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

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FILE:

EAC 07 045 50184

Office: VERMONT SERVICE CENTER

Date: JAN 26 2009

IN RE:

Petitioner:

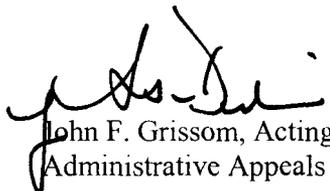
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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 or reopen, 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 had a qualifying relationship with a U.S. citizen, that she was eligible for immediate relative classification based on such a relationship, that she entered into a qualifying relationship in good faith, that she was battered or subjected to extreme cruelty by the U.S. citizen, that she resided with the U.S. citizen and that she is a person of good moral character.

On appeal, counsel submits a brief and additional evidence.

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:

(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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

* * *

(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 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also 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

(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. . . . 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 China who entered the United States (U.S.) on February 24, 2003 as a nonimmigrant visitor (B-1) with authorization to remain in the United States until May 25, 2003. On May 29, 2003, the petitioner married J-W-¹, a U.S. citizen, in California. J-W- subsequently filed a

¹ Name withheld to protect individual's identity.

Form I-130, Petition for Alien Relative, on the petitioner's behalf, which remains pending. The Los Angeles District Office denied the petitioner's concurrently filed Form I-485, Application to Adjust Status, on March 27, 2006 due to the petitioner's failure to attend her second scheduled interview.

On August 24, 2006, the petitioner was arrested in Massachusetts and charged with prostitution and sexual conduct for fee. On August 25, 2006, the petitioner was served with a Notice to Appear for removal proceedings (NTA) charging as deportable under section 237(a)(1)(B) of the Act for remaining in the United States beyond the period of her authorized stay. The petitioner remains in proceedings before the Boston Immigration Court and her next hearing is scheduled for May 19, 2009.

On December 1, 2006, the petitioner filed this I-360, through prior counsel, [REDACTED]. On April 27, 2007, current counsel entered her appearance on behalf of the petitioner for "all immigration matters." On July 18, 2007, the director issued a Request for Evidence (RFE) of the termination of the petitioner's prior marriage in China and the status of her marriage to T-W-, her entrance into their marriage in good faith, her residence with T-W-, his battery or extreme cruelty, and the petitioner's good moral character. The RFE was sent to present counsel. On October 1, 2007, prior counsel sent a letter asserting that she still represented the petitioner in connection with her Form I-360 and requested an additional 60 days to respond to the RFE. Prior counsel did not submit a new Form G-28, Notice of Entry of Appearance as Attorney, with her request. No response to the RFE was received. Consequently, the director denied the petition on October 26, 2007. The petitioner, through present counsel, timely appealed.

On appeal, counsel claims that the petition was denied due to the ineffective assistance of the petitioner's prior counsel. Counsel further asserts that the petitioner has established her credibility and submitted sufficient evidence to demonstrate her eligibility on appeal. The petitioner has failed to establish the ineffective assistance of her prior counsel and the evidence submitted on appeal does not demonstrate the petitioner's eligibility.

Qualifying Relationship

The director determined that the petitioner had not established a qualifying relationship with T-W- because the petitioner did not submit evidence of the legal termination of her prior marriage. On appeal, the petitioner submits a photocopy of the cover and two pages of her Chinese divorce certificate, which states it was issued on March 28, 1996. The photocopied certificate was submitted with an English translation and a "Notarial Certificate (Translation)" from the [REDACTED] Notary Public, Office of Henan Province, China. It is not clear that this notarial certificate corresponds to the accompanying English translation or the photocopied divorce certificate. The "Notarial Certificate (Translation)" does not reference the names of the petitioner or her former spouse, the petitioner's divorce certificate number, or any other specific identifying information on the divorce certificate. The notarial certificate states that the "Special Seal for Marital Registration of Jinshui District Civil Affairs Bureau of Zhengzhou City" is authentic and that the attached English translation conforms to the Chinese copy of the original. However, the seal on the photocopy of the

original contains the characters for “divorce,” not “marital” registration. In addition, the English translation contains a section entitled “Contents of Agreement,” which consists of three paragraphs that discuss the arrangements for the petitioner’s son and the former couple’s property. The submitted photocopy of the original divorce certificate does not contain this information.

