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

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FILE:

[REDACTED]
EAC 06 258 50145

Office: VERMONT SERVICE CENTER

Date: MAR 09 2009

IN RE:

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

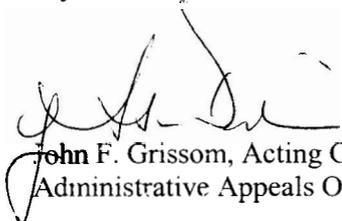
ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that she had shared a joint residence with her husband; (2) that her husband subjected her to battery or extreme cruelty; and (3) that she entered into marriage with her husband in good faith.

The petitioner submitted a timely appeal on September 6, 2007.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

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

- (v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.
- (vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be

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

* * *

- (ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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

Evidence for a spousal self-petition –

- (i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.
- (ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities. . . .
- (iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together . . . Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.
- (iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly

encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

- (vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of the Dominican Republic who entered the United States, without inspection, in or around November 1994. She married R-R-¹ a United States citizen, on May 31, 1997 in Massachusetts. R-R- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on July 21, 1997. The petitioner filed Form I-485, Applicant to Register Permanent Residence or Adjust Status, on that same date. The Forms I-130 and I-485 were denied on July 20, 2006.

The petitioner filed the instant Form I-360 on September 14, 2006. On September 21, 2006, the director issued a request for additional evidence, and requested additional evidence to establish that she is a person of good moral character; and that she married R-R- in good faith. The petitioner responded on November 24, 2006, and submitted additional evidence. The director issued a notice of intent to deny (NOID) the petition on May 14, 2007, which notified the petitioner of deficiencies in the record and afforded her the opportunity to submit further evidence to establish that she had shared a joint residence with R-R-; that she had been subjected to battery and/or extreme cruelty by R-R-; and that she entered into marriage with R-R- in good faith. The petitioner responded on July 2, 2007, and submitted additional evidence.

After considering the evidence of record, the director denied the petition on August 15, 2007.

¹ Name withheld to protect individual's identity.

On appeal, the petitioner submits a letter. Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny the petition.

Joint Residence

The first issue on appeal is whether the petitioner has established that she shared a joint residence with R-R-. On her Form G-325A, Biographic Information, signed on July 18, 1997, the petitioner indicated that she lived at [REDACTED], in East Boston, Massachusetts before she married R-R-, and that she moved with him to [REDACTED] in Lynn, Massachusetts in May 1997. In her September 1, 2006 affidavit, she stated that she lived with the R-R- at the [REDACTED] address until August 2004, when she moved back to the [REDACTED] address. However, in his NOID, the director notified the petitioner that he had reviewed her administrative file, and that address checks had indicated that she had continued to use the [REDACTED] as her mailing address during the marriage.

In her response to the director's NOID, the petitioner did not address this issue. Although she submitted copies of joint tax returns listing the [REDACTED] address, as well as affidavits from friends stating that the couple had lived together in Lynn, Massachusetts (but not indicating a street address), the director found the petitioner's response unconvincing, and stated the following in his August 15, 2007 denial: "you did not provide an explanation regarding why address checks conducted by the Service would show that you continued to use [REDACTED] as your address . . . [a]lthough you submitted evidence to establish that you filed joint taxes, in light of the questions surrounding residence with your spouse, the tax returns alone are not sufficient to establish residence. . . ." The director also found that, if the petitioner and R-R- had in fact lived together for seven years, as claimed, that "it would be reasonable to assume that additional evidence would be available."

The petitioner submits no additional evidence on appeal to establish that she and R-R- in fact shared a joint residence. Nor does she address the director's concerns, voiced on two separate occasions, regarding the petitioner's apparent continued use of the [REDACTED] address throughout the course of the marriage.

