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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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invasion of personal privacy

Bq

[Redacted]

FILE: [Redacted]
EAC 05 109 52791

Office: VERMONT SERVICE CENTER

Date: **FEB 24 200**

IN RE: Petitioner: [Redacted]

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

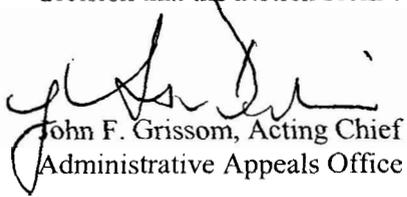
ON BEHALF OF PETITIONER:

[Redacted]

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 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 had resided with her husband or that she entered into the marriage with her husband in good faith.

On appeal, counsel submits a brief and copies of previously submitted 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 states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further

explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Lithuania who entered the United States on May 20, 2000 as a nonimmigrant visitor (B-2). On April 12, 2003, the petitioner married S-D-¹, a U.S. citizen, in Chicago, Illinois.² On July 16, 2003, S-D- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which remains pending along with the concurrently filed Form I-485, Application to Register Permanent Resident or Adjust Status.³ The petitioner filed this Form I-360 on March 7, 2005. The director subsequently issued two Request for Evidence (RFE) forms of the requisite good moral character, joint residence, and good-faith entry into the marriage. The petitioner, through counsel, responded with further documentation. On May 3, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite joint residence and good-faith entry into the marriage. The petitioner

¹ Name withheld to protect individual's identity.

² On the Form I-360, the petitioner states that she has been married two times. We refer to the petitioner's second husband, S-D-, as her husband.

³ I-130/I-485 forms were also filed on behalf of the petitioner's two children, whose file numbers are

did not respond to the NOID. The director denied the petition on March 8, 2007, finding that the petitioner had not responded to the May 3, 2006 NOID and thus had not overcome the grounds cited therein. Counsel timely appealed.

On appeal, counsel claims that the petitioner has submitted supplemental documentation that supports all the requirements of section 204(a)(1)(A)(iii) of the Act. Regarding the requisite joint residence, counsel states, "Evidence of joint residency has been provided with the original application and is attached in form of affidavits hereto and marked as Exhibit F." Regarding the requisite good-faith entry into the marriage, counsel states, "Evidence that [the petitioner] entered into a bona fide marriage with [S-D-] is demonstrated by affidavits, copies of letters, photographs and other available evidence submitted as part of the original petition and selectively submitted as and cumulatively marked as Exhibit D." As discussed below, counsel's claims on appeal fail to overcome the grounds for denial.

Good Faith Entry into Marriage

The record contains the following evidence relevant to the petitioner's claim that she entered into marriage with her husband in good faith:

The petitioner's July 16, 2004 statement submitted with the instant petition;

Affidavits, two undated and the third dated March 14, 2006, from the petitioner's three friends, all stating that they knew of the petitioner's marriage to S-D-, that S-D- disappeared or vanished after about six months into their marriage, and that they were concerned about the treatment of the petitioner by S-D-;

- Counsel's March 16, 2006 letter, stating: "The marriage between the parties was very short and they do not have any common utilities or leases since it was in the name of only one person who resided at the property prior to parties' marriage.";
- An envelope stamped "This correspondence is from an inmate of the Illinois Department of Corrections," postmark date unreadable, addressed to the petitioner, from her husband; and
- Four photographs of the wedding ceremony of the petitioner and her spouse.

The documentary evidence fails to establish the petitioner's good-faith entry into the marriage. In her July 16, 2004 statement, the petitioner states that she met S-D- on July 10, 2002 while dining at Hooters with her girlfriend. The petitioner states that S-D- introduced himself and joined the petitioner and her friend for dinner, after which he drove her home when she locked herself out of her car. The petitioner explains that they started dating when he showed up at her apartment a few days later, that he proposed a little before Christmas, and that they were married on April 12, 2003. The petitioner states

that her husband kept their marriage a secret, that he was lazy and demanded money from her, that she and her husband started fighting, and that she and her children lived in fear until he was arrested and put in jail for committing a crime.

In his May 3, 2006 NOID, the director determined that the petitioner's evidence of a good-faith entry into marriage was insufficient and that the affidavits were brief, vague, and lacked sufficient detail. The director requested additional evidence, including joint insurance policies, bank statements, tax records, joint ownership of property, and affidavits of friends and family providing specific information verifying the petitioner's relationship with her spouse.

As discussed above, the petitioner did not respond to the May 3, 2006 NOID.

On appeal, counsel submits copies of previously submitted documentation, including two affidavits from the petitioner's friends and photographs of the petitioner's wedding ceremony.

