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U.S. Department of Homeland Security
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 17 2009

EAC 06 229 50765

IN RE: Petitioner: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider 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 Immigration and Nationality Act ("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 entered into marriage with her U.S. citizen husband in good faith and that he battered or subjected her to extreme cruelty during their marriage.

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.

* * *

(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.

* * *

(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 in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the United Kingdom who was paroled into the United States on February 22, 1998. On July 9, 1996, the petitioner married R-B-[1], a U.S. citizen, in California. R-B- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which remains pending, as does the petitioner's concurrently filed Form I-485, Application to Adjust Status.

The petitioner filed this Form I-360 on August 3, 2006. On February 28, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite joint residence, good faith in entering the marriage, battery or extreme cruelty and good moral character. The petitioner responded with additional evidence, which the director found sufficient to establish her good moral character and residence with her husband, but insufficient to demonstrate that she entered into the marriage in good faith and was subjected to battery or extreme cruelty by her husband during the marriage. The director denied the petition on the latter two grounds on June 20, 2007 and the petitioner timely appealed.

On appeal, counsel submits evidence that the petitioner filed for divorce from her husband on or about May 25, 2006. Counsel asserts that the length of time it took the petitioner to file for divorce, combined with the evidence submitted below, demonstrates that the petitioner entered the marriage in good faith. Counsel further claims that the petitioner established the requisite extreme cruelty. Counsel's claims and the evidence submitted on appeal fail to overcome the grounds for denial. In addition, beyond the decision of the director, the petitioner has not demonstrated that she resided with her husband.

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). The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *See Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Manufacturing Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990).

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with her husband in good faith:

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[1] Name withheld to protect individual's identity.

- The petitioner's undated declaration initially submitted with the Form I-360 and her April 23, 2007 statement submitted in response to the NOID;
- Statements of the petitioner's friends, , and
  Photocopies of two bills addressed to the petitioner using her husband's last name and one order form for jointly addressed to the petitioner and her husband;
- A letter from Bank of America stating that they are unable to provide documentation of the petitioner's past account because they only maintain records for seven years; and
  Photocopies of photographs of the petitioner and her husband taken on unspecified occasions.

In her first statement, the petitioner briefly asserted that she was in love with her husband, thought they would be together forever and that she did not marry him so that she could move to the United States. In her second statement, the petitioner explained that she met her husband in 1995 through a mutual friend and that she was attracted to him because of his love for music and his creativity. The petitioner states that after their marriage, the former couple shared an apartment with some friends and struggled with their finances. The petitioner does not further describe how she met her husband, their courtship, wedding, shared residence and experiences. Her brief statements do not provide detailed, probative information and are insufficient to demonstrate that she entered her marriage in good faith.

The statements of the petitioner's friends are also insufficient to establish her claim. Mr. states that he often had drinks and dinner with the former couple and they "seemed very happy together." Mr. does not describe any of those gatherings in detail and provides no insight into the former couple's relationship or the petitioner's intentions in entering the marriage. Ms. states that she attended several small parties at the former couple's home and they "seemed to be a happy couple." also fails to describe any of those parties in detail and she provides no further, relevant information. Ms. states that she accompanied the petitioner to visit her husband when he was working in Lake Tahoe and that she often went out with the former couple. Ms. does not describe any of the trips to Lake Tahoe or the outings in detail and her brief statements provide no insight into the petitioner's relationship with her husband.

The remaining, relevant evidence also fails to demonstrate the requisite good-faith entry into the marriage. The two bills are addressed to the petitioner individually at addresses she never stated that she shared with her husband. The bills do not indicate that the petitioner shared the accounts with her husband. The order form also lists an address that the petitioner never mentioned that she shared with her husband. It is also not clear whether the order form is a solicitation or whether the former couple shared a subscription account for the newspaper. The letter from the bank simply states that they cannot verify the petitioner's prior account. The petitioner provides no explanation regarding the account and in her second statement she states that her husband never helped her pay household bills and she indicates that he did not support her financially. Finally, the photographs show that the petitioner and her husband were pictured together on a few, unspecified occasions, but the photographs alone do not establish the requisite good faith.

The behavior of the petitioner's husband may explain her lack of documentation of shared financial assets and other joint marital responsibilities. However, the petitioner has not provided detailed, probative testimony or other evidence sufficient to demonstrate that she entered into the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

Although the director determined that the petitioner established that she resided with her husband, we find that the petitioner has failed to establish the requisite joint residence. The evidence listed in the preceding section is also relevant to the petitioner's alleged residence with her husband.

