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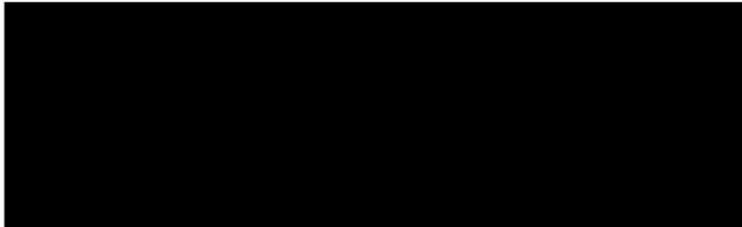
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529-2090



U.S. Citizenship  
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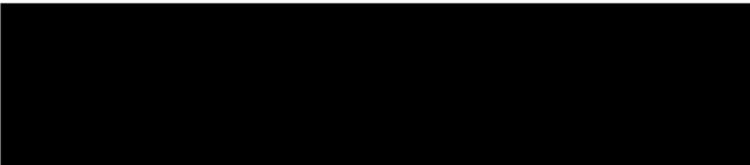
JAN 13 2009

IN RE:



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)

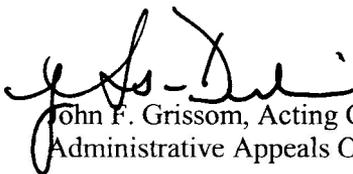
ON BEHALF OF PETITIONER:



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 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: (1) that she had resided with her husband; (2) that her husband subjected her to battery or extreme cruelty; (3) that she is a person of good moral character; and (4) that she entered into marriage with her husband in good faith.

Counsel submitted a timely appeal on March 16, 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.
- (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be

considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

- (vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

- (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.
- (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. . . .
- (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.
- (iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women’s shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.
- (v) *Good moral character.* Primary evidence of the self-petitioner’s good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for

six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

\* \* \*

- (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 Venezuela who entered the United States in B-2 status on December 4, 2002. On October 27, 2003, she was granted R-1 status through October 27, 2006. According to the petitioner, she married R-J,<sup>1</sup> a United States citizen, on May 24, 2004. R-J- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on November 18, 2004. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date. The Forms I-130 and I-485 were denied on January 27, 2006, on the basis of her failure to appear for a permanent residency interview.

The petitioner filed the instant Form I-360 on March 27, 2006. On August 2, 2006, the director issued a request for additional evidence, and requested additional evidence to establish whether the petitioner had resided with R-J-; whether the petitioner had been subjected to battery and/or extreme cruelty by R-J-; whether she is a person of good moral character; and whether she entered into marriage with R-J- in good faith. The petitioner responded on September 29, 2006, and submitted additional evidence. The director issued a notice of intent to deny (NOID) the petition on October 19, 2006, which notified the petitioner of the deficiencies in the record and afforded her the opportunity to submit further evidence to establish that the petitioner had resided with R-J-; that the petitioner had been subjected to battery and/or extreme cruelty by R-J-; that the petitioner is a person of good moral character; and that the petitioner entered into marriage with R-J- in good faith. However, the director did not receive a response to the director's NOID.

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

After considering the evidence of record, the director denied the petition on February 13, 2007. In finding the evidence of record insufficient to satisfy the petitioner's burden of proof, the director stated that the affidavits from [REDACTED] and [REDACTED] concerning problems between the petitioner and R-J- contained no specifics or details; and that the affidavits from the petitioner regarding the alleged abuse and from her daughter stating that the petitioner had called her, one time, regarding the alleged abuse, were self-serving without any corroborating evidence.

On appeal, counsel submits a brief and additional supporting documentation, including a submission she states was sent to the director in satisfaction of his NOID.

Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition.

### **Joint Residence**

The first issue on appeal is whether the petitioner has established that she shared a joint residence with R-J- during their marriage. To satisfy this criterion, the petitioner submits several affidavits, a copy of a credit card, property tax statements, a telephone billing statement, photographs, a statement from her banking institution, and a copy of an application for a post office box.

The affidavits of [REDACTED] and [REDACTED] do not address the issue of the petitioner's joint residence with R-J-, other than to reference R-J- as the petitioner's husband. They are insufficiently detailed to aid the AAO in determining whether R-J- and the petitioner shared a joint residence.

