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

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JAN 22 2009
EAC 06 097 52635

IN RE: Petitioner: [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, 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 married her husband in good faith and that her husband subjected her to battery or extreme cruelty during their marriage.

On appeal, counsel submits a letter, additional evidence and copies of documents previously submitted.

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:

> (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.
>
> * * *
>
> (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 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.
>
> * * *
>
> (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.
>
> * * *
>
> (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 Jamaica who was admitted into the United States on March 18, 2002, as a nonimmigrant H-2B. On November 10, 2003, the petitioner married [redacted], a U.S. citizen, in West Palm Beach, Florida. [redacted] subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which remains unadjudicated. The petitioner concurrently filed a Form I-485, Application to Register Permanent Resident or Adjust Status, which also remains unadjudicated.

The petitioner filed the instant Form I-360 on February 14, 2006. On May 15, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite battery or extreme cruelty, good moral character, and good-faith entry into the marriage. The petitioner, through counsel, timely responded to the NOID with additional evidence. On September 28, 2006, the director denied the petition, finding that the petitioner failed to establish that she had a good-faith entry into the marriage and that she was battered or subjected to extreme cruelty by her citizen spouse. Counsel timely appealed.

On appeal, counsel explains or discounts certain factual inconsistencies and discrepancies cited by the director. As we discuss in detail below, we find no error in the director's discretionary determination that the petitioner's husband did not subject her to extreme cruelty. Counsel's remaining claims and the evidence submitted on appeal also fail to establish the petitioner's good-faith entry into their marriage.

Good Faith Entry into Marriage

At the time of filing, the petitioner submitted a personal statement dated February 8, 2006, in which she discusses how she met on November 28, 2002, and their subsequent courtship, engagement on September 13, 2003, and wedding on November 10, 2003. She also states that on the same day of their wedding, she and her husband moved in with his parents and that, aside from disagreements about her husband going out with his friends, coming home late, and money issues, "everything was good" for about a year after the marriage until December 2004, when her husband's behavior became aggressive. The petitioner states that her husband's behavior was erratic, that he shouted at her, demanded money, cleaned out their savings account, raped her, and hid his history of drug abuse from her. She also states that she moved out of the home of her in-laws in May 2005, and has received help from the organization Women in Distress. The petitioner submitted a variety of supporting documentation, including the following: a letter dated December 21, 2005 from her husband's parents, stating that the petitioner and their son moved in with them with the intention of saving money to buy a home, and lived with them from the date of their marriage until May 20, 2005; a copy of a savings account statement from Bank Atlantic, dated May 16, 2005, addressed to the petitioner and her husband at the following address: Pembroke Park, Florida 33023, reflecting a zero balance, and a copy of a savings account statement from Bank Atlantic, dated August 20, 2005, addressed to the petitioner and her husband at the following address: Riviera Beach, Florida 33404, reflecting a balance of $187.02; court orders containing a history of her husband's drug abuse; a copy of a Form 8453, U.S. Individual Income Tax Declaration for an IRS e-file Return, for 2004, on which she signed both her and her husband's names; a Form SC 1040, South Carolina Individual Income Tax Return, for 2004, on which the petitioner signed both her and her husband's names; a letter dated December 29, 2005 from an advocate at the Women In Distress of Broward County, Inc., certifying that on that date, the petitioner registered for a domestic violence program; and life insurance policies issued to the petitioner and her husband with an effective date of September 1, 2005.

In the additional evidence submitted in response to the director's NOID, the petitioner offers no further probative details regarding her alleged good faith in entering her marriage. In both of the petitioner's statements, she asserts that the lack of joint evidence is because she and her husband lived with his parents, and that neither she nor her husband maintained a steady job. Counsel states that the director's finding that the petitioner's savings account statement of Bank Atlantic was dated on April 25, 2005, after her separation from her husband is erroneous, as the petitioner separated from her husband in May 2005. Counsel also states that as the petitioner and her husband lived with his parents, the petitioner does not have utility bills, mortgages and leases to provide as evidence, and that the petitioner's life insurance was acquired through her job with Subway International, and as her husband is her only immediate relative in the United States, he is her sole dependent and sole beneficiary on that policy. She states further that the petitioner would not have been accepted into the Women in Distress domestic abuse program unless it was determined that she had been abused, and that the petitioner was initially scheduled for an interview with that organization in October 2005, but had to be rescheduled. The petitioner submitted the following additional evidence: a statement, dated June 8, 2006, from her mother-in-law, stating that her son and the petitioner lived with her and her husband from November 2003 through 2005, that her son and the petitioner helped pay the bills, and that her son's actions related to his drug abuse forced the petitioner to leave for her own safety; an undated letter from the petitioner's cousin, who states that the petitioner confided in her about her husband's abuse and that the petitioner moved in with her in May 2005; a life insurance application through the petitioner's employer, Subway International, dated September 9, 2005, signed by the petitioner, naming her husband as the beneficiary; a certificate from the Women in Distress crisis group; documentation related to the petitioner's husband's drug abuse history; bank account printouts; and a June 5, 2006 letter from the senior vice president of CNM Associates, who confirms that the petitioner's husband "verbally authorized Mrs. an employee of this office, to file his joint federal income tax return electronically."