Any document containing a foreign language that is submitted to U.S. Citizenship and Immigration Services (USCIS) must be accompanied by a full English translation, which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). In this case, the “Notarial Certificate (Translation)” does not appear to correspond with the English translation, which also includes information not contained on the photocopy of the original document.

The photocopied divorce decree is dated March 28, 1996, but this date is inconsistent with other documents in the record. On a Form G-325A, Biographic Information, submitted with the petitioner’s Form I-485 application and signed by the petitioner on June 9, 2003, it lists the date of the petitioner’s divorce as March 3, 2000. This is the same date listed on the petitioner’s marriage certificate to T-W- as the date her prior marriage was dissolved. In her November 27, 2006 affidavit submitted below and her December 27, 2007 affidavit submitted on appeal, the petitioner stated that she was divorced from her prior husband on March 28, 1996, but does not explain why she previously stated that her prior marriage ended on March 3, 2000.

The regulation at 8 C.F.R. § 204.2(c)(2)(ii) requires proof of the termination of the self-petitioner’s prior marriage. The petitioner has not submitted sufficient proof of the legal termination of her prior marriage given the discrepancies in the record regarding the date of her divorce, the discrepancies between the contents of the photocopy of the petitioner’s original divorce certificate and the “Notarial Certificate (Translation),” and the apparent lack of connection between that certificate and the submitted English translation and copy of the original Chinese divorce certificate. Accordingly, the petitioner has not established the validity of her marriage to T-W- and she has consequently failed to demonstrate a qualifying relationship pursuant to section 204(a)(1)(A)(iii)(II) of the Act.

Eligibility for Immediate Relative Classification

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive U.S. citizen. As discussed in the preceding section, the petitioner has not demonstrated that she had a qualifying relationship with T-W-. She consequently has also failed to establish that she was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner’s claim of entering into marriage

with T-W- in good faith:

- The petitioner's November 27, 2006 affidavit submitted below and her December 27, 2007 affidavit submitted on appeal;
- Affidavit of the petitioner's friend, [REDACTED];
- Affidavit of the petitioner's friend, [REDACTED];
- Notes of the USCIS officer who conducted the adjustment interview of the petitioner and T-W- on May 12, 2004, which state that the petitioner spoke no English and an interpreter was required;
- A photocopied facsimile of a debit ticket from Omni Bank in Monterey Park, California dated July 25, 2005; addressed to the petitioner and T-W- at [REDACTED] in San Gabriel, California; and indicating that \$791.20 was withdrawn from the account for child support collections;
- A photocopied rental agreement signed by the petitioner and T-W- as lessees for an apartment at [REDACTED] in Monterey Park, California for the period May 1, 2003 to April 30, 2005;
- Photocopies of two life insurance applications by the petitioner and T-W- dated May 10, 2004 on which they name each other as beneficiaries;
- Photocopy of a life insurance policy dated May 10, 2004 for the petitioner naming T-W- as her beneficiary; and
- Four photographs of the petitioner and T-W- in wedding attire taken on an unspecified date, the backs of which are imprinted "Dynasty Wedding Studio."

In her first affidavit, the petitioner stated that she came to New York City on February 24, 2003 on a business trip and stayed with her friend, [REDACTED], who suggested they visit Disneyland in California. On March 10, 2003, the petitioner recounts that as she and [REDACTED] were getting off of a ride, she fell down and T-W- caught her. The next day the petitioner and [REDACTED] went to dinner with T-W- who said "he liked Chinese girls" and expressed his wish "to find a Chinese girl to be his girlfriend." The petitioner reports that T-W- met her and [REDACTED] every day the following week during which she and T-W- became inseparable. After the petitioner and [REDACTED] returned to New York, the petitioner states that T-W- called her daily and a week later came to New York and soon proposed. After three weeks, the petitioner returned with T-W- to California, where she stayed in his apartment. The petitioner states that T-W- was a very "romantic guy" during this time and she was happy. The petitioner reports that she and T-W- were married on May 28, 2003, "a date [she] would never forget," although the former couple's marriage certificate states they were married on May 29, 2003. The petitioner also does not describe the wedding ceremony in any detail.

