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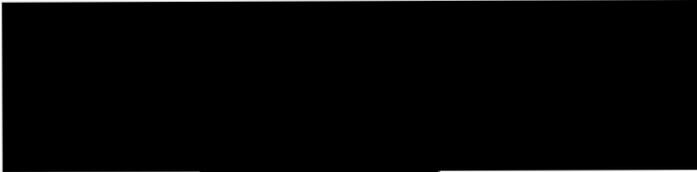
U.S. Department of Homeland Security
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U.S. Citizenship
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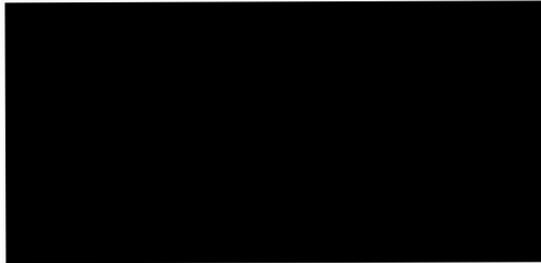
EAC 06 139 50568

Office: VERMONT SERVICE CENTER

Date: JAN 23 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)

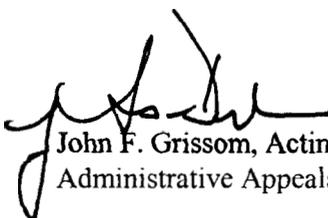
ON BEHALF OF PETITIONER:



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, 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 she is a person of good moral character.

On appeal, the petitioner submits four notarized statements and the results of an insurance policy inquiry, reflecting the petitioner's spouse, L-G- as the primary insured, the petitioner as the beneficiary, no money paid to date, and the policy status as "declined." The petitioner also submits the first page of an application for life insurance, reflecting the "proposed primary insured" as L-G- and "N/A" in part B. for spouse coverage. It is noted that this application contains no signature and appears to be incomplete, as there are no pages following "Page 1." The petitioner also submits a "Deposit Account Agreement and Disclosure" and a "Rate and Fee Schedule (Including TIS Disclosures) from City National Bank of New Jersey, reflecting the "Premiere Checking" account holder as "L-G- POD [the petitioner]" and the account opening date of December 28, 2005. It is noted that the bank documents also contain no signatures.

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:

(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 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.

* * *

(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 in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ghana who was admitted into the United States on July 5, 2003 as a B-2

nonimmigrant visitor for pleasure. On May 16, 2005, the petitioner married L-G-¹, a U.S. citizen, in New Jersey. On July 26, 2005, L-G- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Adjust Status. The petitioner and her husband did not appear for the scheduled adjustment of status interview, and the Forms I-130 and I-485 remain pending adjudication.

The petitioner filed the instant Form I-360 on April 3, 2006. On August 21, 2006, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite joint residency, battery or extreme cruelty, good moral character, and good-faith entry into the marriage. The petitioner, through counsel, requested additional time to respond. On December 21, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of, *inter alia*, the requisite qualifying relationship, eligibility for immigrant classification based on the qualifying relationship, battery or extreme cruelty, joint residency, good moral character, and good-faith entry into the marriage. The petitioner, through counsel, timely responded to the NOID with additional evidence. On March 14, 2007, the director denied the petition, finding that the petitioner failed to establish that she had good moral character and a good-faith entry into the marriage.

On appeal, the petitioner submits the additional evidence noted above. The additional evidence submitted by the petitioner on appeal fails to establish that she married her husband in good faith and that she is a person of good moral character.

Good Faith Entry into Marriage

As discussed above, as evidence of good faith entry into the marriage, the petitioner submits the following documentation on appeal: an insurance policy inquiry; the first page of an application for life insurance; a "Deposit Account Agreement and Disclosure"; and a "Rate and Fee Schedule (Including TIS Disclosures) from City National Bank of New Jersey. The insurance policy inquiry, which names the petitioner and her spouse, contains no signatures, and reflects no money paid to date and the policy status as "declined." As such, the record contains no evidence that the policy was ever activated. In addition, the application for life insurance appears to be incomplete, as only the first page was submitted, and does not contain the petitioner's name or any signatures. It also reflects "N/A" in part B. for spouse coverage. Nor do the "Deposit Account Agreement and Disclosure" and the "Rate and Fee Schedule (Including TIS Disclosures) from City National Bank of New Jersey, contain any signatures or evidence that the account was ever activated.