On appeal, counsel for the petitioner states that the petitioner has satisfied the requirement for a good-faith marriage, as evidenced by the petitioner's joint tax return for 2004 and a letter from her accountant regarding the electronic filing without the presence of the petitioner's husband.

We acknowledge counsel's assertion that the petitioner has satisfied the requirement for a good-faith marriage, as evidenced by the petitioner's joint tax return for 2004 and a letter from her accountant regarding the electronic filing without the presence of the petitioner's husband. As noted above, the petitioner submitted a June 5, 2006 letter from the senior vice president of CNM Associates, who confirms that the petitioner's husband "verbally authorized an employee of this office, to file his joint federal income tax return electronically." It is unclear, however, under what authority the petitioner forged her husband's signature on both the Form 8453, U.S. Individual Income Tax Declaration for an IRS e-file Return, for 2004, and the Form SC 1040, South Carolina Individual Income Tax Return, for 2004, as the instructions are clear on each form that, if filed jointly, both spouses must sign. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing

to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988). Also unclear is counsel's argument that these documents, which have been forged by the petitioner, constitute evidence of a good-faith marriage. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We also acknowledge counsel's statement on appeal that the petitioner provided proof that she and her husband opened a savings account in April 2005, prior to their separation the following month, and that the director's suggestion that the petitioner knew she was going to separate from her husband at the time of opening the account is unreasonable. Neither counsel nor the petitioner, however, address the director's finding that the petitioner's savings account statement from Bank Atlantic, dated May 16, 2005, contains the address of the petitioner's cousin at: Pembroke Park, Florida 33023, the address where the petitioner resided after she left her husband. As the petitioner maintains that she left her husband on May 20, 2005, it is not clear why her May 16, 2005 savings account statement contains the Pembroke address. It also is unclear as to why the petitioner's August 20, 2005 savings account statement contains the address of the petitioner's in-laws, as the petitioner claims to have moved out of her in-laws' house on May 20, 2005. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel also states on appeal: "In addition the fact that [the petitioner] listed [her] husband as her [beneficiary] of her life insurance policy after they [separated] should be considered a factor against good faith marriage in light of the fact that [the petitioner] has no other immediate relative in the United States." Counsel's intended meaning for this statement is not clear. In addition, although in the NOID, the director requested an explanation from the petitioner for the timing of her enrollment in the two life insurance policies insuring both her and her husband, which was four months after their separation, the record contains no such explanation. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the

reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner is not required to submit preferred primary or secondary evidence. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The affidavits from the petitioner, the parents of her husband, and her cousin, all attesting to the petitioner's good-faith marriage, are noted. However, the unresolved inconsistencies and deficiencies discussed above significantly detract from the credibility of the petitioner's claim. In sum, the relevant evidence fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty.

On appeal, counsel states that the petitioner's husband manipulated and emotionally abused her by not disclosing his criminal record and history of drug abuse. Counsel also states that the petitioner's admission into the abuse program at the organization Women in Distress corroborates the petitioner's claim. As supporting documentation, counsel submits an updated report from Women in Distress, dated October 18, 2006.

In her October 18, 2006 letter, the advocate counselor for Women in Distress wrote, in part, as follows:

> Her self-report indicated that she was scared of her husband's violent behavior and her perception of fear for her life or physical harm was a "10" on a scale of 1 to 10 with 1 = minimal and 10 = high according to the Lethality Scale Criteria.
>
> [The petitioner] reported at intake that her husband had pushed her, slapped her, struck her, threaten[ed] to kill her, threw objects at her, kept her isolated and verbally and emotionally abused her. [The petitioner] also reported that [her] husband uses alcohol frequently.

The letter from the advocate counselor is noted. It is not clear, however, that her comments pertain to the petitioner. For example, the advocate counselor stated that the petitioner reported that her husband uses alcohol frequently. Nowhere in the record, including the affidavits from the petitioner, the petitioner's husband's parents, and the petitioner's cousin, is it reported that the petitioner's husband uses alcohol frequently or that he even drinks alcohol. Moreover, the advocate counselor does not even mention the petitioner's husband's problem with drug abuse, which is a common

factor in all of the affidavits. In addition, although the advocate counselor stated that the petitioner's fear of her husband was a "10" on a Lethality Scale of "1 to 10" with "10" as the highest fear level, nowhere in the record does the petitioner state that she fears for her life. Also, nowhere in the record does the petitioner state that her husband pushed, slapped, and struck her, threatened to kill her, and threw objects at her. As discussed above, the petitioner states that, aside from disagreements about her husband going out with his friends, coming home late, and money issues, "everything was good" for about a year after the marriage until December 2004, when her husband's behavior became aggressive and erratic, that he shouted at her, demanded money, cleaned out their savings account, raped her, and hid his history of drug abuse from her. She also mentioned one incident in which he scared her by "lift[ing] his hand towards her face." However, nowhere in the record does she state that he hit her. Neither does any of the husband's alleged abusive behavior, as reported by the advocate counselor, appear in the affidavits of the petitioner's cousin or in-laws. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. at 591 (BIA 1988). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In view of the unexplained inconsistencies discussed above, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that she entered into their marriage in good faith and that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and the petition must be denied.

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.