A month after their marriage, the petitioner states that T-W- encouraged her to work even though she had no authorization to do so. In June 2003, the petitioner states that she went to Philadelphia to a "Chinese Medical clinic" to be trained as a receptionist. The petitioner reports that on her third day at work, the police came to inspect the clinic and she was arrested because she did not have an employment authorization card. The petitioner stated she was released with a fine. Contrary to the

petitioner's account (and as will be discussed below), the record shows that the petitioner was arrested and charged with prostitution under the aliases of "[REDACTED]" and "[REDACTED]"

After the petitioner returned to California, she states that T-W- began to drink excessively and abuse her. The petitioner reports that T-W- hid her first adjustment of status interview notice and did not inform her of the interview until a few days before it was scheduled. Although T-W- said he had taken care of the documents, the petitioner states that at the interview T-W- said he did not have any documents when the officer asked the former couple for evidence of their joint residency.

The petitioner explains that T-W-'s abuse worsened and in November 2005 she went to Boston to visit her friend, [REDACTED]. After T-W- called her repeatedly and left many messages apologizing and begging for her forgiveness, the petitioner states that she agreed to return to him. After T-W- continued to abuse her, the petitioner reports that she left him on April 19, 2006.

In her affidavit submitted on appeal, the petitioner asserts that she married T-W- because she "loved him," but she provides no further, probative information regarding how she met T-W-, their courtship, wedding, or their shared residence and experiences. In regards to the life insurance applications, the petitioner explains that after she learned of her first adjustment interview, she called the "travel agency" that helped prepare her application and was told that "life insurance would be a piece of good evidence" of a bonafide marriage so she bought a life insurance policy on May 10, 2004, two days before the interview, and asked T-W- to sign it.

The petitioner's friends confirm that she married T-W-, but provide insufficient information to support her claim. [REDACTED], confirms that the petitioner met T-W- at Disneyland and that during their visit, the petitioner told [REDACTED] that T-W- made her happy and she loved him. [REDACTED] states that T-W- came to New York to see the petitioner and that he stayed almost one month. Although she states that she and her husband were happy for the petitioner and encouraged her, [REDACTED] **does not describe the petitioner's feelings or intentions as expressed to [REDACTED] or observed by her.** [REDACTED] also does not discuss any occasions during this time where she spent time with the former couple. [REDACTED] states that after the petitioner married, they often spoke by telephone and the petitioner sounded "very happy," but [REDACTED] **provides no further, relevant information.**

[REDACTED] the petitioner's friend in Boston states that in June 2003, the petitioner called and told him that she had married T-W-. [REDACTED] explains that he was surprised that the petitioner had married an American in such a short period of time, but that she told him T-W- "really swept her feet away" and "they loved each other dearly." [REDACTED] indicates that he was not in contact with the petitioner during her courtship and never met T-W-. Apart from the single telephone conversation in June 2003, [REDACTED] provides no further information relevant to the petitioner's alleged good faith in marrying T-W-.

The notes from the former couple's interview on May 12, 2004 contradict the petitioner's testimony. In her first affidavit, the petitioner explained that she was, at first, concerned about the language barrier between her and T-W-, but he reassured her and paid for her English classes after they were married. In

contrast, the officer's notes state that the petitioner could not speak English and an interpreter was required to conduct the interview, which occurred nearly a year after the former couple was married. Although the petitioner states that T-W- and she saw each other every day for a week after they met in California, that T-W- went to [REDACTED]'s home to meet the petitioner in New York City and that she later lived with T-W- at his home in California before their marriage, the notes from the petitioner's adjustment interview state that neither the petitioner nor T-W- knew where the other spouse was living while they were dating.