In his March 14, 2007 affidavit, one of the petitioner's sons-in-law states that R-J- and the petitioner shared a joint residence. In his March 15, 2007 affidavit, another of the petitioner's sons-in-law states attests to the petitioner's joint residence with R-J-. However, neither presents any supporting evidence.

In her undated affidavit, [REDACTED] states that she bought property next to the one in which the petitioner and R-J- lived, and states that the petitioner and R-J- shared a residence together.

The petitioner does not directly address the issue of joint residence in her September 21, 2006 self-affidavit. However, her descriptions of R-J- peeking out the windows of their home, and walking around the home naked, address the issue of joint residence indirectly. However, the documentary evidence she submits in support of her contention that she shared a residence with R-J- is insufficient. The copy of a Wal-Mart credit card does not address joint residence. The tax statements from the Polk County Tax Collector do not establish that she and R-J- shared a joint residence, as the petitioner's name alone is listed on the documents. **The letter from [REDACTED]** does not establish that R-J- and the petitioner shared a joint residence, as the petitioner's name alone is listed on the documents. The telephone billing statement is in neither R-J-'s nor the petitioner's name, so it does not establish that the two shared a joint residence. The

photographs do not establish joint residence, as they are undated and lack any description. The copy of an application for a post office box does not establish that R-J- and the petitioner shared a residence, as it is undated. Further, it is a poor copy that is difficult to read: an entire portion of the copy is illegible. Although the record does contain a copy of a birthday card purportedly sent by R-J- and the petitioner to the petitioner's son-in-law, a single birthday card does not satisfy the petitioner's burden of proof in establishing that she and R-J- shared a residence. It is unclear to the AAO why, during the course of an alleged 13-month period of joint residence, not a single document was generated listing both R-J- and the petitioner on the same piece of paper, and the petitioner makes no effort to explain why such was the case.

Counsel and the petitioner have failed to overcome the director's denial of the petition on this ground. Accordingly, the petitioner has not established by a preponderance of the evidence that she resided with R-J-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

### **Battery or Extreme Cruelty**

The AAO agrees with the director's determination that the petitioner failed to establish that R-J- subjected her to battery and/or extreme cruelty. In support of her assertion that she was the victim of battery and/or extreme cruelty, the petitioner submits several affidavits and a telephone billing statement.

In her September 21, 2006 affidavit, the petitioner states that R-J- would throw "any object" at her; that he hit her; that R-J- called her insulting and offensive names; that R-J- slammed doors; that R-J- lost sexual interest in her; and that R-J- would reject her sexual advances by hitting her. The petitioner states that when R-J- abused her she would run to find a neighbor to help her, but that she could not find anyone to help. However, on one occasion, after suffering a nervous breakdown, she was able to talk to [REDACTED] and [REDACTED] about her situation. The petitioner also states that R-J- acted strangely: that he was nervous "most of the time" and was constantly "peeking out of the windows"; that he walked around the home naked; that he walked onto the porch naked; and that he spent most of the night awake. However, the petitioner fails to describe, in detail, any particular incident of abuse. For example, although she states that R-J- hit her, she fails to provide details such as where they were when he hit her, where on her body he hit her, or any other information. She says that she would run to find neighbors to help her, but she does not explain this statement in detail: for example, how often this happened, whether R-J- chased after her, and how far she ran for help, etc. In a case such as this, where there is no physical evidence of battery and/or extreme cruelty, the petitioner's affidavit is crucial. However, the petitioner fails to describe the abuse she suffered in probative detail, and such lack of detail undermines her case. Nor does she provide any medical evidence regarding her nervous breakdown.

The petitioner's friends and family also provide insufficient information to establish her claim. As noted by the director, the affidavits of [REDACTED] and [REDACTED] are insufficiently detailed: Ms. [REDACTED] states that her memory is not clear as to what happened, and [REDACTED] states that the

petitioner told her she was being abused. The AAO agrees with the director's determination that these affidavits are insufficiently detailed.