The AAO agrees with the director's determination on the issue of joint residence. First, the AAO finds insufficient the petitioner's statement that evidence beyond the tax returns and affidavits from friends and family is unavailable due to "the time already elapsed, and all the many difficulties aroused." As noted by the director, in light of the questions surrounding the petitioner's actual residence, the tax returns alone are insufficient. The AAO also agrees with the director's concerns regarding the affidavits of record in which [REDACTED] and [REDACTED] state that the petitioner and R-R- shared a residence in Lynn, Massachusetts. As noted by the director, those affidavits do not provide the address at which the petitioner and R-R- allegedly lived together. Finally, the AAO echoes the director's concern with regard to the petitioner's apparent continued use of the [REDACTED] address throughout the course of the marriage. The petitioner has twice been afforded the opportunity to offer an explanation, but has elected not to do so. Her failure to explain why she apparently continued to use

the address during the course of the marriage further undermines the evidence she submits in support of her claim of joint residence. The petitioner has not established by a preponderance of the evidence that she shared a joint residence with A-A-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery and/or Extreme Cruelty

The AAO agrees with the director's determination that the petitioner failed to establish that R-R- subjected her to battery and/or extreme cruelty. As evidence of battery and/or extreme cruelty, the petitioner submits three self-affidavits, several affidavits from friends and family members, and a psychological evaluation.

In her September 1, 2006 affidavit, the petitioner stated that she and R-R- "carried a normal marital relationship" for the first seven years of their marriage, but that in the summer of 2004, R-R- began speaking to her in an aggressive manner, and began yelling at her over small, petty things. He also began leaving the home on weekends, and spending nights at unknown locations. The petitioner stated that this behavior made her feel isolated and depressed. The petitioner reported that, further, R-R- began questioning her regarding every detail of her work environment; began controlling her telephone calls; and question how long she was taking to get from home to work. Further, R-R- began coming home intoxicated. According to the petitioner, R-R-'s erratic behavior reached its climax on one particular occasion when, after yelling at the petitioner, R-R- threatened to hit her and throw out all of her belongings. The petitioner states that, after that exchange, she began to see R-R- in a different light, and began to fear him. Moreover, his threats and insults became constant. The petitioner requested intervention from her family, as well as from R-R-'s family, but no one was able to get R-R- to change. R-R- stopped working, and responsibility for household expenses fell solely to the petitioner. The petitioner reported that, in August 2004, R-R- told the petitioner to leave the apartment and that, if she did not do so, he would teach her a lesson on how to obey. The petitioner reports feeling very scared, as she recalled that, in 1997, a few months after their marriage, R-R- was arrested and sent to jail on the basis of a domestic violence complaint filed by the mother of his child.

In her November 21, 2006 affidavit, the petitioner stated that she had been subjected to extreme mental and emotional abuse; that the facts of her ordeal clearly indicate abuse; that she has never been able to carry on a normal life since the abuse; that her quality of life and ability to function have changed; that, no matter how despicable his words, R-R- never apologized; that she was socially isolated; and that she has not been able to carry out a normal social life.

In her June 28, 2007 affidavit, the petitioner stated that after their problems began, R-R- yelled at her "for any petty thing"; that R-R- became increasingly silent during their moments together at home; that R-R- stopped conversations by telling the petitioner that he did not have time to listen to her; that R-R- began leaving the house in an unusual manner, and returning home after she was asleep; that R-R- became indifferent to everything; that she felt abandoned in her own home; that it became increasingly difficult to know R-R-'s whereabouts at a given moment; that R-R- began

questioning her about every detail of her workplace; that R-R- began controlling her phone calls; and that she began to see R-R- as a different person. According to the petitioner, she was subjected to extreme moral and mental cruelty, which was more extreme than any physical abuse.

In her September 8, 2006 affidavit, [REDACTED] stated that the petitioner was compelled to leave the marital residence due to the abusive treatment and threats she received from R-R-. She also stated that she witnessed, on more than one occasion, R-R- insulting and verbally abusing the petitioner. In her June 26, 2007 affidavit, [REDACTED] states that it is her belief that the petitioner was subjected to the most despicable verbal abuses and state of isolation by R-R-; that R-R- and the petitioner had a normal marriage for "almost five years"; and that she personally witnessed R-R- treating the petitioner disrespectfully; arguing with her; insulted her; threatening to hit her; threatening to throw her belongings out of the house; and controlling the petitioner's personal phone calls. [REDACTED] states that she, along with many of the petitioner's other friends, recommended to the petitioner that she "look for protection from the authorities."