The remaining, relevant evidence also fails to establish the petitioner's claim. The life insurance applications and the petitioner's life insurance policy are of little probative value given the petitioner's own admission that she purchased life insurance a couple of days before her adjustment interview because she was told that it would be "good evidence." The bank debit ticket merely shows one withdrawal from a joint account. The petitioner states on appeal that she and T-W- often used cash for their regular expenses and only used the bank account occasionally, yet the petitioner does not submit other statements or documentation of the joint account showing when it was opened or any other use of the account apart from the single debit for child support. The lease for the former couple's purported residence at [REDACTED] from May 1, 2003 to April 30, 2005 is also of little probative value as it contradicts the petitioner's statement on appeal that the former couple did not move to that residence until June 2004. The photographs show only that the petitioner and T-W- were pictured together on one occasion on an unspecified date.

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with T-W- in good faith. Apart from the petitioner's failure to meet her burden of proof in regards to her good faith, the petitioner has also failed to establish that she had a valid marriage or qualifying relationship with T-W-, as discussed above. Accordingly, the petitioner has not demonstrated that she entered or intended to enter into marriage with T-W- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The evidence listed in the preceding section is also relevant to the petitioner's alleged residence with T-W- with the addition of the following:

- The petitioner's Form G-325A, Biographic Information, submitted with her Form I-485 application which states that she began residing at [REDACTED] in February 2003; and
- Printout of a Philadelphia Judicial Fine Record dated October 17, 2003, which lists the petitioner's address as [REDACTED] in New York City.

On the Form I-360, the petitioner stated that she lived with T-W- from April 2003 to April 2006 and that they last lived together at the [REDACTED] residence. In her first affidavit, the petitioner states that T-W-'s apartment was "warm and cozy" and states that T-W- would go to work

and she would cook for him. She further states that the former couple moved to the smaller apartment on [REDACTED] so that T-W- could pay support for his child from another relationship. On appeal, the petitioner states that the former couple lived together at the [REDACTED] residence from May 2003 to June 2004 and at the [REDACTED] residence from June 2004 until she left in April 2006. The petitioner does not further describe either apartment or provide any probative information about the former couple's joint residence.

Both [REDACTED] and [REDACTED] state that the petitioner told them she was living with T-W-, but both of them indicate that they never visited the former couple at either of their allegedly joint residences. [REDACTED] and [REDACTED] provide no further, relevant information.

The remaining, relevant evidence fails to establish the requisite joint residence. Indeed, most of the evidence contradicts the petitioner's assertions regarding her purported residence with T-W-. The single bank notice indicates that the petitioner and T-W- had a joint account as of July 25, 2005, but the notice alone is insufficient to establish that they resided together. The photographs of the former couple are from the "Dynasty Wedding Studio," and do not picture them in any residential setting. As previously discussed, the life insurance applications and the petitioner's life insurance policy are of little probative value given the petitioner's own admission that she purchased life insurance a couple of days before her adjustment interview because she was told that it would be "good evidence."

As previously discussed, the notes from the petitioner's adjustment interview report that both she and T-W- responded "No" when asked if they knew where their spouse was living while they were dating, in contradiction to the petitioner's claim that T-W- came to [REDACTED]'s home where she was living in New York City and that they lived at T-W-'s apartment in San Gabriel before their marriage. As previously noted, the lease for the former couple's purported residence at [REDACTED] beginning on May 1, 2003 contradicts the petitioner's statement on appeal that the former couple did not move to that residence until June 2004. On her Form G-325A, the petitioner stated that she began residing at the San Gabriel apartment in February 2003, yet the petitioner stated on her Form I-360 that she began living with T-W- in April 2003 and on appeal, the petitioner reports that she did not begin residing with T-W- until May 2003.

As noted by the director, the petitioner's record associated with the petitioner's arrest for prostitution in Philadelphia lists her address as [REDACTED] in New York City although the petitioner asserts she was living with T-W- in California at the time. On appeal, the petitioner states, "I did lie to the officer about my address as I did not want to hurt [T-W-] and did not want him to know that I was arrested I thought it was better not to let [T-W-] know about this arrest and so I gave the officer a fake address."

