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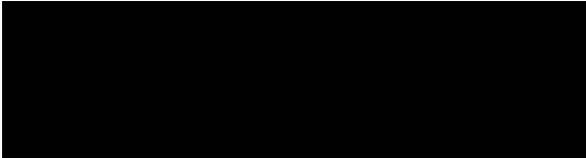
U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE: [REDACTED]
EAC 06 097 52833

Office: VERMONT SERVICE CENTER

Date: **MAR 17 2009**

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)

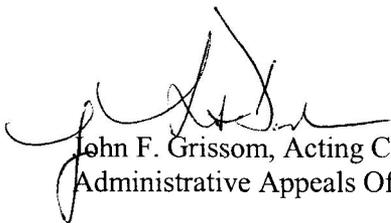
ON BEHALF OF PETITIONER:



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 married her United States (U.S.) citizen husband in good faith, that he battered or subjected her to extreme cruelty and that she resided with him.

On appeal, the petitioner submits an additional statement and further 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 Trinidad and Tobago who entered the United States (U.S.) on February 17, 2002 as a nonimmigrant visitor (B-2). On July 1, 2003, the petitioner married D-T-¹, a U.S. citizen, in Colorado. D-T- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on May 22, 2006.

The petitioner filed this Form I-360 on February 13, 2006. On July 3, 2006, the director issued a Request for Evidence (RFE) that, *inter alia*, the petitioner entered into marriage with D-T- in good faith; that she resided with him and that he subjected her or her child to battery or extreme cruelty during their marriage. Having received no response to the RFE, the director issued a Notice of Intent to Deny (NOID) the petition on the same grounds cited in the RFE on November 30, 2006. The petitioner submitted additional evidence on January 8, 2007, which the director found insufficient to establish the petitioner's eligibility. The director denied the petition on March 1, 2007 and counsel timely appealed.

On appeal, the petitioner reasserts her eligibility and submits further evidence. The petitioner's claims and the evidence submitted on appeal fail to overcome the grounds for denial. The director's decision is affirmed and the appeal will be dismissed.

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim of entering into marriage with D-T- in good faith:

- The petitioner's January 26, 2006 and second, undated statement submitted below; and her April 21, 2007 statement submitted on appeal;
- Affidavits of the petitioner's friends, [REDACTED] and [REDACTED];
Copy of the petitioner's February 25, 2004 Internal Revenue Service (IRS) Form W-9, which lists her address as on [REDACTED] in Brooklyn, New York;
- Copy of the joint 2003 state and federal income tax returns of the petitioner and her husband, which are dated February 18, 2004 and list their address as on [REDACTED] in Palmer Lake, Colorado;
- Copy of the IRS tax account transcript of the former couple's 2003 income tax return;
- Copies of a monthly rental agreement dated March 5, 2004 for an apartment on [REDACTED] in Colorado Springs, which lists the petitioner and her husband as lessees; and a rental

¹ Name withheld to protect individual's identity.

application for the same apartment signed by the petitioner's husband that does not list the petitioner or her son as proposed occupants;

- Photocopies of photographs of the petitioner, her husband and their children.

In her first statement, the petitioner briefly described meeting her husband on March 16, 2000 at a performance in Colorado Springs. She stated that they began dating and were engaged in January 2003. The petitioner reported that after their marriage, her husband was initially supportive of her singing and dancing business, but later told her to stop. The petitioner did not further describe how she met her husband, their courtship, wedding, shared residence and experiences (apart from the alleged abuse). In her second statement, the petitioner explained that the former couple could not obtain a joint bank account or purchase a home or automobile together because of her husband's poor credit rating. The petitioner also explained that she did not have time to gather paperwork before she fled from her husband. On appeal, the petitioner further states that her husband kept most of their paperwork hidden from her "under lock and key." The petitioner's brief statements fail to provide detailed, probative information regarding how she met her husband, their courtship, wedding, shared residence and experiences sufficient to establish that she married him in good faith.

