the person named in Section A [the abuser]?" In the section which states, "Give the last address at which you lived together with the person named in Section A [the abuser], and show the last date that you lived together with that person at that address[.]" the petitioner listed the residence on [REDACTED] in La Puente, California, but did not list the last date on which she lived together with F-B- at that address. In the NOID, the director asked the petitioner to "list specific dates (month/year) and locations (address/state) indicating when and where [the petitioner] lived with [her] spouse." In her response to the NOID, the petitioner failed to provide the requested list. On appeal, the petitioner states that on or about July 2002, she and her children moved in with her husband at his home on [REDACTED] in Covina, California. The petitioner further states that on June 4, 2003, her husband bought the home on [REDACTED] in La Puente, California and the family moved to that residence. The petitioner explains that she moved out of her husband's home to protect her children from the abuse, but she does not state the date that she ceased residing with F-B-.

On appeal, the petitioner cites her and her husband's Forms G-325A submitted with F-B-'s Form I-130 petition and her concurrently filed Form I-485 application. The Forms G-325A indicate that the petitioner lived with F-B- at the [REDACTED] residence from July 2002 to June 2003 and at the [REDACTED] residence from June 2003 until the "present time." The Forms G-325A are undated, although the record shows that they were submitted on September 8, 2004. The petitioner's Form G-325A submitted with her second Form I-485 application on August 7, 2006 is a copy of the Form G-325A submitted on September 8, 2004 with her prior Form I-485 application. Despite the fact that the petitioner listed her address as a residence on [REDACTED] in West Covina, California on her 2006 Form I-485 application, she did not update the Form G-325A to reflect that residence as well as any other addresses where she lived between 2004 and 2006. The petitioner's Form AR-11 card

indicates that she moved away from the [REDACTED] address on September 16, 2005, but the record contains no clear statement from the petitioner regarding the dates of her residence with F-B-.

In her statements submitted below and on appeal, the petitioner does not describe her joint residence with F-B- (apart from the alleged abuse) in any probative detail. The documents addressed to the petitioner individually at the [REDACTED] residence are dated between August 2002 and March 2003. The documents addressed to F-B- individually at the [REDACTED] residence are dated between April 2002 and April 2003. In addition, the 2002 income tax returns of the petitioner (under the alias of [REDACTED]) and F-B- were both filed as head of household. The only document listing the [REDACTED] residence as the address of both the petitioner and F-B- on the same date is their marriage certificate. The documents addressed to the petitioner individually at the [REDACTED] residence are dated between February 2004 and December 2005. The documents addressed to F-B- at the [REDACTED] residence are dated between November 2003 and July 2005. However, the documents show only two months in 2005 (June and July) which place both the petitioner and F-B- at the [REDACTED] address. Finally, the photocopied photographs picture the petitioner and F-B- at a beach and in front of a fountain. None of the pictures show the petitioner and F-B- in a residential setting.

The petitioner has provided no statement listing the dates and addresses of her residence with F-B- nor does she describe their joint residence in any probative detail. The only document listing a common residence for the petitioner and F-B- on the same date is their marriage certificate. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with F-B-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim that F-B- battered and subjected her and her children to extreme cruelty:

- The petitioner's April 6, 2007 statement and undated declaration regarding her alias submitted in response to the NOID and her July 10, 2007 statement submitted on appeal;
- May 3, 2005 and August 7, 2006 letters from case managers at the YWCA Women in Need Growing Strong (WINGS) program in West Covina, California; and
- February 9, 2006 psychological evaluation of the petitioner by [REDACTED]

In her first statement, the petitioner related that after her husband bought a house, he forced her to sign a document granting him her part of the property, but the petitioner does not describe how her husband forced her to sign the document in probative detail. The petitioner further states that she asked her husband to open a bank account, buy a house and file taxes with her, but her husband refused. The petitioner reports that her husband once pushed her and she fell to the ground, but she does not discuss this incident in detail. In November 2004, the petitioner states that her husband asked her to pay rent

for the time that she and her children had been living in his house and threatened that if she did not pay him, she would be deported. However, the petitioner indicates that she did not pay her husband rent and continued to reside in his home. The petitioner further explains that her husband's eldest daughter once fought with her, pushed and hit her, but her husband took his daughter's side in the argument. The petitioner states that on two unspecified occasions, her husband's daughters pushed her and her son out of the house and her husband's younger daughter hit her son. The petitioner reports that her husband left their home for four days and when he returned, he filed for divorce and slept in the garage.