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with T-W-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. Even if the petitioner established that she resided with T-W-, she has not shown that their marriage was valid. Accordingly, she has not

demonstrated that she resided with T-W- as her "spouse" pursuant to section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that T-W- battered and subjected her to extreme cruelty:

- The petitioner's November 27, 2006 affidavit submitted below and her December 27, 2007 affidavit submitted on appeal;
Affidavit of the petitioner's friend, [REDACTED];
Affidavit of the petitioner's friend, [REDACTED];
A temporary, ex-parte Abuse Prevention Order obtained by the petitioner against T-W- issued by the Quincy, Massachusetts District Court on July 18, 2006, which expired on August 4, 2006 (Docket No. [REDACTED]);
- Psychiatric Evaluation Report on the petitioner dated July 3, 2006 by [REDACTED];
- A July 24, 2006 letter from the [REDACTED] domestic violence shelter in Boston, Massachusetts, stating that the petitioner resided at the shelter from June 28, 2006 to July 15, 2006, but "left before all services necessary were in place;"
- An August 4, 2006 letter from [REDACTED], a bilingual advocate at the Asian Task Force Against Domestic Violence in Boston, who translated for the petitioner during her two-hour intake meeting at the [REDACTED] shelter; and
- Copy of a July 31, 2006 letter from [REDACTED], Staff Psychiatrist at the South Cove Community Health Center in Boston, who states that the petitioner was seen on three occasions in July 2006 and also saw a mental health counselor at the Center. [REDACTED] letter is accompanied by notes from the petitioner's three visits.

In her first affidavit, the petitioner states that T-W- began drinking and abusing her after they moved to their apartment on [REDACTED]. The petitioner recounts four incidents when T-W- physically abused her by shoving, grabbing, slamming and kicking her. The petitioner also describes two occasions when T-W- raped her. The petitioner states that T-W- also stole her money, withdrew all the money from their savings account, threatened her with **deportation**, and imposed a curfew on her. The petitioner states that after she left T-W- and went to [REDACTED] home in New York City, T-W- left threatening messages on her cellular telephone, she suffered from anxiety and was treated by [REDACTED]. When T-W- called and told her he was coming to New York, the petitioner reports that she went to Boston and stayed at a women's shelter because she could not contact her friend, [REDACTED]. The petitioner explains that the social workers at the shelter helped her obtain an order of protection and she received counseling through [REDACTED]. When she was able to contact [REDACTED], the petitioner states that she moved into his home, but still sees doctors at South Cove Community Clinic for her depression.

On appeal, the petitioner reiterates that she was "physically, sexually and emotionally abused by [T-W-] during the time [they] lived together." The petitioner does not further describe any incidents of abuse

in detail, but explains that “In China, I was taught not to tell others family affairs even though I was badly treated by my husband. Thus, I did not mention the abuse to anyone else till I was at an edge of mental breakdown.”

states that she called the petitioner in September 2004 and T-W- yelled at her and hung up the telephone. In March 2006, reports that the petitioner told her “some horrible things that [T-W-] had done to her” and that the petitioner said she “just wanted to die.” explains that she purchased a ticket for the petitioner to come to New York. When she arrived, reports that the petitioner had lost a lot of weight and “looked like a ghost.” further attests to the petitioner’s anxiety when T-W- began leaving threatening messages on her cellular telephone. states that she took the petitioner to see who prescribed medication for the petitioner’s depression and insomnia. states that on June 28, 2006, the petitioner called her at work and said she was on her way to Boston because she feared T-W- was coming to get her in New York. reports that she called the national domestic violence hotline and put the petitioner in touch with a women’s shelter in Boston. states that he called the petitioner after she came to Boston and she told him T-W- was “chasing her and she was afraid for her life and safety.” recounts that when he picked up the petitioner, she was so thin he could hardly recognize her. reports that the petitioner told him T-W- “had a bad temper and beat her a few times.” While they attest to the petitioner’s weight loss, anxiety and depression, neither nor describe any particular incidents of abuse in detail and indicate that they were not in touch with the petitioner until after she left T-W-.

