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U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC 05 053 52327

Office: VERMONT SERVICE CENTER

Date: JAN 06 2009

IN RE:

Petitioner:

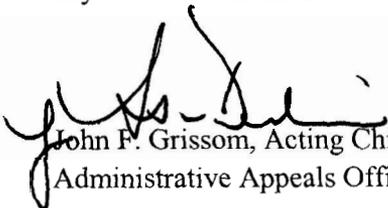
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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 certification. The director's decision will be affirmed. The petition will be denied.

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.

On August 25, 2005, the director denied the petition, finding that the petitioner failed to establish a qualifying relationship with a United States citizen or lawful permanent resident of the United States, her eligibility for preference immigrant classification based on such a relationship, and that she had entered into the qualifying relationship in good faith. The director erroneously rejected the subsequent appeal. On October 12, 2006, the director on United States Citizenship and Immigration Services (USCIS) motion, reopened the matter and issued a NOID. On February 7, 2007, upon receiving no response to the NOID, the director denied the petition as the record did not contain evidence sufficient to overcome the grounds for denial listed in the NOID and certified that decision to the AAO.

On appeal, counsel for the petitioner asserts that the director did not ask for evidence in the NOID and submits additional evidence of the petitioner's qualifying relationship.

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 clause (ii) or (iii) of subparagraph (B), 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 explained 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 filed under section 204(a)(1)(A)(iii) 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.

(ii) *Relationship.* A self-petition file by a spouse must 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 . . . .

(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 petitioner in this matter is a native and citizen of the Dominican Republic. The petitioner married J-W-<sup>1</sup> in the State of Michigan on October 9, 1997. The record contained evidence that the petitioner had been married twice prior to her marriage to J-W- and that J-W- had been married once prior to his marriage to the petitioner. The record included evidence that J-W- is a citizen of the United States and that his first marriage had been legally terminated prior to his marriage to the petitioner. The record did not include evidence that either of the petitioner's prior marriages had been legally terminated before her marriage to J-W-. On May 12, 2005, the director requested, among other items, evidence of the termination of the petitioner's prior marriages. In response, the petitioner provided evidence that her marriage to [REDACTED] had been terminated on January 29, 1994. The director denied the petition as the petitioner had not provided evidence that both of her prior marriages had been terminated.

On the October 12, 2006 USCIS motion to reopen and to issue a NOID identifying the deficiencies in

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

the record, the director notified the petitioner that the record included evidence: establishing that J-W- is a United States citizen; that J-W-'s prior marriage had been terminated; a marriage had been performed between the petitioner and J-W-; and proof of the legal termination of the petitioner's marriage to [REDACTED]. Also in the NOID, in a heading titled "Submit proof of the legal termination of the marriage [petitioner] and [REDACTED]" the director identified the type of proof necessary to demonstrate the legal termination of a marriage.

On February 7, 2007 upon receiving no response to the NOID, the director denied the petition, determining that the petitioner had not submitted evidence sufficient to overcome the grounds for denial as set forth in the NOID. The director certified his decision to the AAO for review.

On certification, counsel for the petitioner asserts that the petitioner did not submit additional evidence as the October 12, 2006 notice did not request that information. Counsel submits a copy of a divorce pronouncement showing the divorce between the petitioner and [REDACTED] on March 14, 1990 and contends that it would be unfair to deny the petition for failure to submit the divorce decree when the petitioner had no knowledge of the request.

Counsel's assertions are not persuasive. The director, in the October 12, 2006 notice, identified a deficiency in the record and in bold type stated: "Submit proof of the legal termination of the marriage [petitioner] and [REDACTED]." Thus, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the petition was adjudicated. **The** petitioner failed to submit the requested evidence and now submits it on certification. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. In this matter, the record before the director did not contain proof of the termination of all of the petitioner's prior marriages. *See* 8 C.F.R. § 204.2(c)(2)(ii). For this reason, the petition may not be approved.

Beyond the decision of the director, the AAO finds that the petitioner has not established that she entered into the marriage in good faith. On the Form I-360, the petitioner indicates that she lived with the petitioner from October 1997 to October 1999. The petitioner also provided her personal statement dated December 23, 2004. The petitioner declares that she cannot remember the exact date she met J-W- but that "when we met we spoke on the phone, we spent about a year [where] we did not see each other, we only spoke on the phone." The petitioner also declares that "[d]uring our relationship he behaved well until we got married." The petitioner indicates that J-W- knew she did not have "papers" and found a lawyer to prepare her papers but that the lawyer would only talk to J-W- because the lawyer thought that only J-W- was paying him. The petitioner indicates that she also paid the lawyer for his work. The petitioner states:

The thing is that when he [J-W-] would drink, he would say that he was going to call the lawyer so he could prepare the papers, because the only thing that I wanted were [sic] the papers.

The petitioner does not provide any further information regarding her intent in marrying J-W-. The lack of detail regarding her courtship with J-W-, her interactions when speaking with him, and the confusing information in her statement indicating that she only wanted “papers” cast doubt upon the legitimacy of the petitioner’s intent to enter into the marriage in good faith. The record also includes one photograph showing the petitioner and J-W- at their marriage ceremony; however, a photograph that shows the couple together on their wedding day does not establish the petitioner’s requisite good faith in entering the marriage.

The AAO has also reviewed the affidavits signed by [REDACTED] and [REDACTED] submitted on the petitioner’s behalf. These affiants provide general statements regarding the alleged abuse and vague statements that provide minimal information pertinent to the circumstances of the courtship and marriage to J-W-. [REDACTED] and [REDACTED] declare in their affidavits that they knew the petitioner and J-W-, reference that the petitioner moved in with J-W- after their marriage in October 1997, indicate that they were aware of the relationship between the petitioner and J-W-, and that prior to the October 1997 marriage, the petitioner lived at an address on Kipling in Oak Park, Michigan. [REDACTED] indicates she is aware that J-W- visited the Kipling residence on various occasions. The affiants do not identify the address where the petitioner resided while married to J-W- and do not provide probative details regarding their observations of the petitioner’s allegedly good faith entry into marriage with her husband. Moreover, these two affiants provide statements that contradict the petitioner’s Form G-325A which lists the petitioner’s address, prior to moving to the Greenview address, as in the Dominican Republic from April 1996 to September 1997. In the affidavit of [REDACTED] declares that he used to pick the petitioner up for work and take her to her home because J-W- worked a night shift and was either not at home or sleeping when the petitioner needed to go to work. [REDACTED] does not provide probative details of the courtship, marriage, and subsequent interactions of the couple sufficient to establish the petitioner’s intent to enter into a *bona fide* marriage. In the affidavit of [REDACTED] declares that she would pick the petitioner up at the Greenview address to take the petitioner to work and that when the petitioner and J-W- separated she helped the petitioner move out of the house. Similarly, however, [REDACTED] fails to provide probative details of the petitioner’s courtship, marriage, and interactions with J-W-. Likewise, [REDACTED] the petitioner’s sister, provides no information regarding the circumstances of the petitioner’s courtship and subsequent marriage to J-W-; instead providing minimal information on the alleged abuse. The affidavits do not contribute to an understanding of the petitioner’s intent in entering her marriage to J-W-. Accordingly, the AAO finds that the petitioner has failed to establish that she entered into her marriage 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. The petition is denied.