In her first statement, the petitioner briefly asserted that she lived with her husband until he disappeared about four years ago. In her second statement, the petitioner mentioned that during their marriage, the former couple lived in Venice, California and shared an apartment with some close friends. The petitioner did not state the former couple's address(es) or describe their joint residence in any probative detail. Her brief statements are insufficient to demonstrate that she resided with her husband.

The statements of the petitioner's friends are also insufficient to establish her claim. Mr. and do not discuss the petitioner's residence with her husband. Ms. states that she attended parties at the former couple's home, but she does not describe any such party in detail or provide any further, relevant information regarding the former couple's joint residence.

The remaining, relevant evidence also fails to demonstrate that the petitioner resided with her husband. On the Form I-360, the petitioner stated that she resided with her husband from July 1995 to July 2004 and that they last lived together at an apartment on in Venice, California. The two bills and the order form do not list that address, but instead list three different addresses in Los Angeles, California. In her second statement, the petitioner reported that during their marriage, she and her husband lived in Venice, not Los Angeles, California. The bank letter is of no probative value as it provides no relevant information. Two of the photographs picture the former couple in front of what appears to be a residence with the number posted near the doorway. The petitioner did not identify that residence or state that she ever lived at a residence with the number with her husband. The remaining photographs do not picture the petitioner and her husband in any residential setting.

The preponderance of the relevant evidence does not demonstrate that the petitioner resided with her husband, as required by 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 her husband subjected her to battery and extreme cruelty during their marriage:

- The petitioner's undated declaration initially submitted with the Form I-360 and her April 23, 2007 statement submitted in response to the NOID;
- Statements of the petitioner's friends, , and , and
- A psychological evaluation report and supplemental update by .

In her first statement, the petitioner asserted that her husband battered her and subjected her to emotional and psychological abuse. The petitioner did not describe any incident of physical or mental abuse in any detail, but stated that she suffered from anxiety and depression resulting from her marriage. In her second statement, the petitioner reported that her husband did not help her pay household bills and would disappear for months at a time. The petitioner explains that every time her husband left, she felt as though he was using her emotionally and socially and that he manipulated and controlled her life from a distance because she could not move on with her life. The petitioner states that she suffered from depression and had to be hospitalized for ten days. The petitioner does not explain the circumstances of her hospitalization or describe any incident of abuse in probative detail. The petitioner's brief assertions are insufficient to demonstrate that her husband subjected her to battery or extreme cruelty.

The statements of the petitioner's friends also fail to establish the petitioner's claim. Mr. stated that the petitioner became more and more depressed after her husband disappeared because, "like any happily married woman," she hoped that he would return. Ms. stated that the petitioner was emotionally, mentally and financially devastated due to her husband's disappearance and she "withdrew from the world." Ms. stated that the petitioner was always unsure of whether or not her husband would return.

reports also fail to demonstrate that the petitioner's husband subjected her to battery or extreme cruelty during their marriage. Dr. states that her evaluation of the petitioner was based on a single meeting on February 13, 2006, over a year and a half after the petitioner states that she and her husband separated. Dr. diagnoses the petitioner with adjustment disorder with mixed anxiety and depressed mood and alcohol dependence. Dr. explains:

> The emotional distress which the [petitioner] suffered during the time of abandonment from her husband became a catalyst for drinking. . . . The [petitioner's] drinking behavior became so severe that she finally required hospitalization for alcohol poisoning. . . . [The petitioner] has since been in recovery and has been able to maintain sobriety for the past two and a half years.

In her supplemental report, opines that the petitioner's husband was "a shrewd schemer and probable sociopath" who was "very skilled at manipulation and control." Dr. analysis, however, fails to demonstrate how the petitioner's husband manipulated or exerted control over the petitioner.

Although the petitioner claimed, in her first statement, that her husband battered her, she does not describe any incident of battery in detail. The petitioner's friends and also do not mention

any battery. The testimony of the petitioner and her friends confirms that the petitioner's husband abandoned her and that she suffered emotionally and psychologically after his disappearance. Dr. affirms that the petitioner experienced anxiety, depression and alcoholism after her husband's departure. However, none of the relevant evidence indicates that the petitioner's husband exerted control over her or that his nonviolent actions were part of an overall pattern of violence. The petitioner's husband's frequent absences and eventual disappearance, as described in the relevant evidence, did not constitute extreme cruelty. Accordingly, the petitioner has not demonstrated that her husband battered or subjected her to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

The petitioner has not demonstrated that she entered into marriage with her husband in good faith, that she resided with him and that he subjected her to battery or extreme cruelty during their marriage. 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.