Although the petitioner states that she received “counseling” through in her letter, states that she only translated for the petitioner on one occasion, the petitioner’s intake interview at the shelter. As related by the petitioner during the interview, describes one incident of rape and one occasion on which T-W- slammed the petitioner and stole her money. states that the petitioner comes to the Asian Task Force twice a week for English classes, but does not indicate that the petitioner receives any counseling or other services related to domestic violence from the Task Force.

s report is also based on a single meeting with the petitioner on June 28, 2006. recounts incidents of rape and battery as described by the petitioner. diagnoses the petitioner with Major Depressive Disorder and Posttraumatic Stress Disorder and explains how the petitioner’s experiences and symptoms are consistent with those conditions. further reports that she prescribed medication for the petitioner’s depression and insomnia.

merely states that the petitioner was seen by his office on July 7, 14, and 28, 2006 and that she is also seeing a mental health counselor. The notes from the petitioner’s July 7, 2006 visit state, “[patient] claims to be victim of domestic violence” and report her diagnosis as Major Depressive Disorder. The notes dated July 28, 2006 and signed by state, “I have informed [patient] that I would be unable to provide the letter requested by her attorney.”

The temporary abuse prevention order was issued ex parte and expired a few weeks later upon the next

scheduled hearing on August 4, 2006. The petitioner does not provide evidence of that hearing or that she was granted another temporary or a permanent protection order against T-W-.

The relevant evidence shows that the petitioner has been treated for depression and anxiety related to her relationship with T-W-, that she briefly resided at a domestic violence shelter in Boston when she could not reach her friend and that she obtained a temporary abuse prevention order issued ex parte. The petitioner does not, however, submit evidence that the ex parte order was extended or provide other documentation of the outcome of the hearing on the ex parte order. The letters of [REDACTED] and [REDACTED] also fail to support the petitioner's account of abuse. [REDACTED]'s report is based on a single meeting with the petitioner, as is [REDACTED] letter. The record also shows that the petitioner departed [REDACTED] when she contacted [REDACTED] and before she received "all services necessary." Contrary to the petitioner's assertion, [REDACTED] indicates that she never counseled the petitioner and that the petitioner takes English classes, but receives no domestic violence related services from [REDACTED] agency. Finally, [REDACTED] confirms only that the petitioner was seen in his office three times and his notes state that he could not provide the letter requested by counsel.

In sum, the relevant evidence fails to establish that T-W- subjected the petitioner to battery or extreme cruelty. Even if the petitioner demonstrated the requisite abuse, she has not established the validity of her marriage to T-W-. Accordingly, the petitioner has failed to establish that T-W- 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

To establish good moral character, the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires 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." The record shows that the petitioner resided in California, Pennsylvania, New York and Massachusetts during the three years preceding the filing of her Form I-360. With the Form I-360, the petitioner submitted evidence that on October 17, 2003, she was charged, under the alias of [REDACTED] with prostitution in Philadelphia, Pennsylvania and ordered to pay a \$65 fine. The petitioner was placed on probation in the Accelerated Rehabilitative Disposition Program (ARD) and completed her probation on November 22, 2004. The petitioner also submitted a fingerprint card from the Sheriff's Department of Temple City, California, but no evidence of the results of the search of her fingerprints. In the RFE, the director specifically requested police clearances or criminal background checks for the petitioner from New York, California, Pennsylvania and Massachusetts. The director noted that the petitioner had been arrested for prostitution in Massachusetts in August 2006. The director also explained that because the petitioner had used an alias when arrested in Philadelphia, name-based searches would be insufficient to establish her good moral character and any further clearances submitted should be based on an analysis of her fingerprints.

