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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*Bey*

[Redacted]

FILE: [Redacted]  
EAC 06 140 51322

Office: VERMONT SERVICE CENTER

Date: **JAN 07 2009**

IN RE: [Redacted]

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)

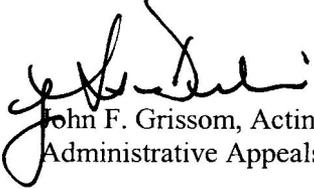
ON BEHALF OF PETITIONER:

[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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The service center director 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 on the basis of his determination that the petitioner had failed to establish that she entered into marriage with her husband in good faith.

Counsel submitted a timely appeal on February 23, 2007.

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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

(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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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 of proceeding establishes the following pertinent facts and procedural history.** The petitioner is a citizen of Cambodia who entered the United States with a B-2 visa on July 19, 2002. The petitioner married J-T-<sup>1</sup> a United States citizen, on August 25, 2004 in Charlotte, North Carolina. J-T- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on October 1, 2004, and the petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on that same day. The Form I-130 was denied on January 19, 2006, upon J-T-'s withdrawal of the petition. A Notice to Appear, charging the petitioner as inadmissible to the United States under section 237(a)(1)(B) of the Act, was issued on February 22, 2006.

The petitioner filed the instant Form I-360 on March 30, 2006. The director issued a notice of intent to deny (NOID) the petition on August 7, 2006, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish (1) that she and J-T- resided together; (2) that she married J-T- in good faith; (3) that J-T- subjected her to battery and/or extreme cruelty; and (4) that she is a person of good moral character. Counsel responded to the director's NOID on October 3, 2006, and requested an additional sixty days in which to submit additional evidence. Counsel submitted a second response to the NOID on December 5, 2006, and submitted additional evidence. After considering the evidence of record, including the evidence

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

submitted by the petitioner in response to the NOID, the director denied the petition on January 26, 2007. Counsel submitted a timely filed appeal.

### **Good Faith Entry into Marriage**

The sole issue on appeal is whether the petitioner has established that she married J-T- in good faith. In finding the evidence of record insufficient to establish this criterion, the director noted the couple's brief courtship; stated that the photographs of the couple's ceremony do not establish good faith entry into marriage, as a wedding ceremony is a one-day event, and noted that, although the couple filed a joint tax return for tax year 2004, financial commingling of funds is only one indicator of a good faith marriage.

On appeal, counsel contends that the director erred in denying the petition. Counsel contends that all evidence of record was not fully and fairly evaluated; that counsel has had difficulty locating witnesses to the couple's marriage; and that, when all evidence is taken into account, the petitioner has demonstrated good faith entry into marriage. In a supplemental submission, counsel submits a copy of the couple's divorce judgment. Counsel notes that the judge granted the divorce on grounds of cruel and abusive treatment, and asks the AAO to "give deference to the Court's finding of Cruel and Abusive treatment."<sup>2</sup>

Upon review, the AAO agrees with the director's conclusion that the record, as presently constituted, fails to establish that the petitioner entered into marriage with J-T- in good faith. As noted by the director, the record indicates that one of the petitioner's friends called and arranged for the petitioner and J-T- to have a date on a Sunday; that the petitioner and J-T- became engaged that same afternoon; and were married three days later on the following Wednesday.

The petitioner's December 2, 2006 affidavit speaks primarily to J-T-'s conduct during the marriage. While such testimony (and supporting evidence) satisfied the other criteria at issue in this case, it does not satisfy the petitioner's requirement to demonstrate that she entered into marriage in good faith. In her affidavit, the petitioner stated, with regard her good faith entry into the marriage, that she met J-T- at their temple through a friend; J-T- had previously told this friend that he was looking for a wife. The petitioner had been living in a trailer with several other immigrants, and she was lonely, needed someone for support, and wanted a husband, home, and a normal life. Therefore, she was thrilled at the prospect of meeting someone who might want to marry her. That night the friend called J-T-, and J-T- agreed to meet the petitioner at the friend's house the following Sunday for lunch with the petitioner. After lunch, J-T- talked, and J-T- asked the petitioner whether she wanted a real marriage, or whether she would just use him. The petitioner assured him that she was not using him, and they agreed to marry. They married three days later, on Wednesday. They

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<sup>2</sup> The AAO reminds counsel that the director specifically stated that the petitioner had established that she has been the victim of battery and/or extreme cruelty. Whether the petitioner was subjected to battery and/or extreme cruelty is not at issue here.

had a large, traditional wedding ceremony on October 30, 2004. After the traditional wedding, the couple moved in together, and the petitioner quit her job.