The testimony of the petitioner's friends also does not establish the petitioner's claim. Ms. [REDACTED] states that she once called the petitioner's husband in an effort to make him stop his abuse, but she provides no insight into the petitioner's intentions in entering her marriage. Ms. [REDACTED] states that she and the former couple visited each other because they were neighbors on [REDACTED] in Colorado Springs. [REDACTED] also recounts an incident in June 2005 when the petitioner's husband hit the petitioner in [REDACTED]'s presence. Ms. [REDACTED] does not describe the former couple's residence in any detail and provides no relevant information regarding their marriage (apart from the alleged abuse) and the petitioner's intentions in marrying her spouse. In her first affidavit, [REDACTED] states that she once called the petitioner and her husband took the telephone and told [REDACTED] not to call again. Ms. [REDACTED] provides no relevant, probative information regarding the petitioner's marital relationship apart from the alleged abuse.

The remaining, relevant evidence also fails to establish the requisite good faith. The petitioner stated that she resided with her husband for over three years, but submitted evidence that they filed only one joint income tax return for 2003. The 2003 tax return is of little weight because the petitioner's IRS Form W-9 states that she was living in New York in February 2004, the same month and year that the IRS Form 1040A is dated. The lease is also of limited probative value because the petitioner's name is written in different script from that of her husband's name and the other information filled in on the form. In addition, the petitioner's husband listed only his own children (from a prior relationship), not the petitioner or her son, as other proposed occupants of the apartment on his rental application, signed in February 2004, the same month and year that the petitioner stated she lived in New York on her IRS Form W-9. Finally, the photographs show that the petitioner, her husband and their children (from different relationships) were pictured together on a few unspecified occasions. The photographs alone do not demonstrate the petitioner's good faith in entering the marriage.

Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with D-T- 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 D-T- with the addition of the following:

- Copies of the Colorado driver license of the petitioner's husband and her Colorado identification card, both showing the address.

On the Form I-360, the petitioner stated that she lived with her husband from May 2002 to November 2005 and they last resided together at the home in Colorado Springs. In her first statement, the petitioner did not describe their joint residence in any detail. In her second statement, made in response to the RFE, the petitioner stated that she lived with her husband at the residence in Palmer Lake, Colorado from March 2002 to February 2004 and at the residence in Colorado Springs from February 2004 to November 2005. The petitioner did not explain the discrepancy between her statement on the Form I-360 that she began living with her husband in May 2002 and her second statement that they began residing together in March 2002. In her second statement, the petitioner also failed to describe the former couple's shared residences in any detail. The petitioner's brief and inconsistent statements are not sufficient to demonstrate that she resided with her husband.

The brief statements of the petitioner's friends also fail to establish the requisite joint residence. Ms. states that she once spoke to the petitioner's husband on the telephone when she called the petitioner at home, but she does not state the former couple's address at the time or indicate that she ever visited them. Ms. also states that she once spoke to the petitioner's husband on the telephone when she had called the petitioner at home, but she fails to provide any further, relevant information. Ms. states that she was the former couple's neighbor and she visited them at their home, but she does not describe any such visit in detail. Ms. also attests to one incident of alleged battery when she was present at the former couple's home, but she does not provide any detailed information regarding their shared residence.

The remaining, relevant evidence also does not establish the petitioner's claim. As previously discussed, the petitioner's IRS Form W-9 lists her address in New York while the 2003 joint tax return lists the allegedly joint residence on in Palmer Lake, Colorado even though both documents are dated in February 2004. The rental agreement for the apartment in Colorado Springs is also of little probative value because, as previously noted, the petitioner's name is written in different script and the petitioner's husband listed only his own children, not the petitioner or her son, as other proposed occupants of the apartment on his rental application, signed on February 27 2004, just two days after the petitioner stated she lived in New York on her IRS Form W-9.

Although the Colorado driver license of the petitioner's husband and her Colorado identification card both list the [REDACTED] address in Palmer Lake, they are also of little weight because the petitioner's card was issued in February 2004, the same month and year in which she signed her IRS Form W-9 listing her address in New York. On appeal, the petitioner claims that after she moved to Colorado, she continued to use the New York residence of her sister as a mailing address. The petitioner's explanation is not credible given the fact that she used the New York address on her IRS form requesting a taxpayer identification number and certification just seven days after she filed a joint tax return with her husband stating their address in Colorado.