On appeal, the petitioner submits the following evidence:

1. A criminal docket sheet from the Quincy, Massachusetts District Court, which shows that on August 25, 2006, the petitioner was charged with deriving support from prostitution and sexual conduct for a fee in violation of the Massachusetts Code. On February 26, 2008, the prostitution charge was dismissed upon the joint request of the prosecution and the petitioner. The evidence indicates, however, that the remaining charge of sexual conduct for a fee remains pending.
2. A letter from the New York State Unified Court System stating that a search of the petitioner's name and date of birth found no records. The petitioner submitted a fingerprint card submitted to the New York City Police Department, but no evidence of the results of the fingerprint-based search.
3. A copy of the petitioner's application and fingerprint card dated November 28, 2007, submitted to obtain a copy of her California state criminal history record, but no evidence of the results of any related search of California criminal records.
4. A letter dated December 4, 2007, which states that a search of the petitioner's name and date of birth found no adult criminal court appearances for the petitioner in the database of the Massachusetts Criminal History Systems Board.
5. A copy of her fingerprint card dated December 7, 2007 and submitted to the Federal Bureau of Investigation (FBI), but no evidence of the results of the related search.

The record indicates that a criminal case against the petitioner for sexual conduct for a fee remains pending before the Quincy District Court in Massachusetts. The petitioner submitted clearances from the New York State Unified Court System and the Massachusetts Criminal History Systems Board, but these clearances were based on a search of the petitioner's name. Because the petitioner has a criminal record under an alias, the name-based clearances are insufficient to establish her good moral character. The petitioner has submitted no clearances from California or Pennsylvania.

The regulation at 8 C.F.R. § 204.2(c)(2)(v) prescribes that "primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit." In her first affidavit submitted below, the petitioner did not discuss her moral character and did not disclose her August 2006 arrest for prostitution in Massachusetts. The petitioner stated that she went to Philadelphia to a Chinese medical clinic "for job training as a receptionist" and was arrested because she did not have work authorization. On appeal, the petitioner states that she went to the clinic "to train[] to learn massage," was arrested when she was observing a coworker giving a client a massage and was arrested under an alias because her boss misspoke her name. The petitioner admits her arrest in Massachusetts for "involvement in prostitution," but she does not explain the circumstances of her arrest or further discuss this incident. The petitioner's statements regarding her arrest in Philadelphia lack credibility. The petitioner has also

failed to explain her subsequent arrest for prostitution in Massachusetts and submit evidence of the final disposition of all the charges against her. The petitioner has thus failed to submit testimony or documentation sufficient to establish her good moral character.

While the regulation permits the submission of other evidence of good moral character if police clearances or criminal background checks are unavailable for certain locations, the petitioner has not sufficiently explained her inability to obtain sufficient clearances from any of the four states in which she resided prior to filing her Form I-360. On appeal, counsel claims that prior counsel did not inform the petitioner of her need to obtain the clearances and that the petitioner “is at the mercy of several bureaucratic systems in her attempts to obtain these records.” The record does not, however, indicate that the petitioner faces substantial bureaucratic obstacles, but rather, that she did not attempt to obtain most of the necessary evidence until December 2007. On appeal, the petitioner explains that her prior counsel told her she should wait to respond to the RFE until her criminal case in Massachusetts was resolved. Yet, as discussed below, the petitioner does not demonstrate that her prior counsel engaged in deficient performance. In addition, the petitioner does not explain why she did not attempt to obtain the requisite clearances beginning at least in November 2007 when present counsel filed the appeal. The petitioner also fails to submit other evidence of her good moral character or explain her inability to obtain affidavits from individuals in California, New York, Massachusetts or Pennsylvania who could attest to her good moral character.

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.