However, the petitioner's affidavit provides no other information regarding her intentions upon entering into marriage. For example, the petitioner fails to provide detailed information regarding the circumstances surrounding the petitioner and J-T-'s first introductions at the temple and at the friend's house; their first impressions of each other; their courtship; or their early life together. She offers no details about the types of activities they enjoyed together. Further, the very brief courtship – approximately three days – casts doubts on the petitioner's good faith entry into the marriage. Despite having been specifically placed on notice of the insufficiency of her affidavit via the denial, the petitioner elects on appeal not to submit additional details.

In her March 10, 2007 affidavit, [REDACTED] stated that the petitioner and J-T- came to her house one day and asked her to attend, and help decorate for, their wedding. She stated that the couple seemed happy and excited, and appeared happy with each other. She also said that she remembers seeing the petitioner and J-T- "at a cookout and other places" and that, each time she saw them, they seemed happy together and "acted like a married couple." However, this affidavit does not establish that the petitioner married J-T- in good faith. For example, it is unclear that, when [REDACTED] references the couple's wedding, she is referring to the civil marriage that occurred on August 25, 2004 or the traditional marriage that occurred on October 30, 2004. The distinction is a critical one: the petitioner must establish that she married J-T- in good faith at the time of the August 15, 2004 union. Her statements that the couple seemed happy and acted like a married couple are insufficiently broad; as are her statements that she saw the petitioner and J-T- at a single cookout and "other places."

Nor does [REDACTED]'s March 15, 2006 preliminary forensic psychiatric examination report establish that the petitioner entered into marriage with J-T- in good faith, as it is focused primarily on J-T-'s treatment of the petitioner during their marriage, and on the petitioner's psychological state as a result of that treatment. The only information contained in the evaluation regarding the petitioner is also contained in the petitioner's own affidavit, although the AAO does note inconsistencies with the rest of the record in her evaluation. First, [REDACTED] states that the petitioner and J-T- had several dates before their marriage. However, the AAO questions whether this was possible, given that the first date occurred on a Sunday, they made an appointment for the wedding ceremony two days later, on Tuesday, and were married by Wednesday. Second, the AAO notes the [REDACTED] provides an incorrect date of marriage. As this evaluation contains no additional information regarding the petitioner's good faith entry into the marriage, it fails to satisfy this criterion.

The AAO agrees with the director regarding the photographs of the wedding ceremony. As noted by the director, a wedding ceremony is a one-day event, and a one-day event does not constitute evidence of good faith entry into marriage. Further, whether wedding guests considered the marriage valid is irrelevant, as it is the petitioner's intentions upon entering the marriage, not those of friends and family, which are determinative.

Section 204(a)(1)(J) of the Act requires USCIS to “consider any credible evidence relevant to the petition.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J). This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, “[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of” Citizenship and Immigration Services (CIS). Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, “All credible relevant evidence will be considered.” 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner’s burden of proof. While USCIS must consider all credible evidence relevant to a petitioner’s claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner’s burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). To require otherwise would render the adjudicatory process meaningless.

In this particular case, while the AAO finds the petitioner’s evidence credible, it does not find it sufficient to satisfy her burden of proof. As noted previously, the information of record regarding the petitioner’s good faith entry into the marriage is very general in nature. Again, the very brief courtship – approximately three days – casts doubts on the petitioner’s good faith entry into the marriage, and the petitioner provides little or no information regarding the circumstances surrounding the petitioner and J-T-’s first introductions; their first impressions of each other; their courtship; the types of activities they enjoyed together; or their early life together. As such, the AAO finds that the evidence of record fails to demonstrate that the petitioner entered into marriage with J-T- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### **Conclusion**

The AAO concurs with the director’s determination that the petitioner has failed to demonstrate that she entered into marriage with A-C- in good faith. Se is therefore ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely 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.