

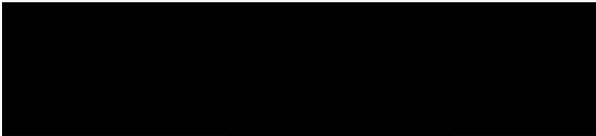
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**U.S. Citizenship  
and Immigration  
Services**

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prevent clearly unwarranted  
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FILE:

EAC 06 195 52386

Office: VERMONT SERVICE CENTER

Date:

**FEB 27 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)

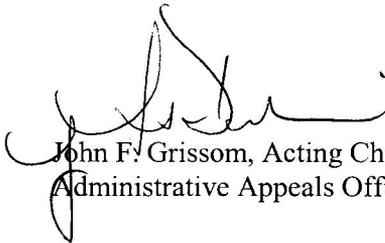
ON BEHALF OF PETITIONER:

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. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

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). An alien who has divorced a United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

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.

(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

(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 pertinent facts and prior procedural history of this case were discussed in our prior decision, incorporated here by reference. Accordingly, we will only repeat such information as is pertinent to the present decision. The director initially denied the petition on December 18, 2006 because the petitioner did not establish that she had a qualifying relationship with her former husband as she had divorced him more than two years before her petition was filed. In its December 28, 2007 decision on appeal, the AAO concurred with the director's determination and further found that the petitioner had not demonstrated that she was eligible for immediate relative classification based on a qualifying relationship, that she resided with her former spouse and that she entered into their marriage in good faith. However, the AAO remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the former regulation at 8 C.F.R. § 204.2(c)(3)(ii) (2006).

Upon remand, the director issued a NOID on February 27, 2008, which informed the petitioner that she had not established a qualifying relationship. The NOID granted the petitioner 33 days to submit a response and any additional evidence. The petitioner did not respond to the NOID. Accordingly, the director denied the petition on July 10, 2008 on the ground cited in the NOID and certified the decision to the AAO for review.

The director's Notice of Certification informed the petitioner that she had 30 days to submit a brief to the AAO. To date, the AAO has received nothing further from the petitioner. We concur with the July

10, 2008 decision of the director that the petitioner did not establish a qualifying relationship with her former husband. Beyond the decision of the director, the petitioner has also failed to establish that she was eligible for immediate relative classification based on a qualifying relationship with her former husband, that she entered into their marriage in good faith and resided with her former husband.

The AAO maintains plenary power to review each certified decision on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

### *Qualifying Relationship*

In our prior decision, we explained that the petitioner had divorced her former husband more than two years before this petition was filed and had consequently failed to establish a qualifying relationship pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. The director again informed the petitioner of this deficiency in the NOID. The petitioner did not respond to the NOID and has submitted nothing on certification. Accordingly, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen.

### *Eligibility for Immediate Relative Classification*

The petitioner also did not demonstrate that she was eligible for immediate relative classification based on her relationship with her former husband, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. 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 qualifying relationship to the abusive spouse. As discussed above, the petitioner has failed to establish a qualifying relationship and she has consequently also failed to demonstrate her eligibility for immediate relative classification based on such a relationship.

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

The petitioner’s statements below and on appeal are the only evidence relevant to her allegedly good faith in entering her former marriage. In her 2006 statement, the petitioner briefly recounted that she met her husband, fell in love and had a relationship of approximately eight years before their marriage. The petitioner also stated the two addresses where she and her husband resided before and after their marriage. The petitioner did not further describe how she met her husband, their courtship, wedding, shared residences and experiences (apart from the abuse).

On appeal, the petitioner stated that her marriage was witnessed by her mother. She asserted that her marriage “was not a sham perpetrated to work a fraud on the immigration system.” Yet the petitioner

again failed to describe in probative detail how she met her husband, their courtship, wedding, shared residences and experiences (apart from the abuse). Although the petitioner states that she had an eight-year relationship with her husband prior to their marriage and resided with him for four years, she submits no documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

The petitioner's testimony lacks probative, detailed information sufficient to demonstrate that she married her former husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Joint Residence*

The petitioner's statements and the affidavit of her friend, [REDACTED] are the only documents in the record relevant to the petitioner's alleged residence with her former husband. In her first statement, the petitioner listed her marital address, but she did not describe her shared residence with her former husband in any detail. On appeal, the petitioner did not discuss the former couple's purportedly joint residence. Ms. [REDACTED] states that she once visited the former couple's apartment, but she does not state the address or describe her visit, apart from the abuse that took place.

Although the petitioner states that she resided with her husband for four years, she submits no documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii). Although she is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

The statements of the petitioner and [REDACTED] do not describe the petitioner's residence with her husband in any probative detail. Their testimony is consequently insufficient to establish that the petitioner resided with her former husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

The petitioner has not demonstrated that she had a qualifying relationship with her former husband, that she was eligible for immediate relative classification based on such a relationship, that she entered into marriage with her former husband in good faith and that she resided with him. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The denial of the petition will be affirmed 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 director's decision of July 10, 2008 is affirmed. The petition is denied.