Finally, the photocopied photographs do not picture the petitioner and her husband in any residential setting. On appeal, the petitioner asserts that one of the photographs shows her husband and their four children in front of the [REDACTED] residence in Colorado Springs. The picture has little probative value. The petitioner is not pictured in the photograph, which shows the petitioner's husband and four children standing in front of a doorway with two consecutive apartment numbers posted on both sides of the entranceway.

Considered in the aggregate, the relevant evidence fails to 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 battered and subjected her or her child to extreme cruelty during their marriage:

- The petitioner's January 26, 2006 and second, undated statement submitted below; and her April 21, 2007 statement submitted on appeal;
- Affidavits of the petitioner's friends, [REDACTED], and [REDACTED];
- Copies of the petitioner's Family Offense Petition filed against her husband in the Kings County, New York family court on January 6, 2006, which was submitted below and a copy of the judge's notes on the case submitted on appeal.

In her first statement, the petitioner described an incident in May 2005 when her husband beat her after she refused to stop working. The petitioner explained that she did not call the police because her husband told her they would arrest her because she did not have "immigration papers." The petitioner stated that her husband "became very controlling" and wanted "to destroy [her] life," but she did not explain his actions in any detail. The petitioner described one other incident of battery that occurred on August 12, 2005 and reports that she left her husband on August 19, 2005. On December 28, 2005, the petitioner stated that her husband found her at her mother's house in New York and threatened to kill her if she did not return to Colorado, but that he fled when she said she would call the police.

In her second statement, the petitioner asserts that the court papers regarding her family offense petition were twice served on her husband, but he did not appear in court. The petitioner provided no further, relevant information. On appeal, the petitioner explains that the court never issued a restraining order against her husband because she did not have proof of service of the summons with her in court. Again, the petitioner does not further discuss the alleged abuse.

In her first affidavit, [REDACTED] states that in July 2005, the petitioner told her that her husband had beaten her a few times and she asked [REDACTED] to call her husband to try and make him stop the abuse. [REDACTED] states that she called the petitioner's husband, but he said he could beat the petitioner and [REDACTED] could not do anything about it. The petitioner herself does not discuss any incident of battery in July 2005 and does not mention [REDACTED] contact with her husband. In her second affidavit, [REDACTED] states that in 2006, the petitioner lived with her for five months and the petitioner's husband would call her and threaten to hurt her and have her deported. Ms. [REDACTED] reports seeing the petitioner cry after receiving her husband's calls. Again, the petitioner herself does not describe this period or discuss her husband's threats in any probative detail.

In her first affidavit, [REDACTED] states that in June 2005, she called the petitioner and the petitioner's husband took the telephone and told [REDACTED] that he would kill the petitioner if she called their home again. The petitioner herself does not mention this incident. In her second affidavit, [REDACTED] states that the petitioner stayed with her from June to September 2006 in Brooklyn, New York and that during that time, the petitioner's husband would threaten the petitioner over the telephone. Ms. [REDACTED] does not describe any of the threats in probative detail and the petitioner herself does not discuss her residence with [REDACTED] or her husband's threats during that time.

[REDACTED] states that in June 2005, she was at the petitioner's home when the petitioner's husband hit the petitioner because he was upset that she had gone out to perform the previous evening. Ms. [REDACTED] explains that she tried to intervene and took the petitioner to her home to stay for a while. The petitioner herself does not mention this incident.

In her family offense petition, the petitioner briefly states that her husband slapped her, pulled her hair and verbally abused her on many different occasions, but she does not describe any of those incidents in detail. The petitioner states that her husband came to her mother's home in New York and threatened to kill her if she did not return to Colorado. The record shows that the court did not issue a restraining or protection order against the petitioner's husband. The judge's notes state that although the petitioner was told to bring a certificate of service to court, she failed to do so. The petitioner does not explain why she did not bring proof of service with her to court or state that she made any subsequent efforts to obtain a restraining or protection order against her husband. The petitioner's family offense petition is consequently of little probative value.

The petitioner's friends describe incidents of battery and threatening behavior that the petitioner herself does not mention. The petitioner provides no explanation for these discrepancies. The family offense petition did not result in any protective order and the petitioner fails to explain why she did not bring

proof of service to the court or take any further action. In sum, the relevant evidence fails to establish that the petitioner's husband subjected her or her child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that she entered into marriage with D-T- in good faith, resided with him and that he subjected her or her child 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.