Ineffective Assistance of Counsel

Counsel asserts that the petitioner was prejudiced by prior counsel’s failure to file a response to the RFE. Counsel claims that the petitioner is not required to comply with all of the requirements to establish an ineffective assistance of counsel claim under *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). However, the Attorney General has recently issued a binding precedent superseding *Lozada*: *Matter of Compean, Bangaly and J-E-C-, et al.*, 24 I&N Dec. 710 (A.G. 2009). In *Compean*, the Attorney General held that the Constitution affords no right to counsel or effective assistance of counsel to aliens in immigration proceedings under the Sixth Amendment or the Due Process Clause of the Fifth Amendment. *Id.* at 711-27. Although the Act and regulations also do not afford aliens a right to effective assistance of counsel, USCIS may, in its discretion, reopen proceedings based on the deficient performance of an alien’s prior attorney. *Id.* at 727. *Compean* establishes three elements of proof and six documentary requirements that an alien must meet to prevail on a claim of deficient performance of counsel. *Id.* Although *Compean* addresses deficient performance of counsel claims in the context of motions to reopen removal proceedings, the decision also applies to claims of deficient performance raised on direct review. *Id.* at 728 n.6.

To prevail on a deficient performance of counsel claim, the alien must show:

1) that counsel's failings were egregious; 2) in cases where the alien moves to reopen beyond the 30-day limit, the alien must show that he or she exercised due diligence in discovering and seeking to cure the lawyer's deficient performance; and 3) that the alien was prejudiced by the attorney's error(s). To establish prejudice, the alien must show that but for the deficient performance, it is more likely than not that the alien would have been entitled to the relief he or she was seeking.² *Id.* at 732-34.

To establish these three requirements, the alien must submit six documents: 1) the alien's detailed affidavit setting forth the relevant facts and specifically stating what the lawyer did or did not do and why the alien was consequently harmed; 2) a copy of the agreement, if any, between the lawyer and the alien. If no written agreement exists, the alien must specify what the lawyer agreed to do in his or her affidavit; 3) a copy of the alien's letter to the attorney setting forth the attorney's deficient performance and a copy of the attorney's response, if any; 4) a completed and signed complaint addressed to the appropriate State bar or disciplinary authorities; 5) any document(s) the alien claims the attorney failed to submit; and 6) when the alien is subsequently represented, a signed statement from the new attorney attesting to the deficient performance of the prior attorney. *Id.* at 735-38. If any of the latter five documents are unavailable or missing, the alien must explain why the documents are unavailable or summarize the contents of any missing documents. *Id.* at 735.

The three substantive requirements must be met for all deficient performance claims filed before and after *Compean* was issued on January 7, 2009. *Id.* at 741. For claims pending prior to January 7, 2009, the alien is not required to meet the six new documentary requirements, but must still comply with the requirements set forth in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988). *Lozada* required an alien to submit: 1) an affidavit attesting to the relevant facts, detailing the agreement that was entered into, what actions were supposed to be taken and what the attorney did or did not do; 2) evidence that former counsel was informed of the allegations, given an opportunity to respond and former counsel's response, if any; and 3) evidence that a complaint has been filed with the appropriate disciplinary authorities regarding such representation or an explanation of why such a complaint was not filed. *Id.* at 638-39.

In this case, the petitioner fails to meet the new substantive requirements under *Compean*. The petitioner has not shown that prior counsel's errors were egregious and that she was prejudiced by those errors. Even if prior counsel had, in response to the RFE, submitted all the evidence submitted by present counsel on appeal, the petitioner would not have established her eligibility. The petitioner has also not met the documentary requirements under *Lozada* (still applicable to her case as her deficient performance of counsel claim arose prior to *Compean*). The petitioner did not submit evidence that she informed prior counsel of the alleged errors and that she filed a complaint with the appropriate disciplinary authorities or an explanation of her failure to do so. Consequently, the petitioner has failed to establish that her prior counsel's performance was deficient.

² Where the alien sought discretionary relief, the alien must not only show that he or she was eligible for such relief, but also would have merited a favorable exercise of discretion. *Matter of Compean*, 24 I&N Dec. at 734-35.

The petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen husband, was eligible for immediate relative classification based on such a relationship, entered into such a relationship in good faith, resided with the U.S. citizen, was subjected to battery or extreme cruelty by the U.S. citizen during the qualifying relationship and that she is a person of good moral character. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her 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.