In her November 6, 2006 affidavit, [REDACTED] stated that the petitioner was compelled to leave the marital residence due to the abusive treatment and threats she received from R-R-. She also stated that the families of both R-R- and the petitioner attempted to intervene and change R-R-'s abusive behavior, but that such attempts were unsuccessful. In her June 22, 2007 affidavit, [REDACTED] stated that R-R- and the petitioner shared a normal marital life until "around the year" 2003, when she began seeing R-R- behave in an aggressive manner, and insulting the petitioner "for any small thing." She stated that R-R- began spending more time outside the home and that, due to her state of virtual abandonment, the petitioner began experiencing economic problems.

In her November 8, 2006 affidavit, [REDACTED] stated that the petitioner was compelled to leave the marital home because of the persistent abuse and cruel treatment she suffered from R-R-; that she personally witnessed the insults and verbal aggression to which the petitioner was subjected; and that the petitioner has been forced to receive medical attention due to the mental stress that she has had to confront.

Finally, the petitioner submitted a November 21, 2006 letter from [REDACTED], a psychiatrist. In his letter, [REDACTED] stated that the petitioner had been under his psychiatric care since August 30, 2006; that the petitioner was diagnosed with single episode major depression; and that she was prescribed medication for her condition.

Upon review, the AAO agrees with the director's determination that the petitioner has failed to establish that she was the victim of battery and/or extreme cruelty. With regard to the affidavits of [REDACTED] and [REDACTED], the AAO agrees with the director's assessment that they failed to provide detailed, probative information regarding the alleged abuse. Further, the AAO notes that the timelines of [REDACTED] and [REDACTED] differ from that of the petitioner. In her affidavits, the petitioner states that the abuse began in 2004, seven years into the marriage. [REDACTED] on the other hand, describes the abuse as beginning in 2002, five years into the marriage. [REDACTED] describes the abuse as beginning "around" 2003, six years into the marriage. 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). These unexplained inconsistencies diminish the evidentiary weight of their testimony. 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. *Id.*

Nor does ██████████ report establish that R-R- subjected the petitioner to battery and/or extreme cruelty. The AAO disagrees with the petitioner's assertion in her June 28, 2007 affidavit that "it is obvious that the symptoms the physician described are a product of the family problems I faced with my husband, which remain as the basis of my mental distress." ██████████ states that he has been treating the petitioner since August 30, 2006, over two years after the petitioner left the marital residence, and one week before the instant petition was filed. Although ██████████ diagnoses the petitioner with single episode major depression, he also states that her depressed mood, insomnia, fatigue, muscle tension, nervousness, and hopelessness had been going on for only four months, indicating that such symptoms began long after the petitioner left the marital residence. Nor did ██████████ identify the behavior of R-R- as a causative factor in the petitioner's mental health condition.

Finally, the AAO finds that the petitioner's affidavits fail to establish that she was the victim of battery or extreme cruelty perpetrated by R-R-. As was the case with the other affidavits of record, the petitioner's affidavits lack detailed, probative information regarding the alleged abuse and/or extreme cruelty. For example, although the petitioner claims that R-R- controlled her phone calls and otherwise isolated her, she does not explain how he controlled, or attempted to control, her phone calls, nor does she explain how he otherwise controlled her. The evidence of record fails to demonstrate that the petitioner was forced to submit to the control of R-R-. Though she claims to have been verbally abused, her affidavits lack detailed, probative, and specific information regarding such abuse. Nor do claims that R-R- left the house for extended periods of time, became indifferent to the petitioner, or told her to leave the house demonstrate that his actions amounted to extreme cruelty.

While R-R-'s actions may have been unkind and inconsiderate, they do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The affidavits submitted on behalf of the petitioner fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that R-R-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. The petitioner has failed to establish that R-R- 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 Faith Entry into Marriage

The director also found that the petitioner had failed to establish that she married R-R- in good faith. The petitioner does not address this issue on appeal and, as such, has failed to overcome the concerns of the director in this regard. Further, the AAO incorporates here its previous discussion regarding the unresolved questions regarding the petitioner's actual residence during the marriage. The record as it currently stands, without further clarification, lacks sufficient documentation to establish that the petitioner entered into marriage with R-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that she and her husband shared a joint residence; that her husband subjected her to battery or extreme cruelty; and that she entered into marriage with her husband in good faith. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and the petition must be denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.