The affidavits from the petitioner's friends fail to provide detailed, probative testimony regarding the petitioner's allegedly good-faith entry into the marriage. As noted above, the petitioner's friends all state that they knew of the petitioner's marriage to S-D-, that S-D- disappeared or vanished after about six months into their marriage, and that they were concerned about the treatment of the petitioner by S-D-. The petitioner's friends provide no further details or describe any particular occasions where they observed the petitioner interacting with her husband. The wedding photographs of the petitioner and her spouse confirm that they were married, but they alone do not establish the petitioner's good-faith entry into the marriage.

Although the petitioner discusses in detail how she met her husband in her July 16, 2004 statement, she provides no further testimony regarding their courtship, marriage, joint residence or any of their shared experiences, apart from the alleged abuse. The petitioner's friends fail to provide probative details regarding her alleged good-faith entry into the marriage. Counsel's explanation in his March 16, 2006 letter regarding the petitioner's short marriage and lack of joint evidence, and the envelope addressed to the petitioner from her spouse while in prison, also fail to establish the petitioner's claim. Accordingly, the petitioner has not demonstrated that she entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- The petitioner's July 16, 2004 statement submitted with the instant petition;
- Affidavits, two undated and the third dated March 14, 2006, from the petitioner's three friends, all stating that they knew of the petitioner's marriage to S-D-, that S-D-

disappeared or vanished after about six months into their marriage, and that they were concerned about the treatment of the petitioner by S-D-; and

- Counsel's March 16, 2006 letter, stating: "The marriage between the parties was very short and they do not have any common utilities or leases since it was in the name of only one person who resided at the property prior to parties' marriage."

The documentary evidence fails to establish the petitioner's joint residence with her husband. None of the statements and/or affidavits, including the petitioner's statement, states the address and dates of the joint residence or provides any further details. On the Form I-360, the petitioner states that she resided with her husband from April 2003 until October 2003 and that their last joint residence was: [REDACTED] in Chicago Ridge, Illinois. On her Form G-325, Biographic Information, which she signed on May 19, 2003, she indicated that she lived at [REDACTED] in Chicago R, Illinois from September 2001 through April 2003, and that from April 2003 until she signed the Form G-325 on May 19, 2003, she lived at [REDACTED] in Joliet, Illinois, which corresponds with the address for her husband on his Form G-325 for the time period from April 2003 until he signed the form on May 19, 2003. However, on the Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, signed by the petitioner on May 2, 2003, the petitioner listed her address in Item #2 as follows: [REDACTED] Chicago Ridge, Illinois, which conflicts with the address reflected on the Form G-325 for that time period. The record contains no explanation for this discrepancy. 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). 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 (BIA 1988).

In his May 3, 2006 NOID, the director determined that the petitioner's evidence of joint residence was insufficient and that the affidavits were brief, vague, and lacked sufficient detail. Again, the director requested additional evidence, including joint leases, mortgages or rental agreements, insurance policies, utility invoices, bank statements, tax records, financial documents, and affidavits of friends and family verifying the petitioner's joint residence with her spouse.

As discussed above, the petitioner did not respond to the May 3, 2006 NOID.

On appeal, counsel submits a copy of a previously submitted affidavit from the petitioner's friend. As discussed above, none of the statements and/or affidavits, including the previously submitted affidavit counsel submits on appeal, states the address and dates of the joint residence or provides any further details.

The petitioner provides no detailed statement of the dates and addresses of, or other probative information regarding, her residence with her husband. Moreover, the petitioner has not resolved the

discrepancy discussed above pertaining to the petitioner's claimed joint address on the following forms: I-360, G-325, and I-693. Accordingly, the petitioner has failed to establish that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The record does not demonstrate that the petitioner entered into marriage with her husband in good faith and that she resided with her husband. 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.

Beyond the decision of the director, we find that the petitioner failed to establish that her husband subjected her to battery or extreme cruelty during their marriage. Again, the record contains inconsistent information regarding the petitioner's claim that she resided with her husband. Moreover, neither the petitioner's statement nor the psychological consultation report from [REDACTED] provides specific details and dates of the petitioner's alleged abuse by her husband. Furthermore, Dr. [REDACTED] states that the petitioner reported that her husband "talked down to her sons on several occasions, but did not do so often." Not only is this statement contradictory in itself, but the petitioner also does not mention it in her July 16, 2004 statement. Dr. [REDACTED] also reports that the petitioner warned her husband that she would call the police if he ever hit her. Again, the petitioner does not mention this in her July 16, 2004 statement. While we do not question the expertise of [REDACTED] the unexplained inconsistencies in the record, as discussed above, detract from the probative value of her testimony. The relevant evidence fails to demonstrate that the petitioner's husband subjected her to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(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).

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.