In addition to the evidence listed in the preceding section, the record contains a notarized statement from the petitioner, dated January 11, 2007, in which she describes meeting her husband at the Greyhound bus station, getting married, moving into "their family house," experiencing the shock of finding out that her husband already had children, as she had no children. This information conflicts with the information she provided on the Form I-485, Application to Register Permanent Resident or

¹ Name withheld to protect identity.

Adjust Status, claiming a daughter, [REDACTED], born on October 6, 1992 in Ghana. The record contains no explanation for this inconsistency. 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).

The record also contains notarized statements from the following: [REDACTED] who certifies that he was the best man at the petitioner's wedding and that the petitioner stayed at his house after the petitioner's spouse threw her out of their house; [REDACTED] who certifies that the petitioner had called to tell him that her husband had kicked her out of their "matrimonial home", and that she lived for time at [REDACTED] home; and [REDACTED], who states that the petitioner is his wife's friend and that he drove to the petitioner's home to offer spiritual counseling, but the petitioner's spouse refused. The record also contains photographs of the petitioner and her spouse, and a temporary auto insurance card in the petitioner and spouse's names, effective on October 16, 2005, for 60 days.

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). However, upon review of the record in its entirety, the documents pertaining to the petitioner's residences and shared residences contain inconsistencies. The Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, signed by the petitioner on May 25, 2005, after her May 16, 2005 marriage, lists her address as [REDACTED] Newark, New Jersey, which is her husband's reported address, though she lists her maiden name, [REDACTED], on the form and also signs the form in her maiden name, [REDACTED]. This unexplained inconsistency significantly detracts from the credibility of the petitioner's claim. 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). 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.

Good Moral Character

As evidence of good moral character, the petitioner submitted four notarized statements. The first notarized statement appears to be from [REDACTED], as the signature matches the signature of that on the Form I-864, Affidavit of Support Under Section 213A of the Act, filed by Mr. [REDACTED] on July 26, 2005, on behalf of the petitioner. [REDACTED] asserts that he and the

petitioner are cousins, that he has known her all his life, and that the petitioner is a “good, trustworthy and dependable person, a woman of integrity and honor. . .” The second notarized statement is from [REDACTED] as discussed above, who gives the petitioner his “wholehearted endorsement.” The third notarized statement is from [REDACTED] who, as the Deacon of Christ Charismatic Church, describes the petitioner as “a very good, dependable and honest associate as well as a pleasant person.” The fourth notarized statement is from [REDACTED] an acquaintance of the petitioner, who also highly recommends the petitioner for any position or endeavor she may seek to pursue.

The petitioner failed to establish that she is a person of 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, the petitioner has failed to submit an affidavit regarding her good moral character and a police clearance or background check. Thus, the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iv) of the Act.

Although these were the sole grounds cited by the director for denial, we find an additional ground beyond the decision of the director that precludes approval of the petition.

Battery or Extreme Cruelty

We do not agree with the director’s finding that the petitioner has demonstrated the requisite abuse. In her personal statement, dated January 11, 2007, the petitioner claims that she and her spouse quarreled a lot, that her spouse stopped talking to her and disrespected her in front of their friends, that he called her names and slammed the door on her face, and that he eventually locked her out of the house. In a notarized statement dated December 20, 2006, [REDACTED] stated that the petitioner complained to him that her husband yelled at her, called her names, was on drugs, and that she was afraid “that one day he will hit her.” This information conflicts with the description of violence described in the psychological evaluation from [REDACTED], dated December 15, 2006, who states that the petitioner’s husband, on two particular occasions, “became violent with her, punching her, grabbing her, and trying to choke her.” It is also noted that neither [REDACTED] nor [REDACTED] describes any physical violence perpetrated on the petitioner by her husband. 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). The unresolved discrepancies and inconsistencies in the record, including the petitioner’s testimony, the notarized statements from the petitioner’s acquaintances, and the corresponding description of violence in [REDACTED] evaluation, as previously discussed, detract from the credibility of the petitioner’s alleged abuse. In sum, the relevant

evidence fails to establish that the petitioner's 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. We, therefore, withdraw the director's finding that the petitioner satisfied this requirement.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.