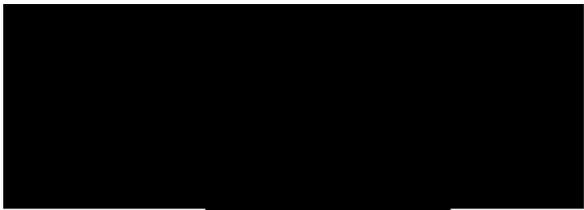


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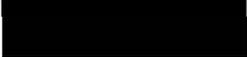
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U.S. Citizenship  
and Immigration  
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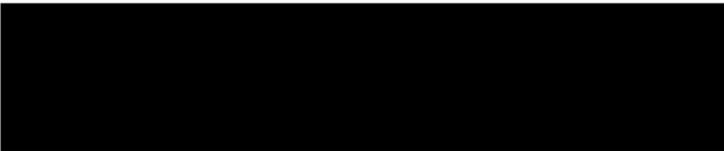
Office: VERMONT SERVICE CENTER

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)

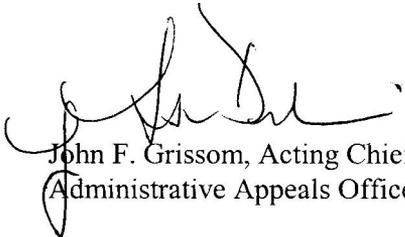
ON BEHALF OF PETITIONER:



**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 United States citizen husband in good faith.

On appeal, counsel submits a brief and additional evidence.

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:

(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.

\* \* \*

(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 the Dominican Republic who entered the United States (U.S.) on June 7, 2004 as a nonimmigrant visitor (B-2). On March 25, 2005, the petitioner married K-F-<sup>1</sup>, a U.S. citizen, in Pennsylvania. K-F- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on August 23, 2006. The petitioner's corresponding Form I-485, Application to Adjust Status, was denied on September 14, 2006.

The petitioner filed this Form I-360 on May 19, 2006. On January 12, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's entry into the marriage in good faith. The petitioner responded with additional evidence, which the director found insufficient to establish her eligibility. On April 18, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite good-faith entry into the marriage. The petitioner responded to the NOID with additional documents, which the director found insufficient to establish her eligibility. Accordingly, the director denied the petition on August 22, 2007 for failure to demonstrate the requisite good-faith entry into the marriage.

On appeal, counsel claims that the director erroneously denied the petitioner's case because the petitions of her two youngest children were approved. We concur with the director's determination. Counsel's claim and the evidence submitted on appeal do not overcome the ground for denial.

*Entry into the Marriage in Good Faith*

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

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

- The petitioner's March 9, 2006 affidavit; her March 7, 2007 statement submitted in response to the RFE; her June 5, 2007 letter submitted in response to the NOID and her October 15, 2007 affidavit submitted on appeal;
- Affidavit of the petitioner's daughter, [REDACTED], submitted on appeal;
- Affidavit of the petitioner's friend, [REDACTED], submitted on appeal;
- Letters of the petitioner's friends, [REDACTED] and her cousin, [REDACTED];
- Copies of bills and correspondence addressed to the petitioner and her husband individually at their residence in Pennsylvania;
- Copy of a residential lease for September 1, 2005 to September 1, 2006, listing the petitioner and her husband as tenants and signed by both of them;
- Copies of school records of the petitioner's children listing the petitioner as the parent and addressed to her individually; and
- Copies of photographs of the petitioner and her husband on their wedding day and on one other, unspecified occasion.

In her first affidavit, the petitioner stated that she met her husband at a party in approximately November 2004 when she went to Pennsylvania to visit friends. The petitioner explains that the former couple "spent a lot of time talking and [she] felt very good around him." The petitioner briefly states that after they met, her husband called her and she visited him in Pennsylvania. She reports that after a few months of dating, her husband proposed and she accepted. The petitioner explains that she was happy because she "finally met a man who [she] could share [her] life with." The petitioner briefly states that "the wedding and all the preparations went by with no problems. We all had a great time." The petitioner explains that she and her husband did not go anywhere for a honeymoon because they could not afford it. After she and her children moved to Pennsylvania, the petitioner simply states, "We were happy with our lives together and spending a lot of time together." The petitioner does not further describe how she met her husband, their courtship, wedding, shared residence and experiences (apart from the abuse).