The petitioner explains that on another unspecified occasion, her husband's daughters locked her out of the house and she called the police, but no report was filed because she was not listed on the title to the property. After the police left, the petitioner states that her husband's daughters opened the door to let her in. The petitioner further relates that her husband once reported to a social worker that she had locked her children in their bedroom, but she explained to the social worker that her husband was lying. Shortly after this incident, the petitioner states that she moved out of her husband's home with her children. The petitioner reports that after she moved out, one of her husband's employees started calling her, but she told him that if he did not stop "molesting" her she would call the police. The petitioner does not describe any of the telephone calls from her husband's employee or indicate that she was frightened or felt threatened by the calls or that her husband directed or otherwise instigated the calls.

On appeal, the petitioner states that her husband physically abused her, but she did not call the police and "was not able to do anything" because of his threats. However, the petitioner does not describe any particular incident of physical abuse in detail and does not further discuss the substance of her husband's threats and how they affected the behavior, mental or physical health of her or any of her children.

The May 3, 2005 letter from YWCA-WINGS states that the petitioner enrolled in the organization's domestic violence program on January 12, 2005 and was attending weekly support groups, which enabled the petitioner "to express her feelings related to her experience with domestic violence." The letter does not further discuss the petitioner's situation or the domestic violence she experienced. The August 7, 2006 YWCA-WINGS letter states that the petitioner completed a 16-week session of the organization's weekly domestic violence education support group. The 2006 letter further states:

[The petitioner] claimed that she was a victim of verbal, psychological, and economic abuse. [The petitioner] also claimed that although her abusive partner was not physically abusive toward her, he would allow his children (from his previous marriage) to unleash his rage upon her. On many occasions [the petitioner] would speak about the economic abuse she has had endured [sic].

While they indicate that the petitioner sought and received domestic violence services from YWCA-WINGS, the letters contradict significant parts of the petitioner's testimony. In her statement on appeal, the petitioner asserted that she was physically abused by her husband, but she did not

describe any incident of physical abuse in detail. In her April 6, 2007 statement submitted in response to the NOID, the petitioner stated that her husband pushed her and she fell to the ground on one unspecified occasion, but the petitioner did not describe that incident in any probative detail. While physical abuse is not required to establish a self-petitioner's eligibility, the petitioner does not explain why the 2006 YWCA-WINGS letter states that she claimed her husband was never physically abusive. In addition, the 2006 YWCA-WINGS letter states that the petitioner claimed she was economically abused by her husband, but in her own testimony the petitioner states only that her husband asked her to pay rent, but she successfully refused his request. She does not describe any other incidents involving economic disputes or other monetary issues between her and her husband. These significant, unresolved discrepancies detract from the petitioner's credibility regarding her claim of battery and extreme cruelty.

's psychological evaluation also differs from the petitioner's testimony in several, significant aspects. First, the psychological evaluation does not mention any incident of physical abuse of the petitioner or her children by F-B-. Second, the evaluation describes two incidents involving her husband and his younger daughter which the petitioner does not mention in her own testimony. Third, the evaluation states that after the petitioner left her husband's home, he continued to call her and tried to blackmail her. In her first statement, the petitioner reports that one of her husband's employees called her after she left her husband's home, but she makes no mention of any further contact with her husband.

While we do not question 's professional expertise, her psychological evaluation of the petitioner is of limited probative value for three additional reasons. First, Dr. 'z diagnoses the petitioner with depression, anxiety and post traumatic stress disorder, but her evaluation is based on a single meeting with the petitioner on January 6, 2006 of unspecified length. Second, ' states that although the petitioner spoke "very little English; the evaluation was conducted in English." The fact that the petitioner was unable to express herself in her native language further detracts from the probative value of the psychological evaluation. Third, as noted by the director, the evaluation was conducted for the purpose of "assess[ing] the impact that being deported would have on [the petitioner]." ' does not indicate that she ever treated the petitioner or saw her again after their single session.

The petitioner's testimony indicates that her husband's daughters mistreated her and her children during arguments and that her husband, in some instances, supported his daughters instead of her. The petitioner does not indicate, however, that her husband instigated, encouraged or otherwise approved of his daughters' actions. The petitioner states that her husband threatened her with deportation, but she does not describe those threats in any probative detail. The petitioner also indicates that she was able to refuse her husband's demand for rent and to refute his accusation made to the social worker. The petitioner states that her husband once pushed her and she fell to the ground, but she does not describe that incident in any probative detail. There are also significant discrepancies between the petitioner's testimony and the 2006 YWCA-WINGS letter and Dr. ' psychological evaluation.

In sum, the relevant evidence fails to establish that F-B- subjected the petitioner or any of her children to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that she entered into marriage with her U.S. citizen husband in good faith, that she resided with him and that he subjected her or any of her children to battery or extreme cruelty during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) 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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.