In her affidavit, the petitioner's daughter states that the petitioner called her to tell her that R-J- was hitting her, abusing her, and calling her names in March 2005, the same month that, according to the Form I-360, the petitioner and R-J- ceased sharing a residence. The petitioner's daughter states that she could "sometimes" hear R-J- calling the petitioner a "bitch" and a "whore"; and that R-J- was continuously yelling and swearing. The petitioner's daughter, however, does not indicate how frequently this occurred. Her testimony indicates that it happened on several occasions but, given that she only learned of the abuse shortly before the petitioner and R-J- stopped living together, it is unclear to the AAO how it could have happened frequently. Further, the petitioner's daughter did not personally witness any of the alleged abuse, and her testimony is prefaced upon the petitioner's own testimony to her, which diminishes the probative value of that testimony.

The affidavits of the petitioner's two sons-in-law are similarly deficient in that they did not witness any of the abuse first-hand. Although one son-in-law submits a copy of a telephone billing statement as evidence that the petitioner called the police, the AAO notes that the account from which 911 was dialed was not that of the petitioner. The emergency 911 calls referenced by the petitioner's son-in-law were made from his own account. As was the case with the affidavit of the petitioner's daughter, the affidavits from her sons-in-law fail to describe, in detail, any particular incidents of abuse that they witnessed. Further, the AAO notes that the petitioner did not reference any emergency 911 calls to the police in her own affidavit, nor did she submit copies of any police reports.

Finally, the AAO turns to the affidavits of \_\_\_\_\_ and \_\_\_\_\_. Again, neither of these affiants describes in probative detail any particular instances of abuse they witnessed.

The affidavits submitted on behalf of the petitioner fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that R-J-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. The petitioner has failed to establish that her husband subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### **Good Moral Character**

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in March 2003 and ending in March 2006).

Primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by the requisite local police clearances or state-issued criminal background checks. However, while the record contains a police certificate from the Commonwealth of Puerto Rico, there is no information from the State of Florida, or from any of the localities in the State of Florida in which the petitioner lived during this time. Accordingly, the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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

The director also found that the petitioner had failed to establish that she married R-J- in good faith. The AAO agrees. Although the record does contain several photographs, they are undated and unexplained. Further, the record contains no information regarding the couple's first meeting, their courtship, their decision to marry, or their wedding. There is no indication in the record as to how long they dated, and how long they were engaged before marrying. Although there are several cards addressed from R-J- to the petitioner, those cards speak to R-J-'s intentions, not the petitioner's intentions. Further, and as noted previously, it is unclear to the AAO why, during the course of an alleged 13-month period of joint residence, not a single document was generated listing both R-J- and the petitioner on the same piece of paper, and the petitioner makes no effort to explain why such was the case.

The evidence of record fails to demonstrate that the petitioner entered into marriage with R-J- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Pursuant to the preceding discussion, the AAO agrees with the director's determination that the petitioner has failed to establish that the petitioner shares a joint residence with R-J-; that the petitioner was subjected to battery and/or extreme cruelty by R-J-; that the petitioner is a person of good moral character; and that the petitioner entered into marriage with R-J- in good faith. Beyond the decision of the director, the AAO finds that the petition cannot be approved for an additional reason.

### **Qualifying Relationship and Eligibility for Classification as an Immediate Relative**

Beyond the decision of the director, the AAO finds that the record of proceeding, as presently constituted, fails to demonstrate that the petitioner had a qualifying relationship with R-J-. As presently constituted, the record of proceeding fails to establish that the petitioner and R-J- were ever legally married. The record contains a copy of a "State of Florida Marriage Record" which indicates that the petitioner and R-G- were granted a marriage license on Mary 7, 2004. However, the portion of the record entitled "Certificate of Marriage" is empty, and there is no other documentary evidence in the file that a wedding ceremony was ever performed. Accordingly, the petitioner has failed to establish that she has a qualifying relationship with a United States citizen. Further, as the petitioner has not demonstrated a qualifying relationship as the spouse of a citizen of the United States pursuant to section 204(a)(1)(A)(iii) of the Act, she also was not eligible for preference immigrant classification based on such a relationship, as required by section 204(a)(1)(A)(iii) of the Act. For this additional reason, the petition may not be approved.

### Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that she and her husband shared a joint residence; that her husband subjected her to battery or extreme cruelty; that she is a person of good moral character; and that he entered into marriage with her husband in good faith. Beyond the decision of the director, the record fails to demonstrate that the petitioner and R-G- were ever legally married. The petitioner, therefore, is 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 AAO maintains plenary power to review each appeal 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).

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.