In her March 7, 2007 statement, the petitioner repeats her description of how she met her husband and their courtship. The petitioner adds that when she met her husband she was visiting her friend [REDACTED] and that during their courtship, she "felt good, because [she] felt that he really cared about [her]." The petitioner provides no further, relevant details. In her June 5, 2007 letter, the petitioner asserts, "I truly intended to have a normal family life with my husband. I was very much in love with him and was so grateful of finding someone I could share my life with." In her affidavit submitted on appeal, the petitioner again repeats her earlier descriptions of how she met her husband and their courtship. The petitioner adds that she accepted her husband's marriage proposal because she was "in the throes of initial romantic crush" and that her husband once visited her in Rhode Island where he met her children and "they seemed to like him." The petitioner does not provide any further, probative information about how she met her husband, their courtship, wedding, shared residence and

experiences (apart from the abuse). The petitioner's testimony lacks detailed, probative information sufficient to demonstrate her good faith in entering the marriage.

The statements of the petitioner's daughter, cousin and friends also fail to establish her claim. The petitioner's eldest daughter, [REDACTED] states that the petitioner and K-F- "became very romantic together. They seemed to be very much in love." [REDACTED] explains that they moved to Pennsylvania after the petitioner married K-F- and "[a]t first, things were okay and [the petitioner] seemed happy there but after a short time, things began to change." Ms. [REDACTED] states that she met K-W- when she was invited to the petitioner's home, but she does not describe the party she hosted where the petitioner states that she met her husband. In her letter, [REDACTED] states that during the first few months of their marriage, the petitioner and her husband "were stable and they seemed to be very happy." In her affidavit submitted on appeal, [REDACTED] states that the petitioner began mentioning her husband in early 2004 (although the petitioner states that she did not meet her husband until approximately November 2004) and that the petitioner "seemed very happy. They were in love." Ms. [REDACTED] states that she visited the petitioner after her marriage, but she does not describe that visit or any other occasions where she observed the petitioner interacting with or expressing her feelings for her husband. [REDACTED] states that she "enjoyed several social activities" with the former couple, that the petitioner's husband was "sweet and loving" to the petitioner and that the petitioner would tell her "that she felt very happy, apparently, so did he." Ms. [REDACTED] states that she met the petitioner's husband and encouraged her to marry him. Ms. [REDACTED] states that she went to the petitioner's wedding where the former couple "seemed very happy" and that she "enjoyed many happy moments" when she visited them. The petitioner's daughter and friends fail to provide detailed, probative information regarding their observations of the petitioner's interactions with her husband or her expressed intentions in entering their marriage.

The remaining, relevant evidence also fails to demonstrate that the petitioner married her husband in good faith. The bills and correspondence are addressed to the petitioner and her husband individually. While those documents and the joint lease show that the petitioner and her husband resided together, they do not demonstrate that they shared financial assets and liabilities or other, significant marital responsibilities. The school records of the petitioner's children only list her as a parent and are addressed to her individually. The photographs show that the petitioner and her husband were pictured together on their wedding day and one other, unspecified occasion, but the photographs alone do not establish that the petitioner entered into their marriage in good faith.

In her June 5, 2007 letter, the petitioner explained that her husband was very controlling and did not allow her "to do things regarding [their] household because he would always say that [she] was illegal and couldn't have things on [her] name." However, the petitioner submitted evidence that she maintained bank and utility accounts in her name during their marriage.

On appeal, counsel asserts that the director erred in finding that the petitioner did not establish a bona fide marital relationship because the petitions of her two younger children were approved. Counsel fails to acknowledge that child self-petitioners are not required to establish the good faith of their

abused parent in marrying the abuser. Section 204(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iv).

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

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.