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

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 23 2009

EAC 07 065 50434

IN RE: [redacted]

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

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)(B)(ii) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

The director denied the petition on the basis of his determination that because she had been divorced for longer than two years at the time she filed her petition, the petitioner failed to establish that she has a qualifying relationship with a lawful permanent resident of the United States.

The petitioner submitted a timely appeal on October 25, 2007

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States lawful permanent resident 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)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(B)(ii)(II)(aa) of the Act states, in pertinent part, that an individual who is no longer married to a lawful permanent resident of the United States is eligible to self-petition under these provisions if he or she is an alien:

> (CC) who was a bona fide spouse of a lawful permanent resident within the past 2 years and –
>
> > (aaa) whose spouse lost status within the past 2 years due to an incident of domestic violence; or
> >
> > (bbb) who demonstrates a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the lawful permanent resident spouse. . . .

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

> In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), 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:

(i) *Basic eligibility requirements.* A spouse may file a self-petition under section 204(a)(1)(A)(iii) . . . of the Act for his or her classification as an immediate relative . . . if he or she:

* * *

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) . . . of the Act based on that relationship [to the U.S. citizen spouse].

(ii) *Legal status of the marriage.* The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. . . .

* * *

(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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

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

The evidentiary standard and 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

* * *

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

The record of proceeding establishes the following pertinent facts and procedural history. The petitioner is a citizen of the Dominican Republic who married D-H-,[1] a lawful permanent resident of the United States, on December 29, 1995 in the Dominican Republic. D-H- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on April 17, 1998. It was approved on January 19, 1999. The petitioner entered the United States, without inspection, on or around October 1, 2001.

In response to a December 6, 2004 letter from D-H- notifying U.S. Citizenship and Immigration Services (USCIS) that he and the petitioner had divorced, approval of the Form I-130 was revoked on November 30 2005.

The record indicates that the divorce between D-H- and the petitioner became final on August 21, 2003. The petitioner filed the instant Form I-360 on January 3, 2007. On January 12, 2007, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner is a person of good moral character; and that she married D-H- in good faith. The petitioner responded to the director's request on March 7, 2007, and submitted additional information. On August 6, 2007, the director issued a notice of intent to deny the petition (NOID), which notified the petitioner of deficiencies in the record and afforded her the opportunity to submit additional evidence to establish that she had a qualifying relationship with D-H- on the date the petition was filed. The petitioner responded to the director's NOID on August 22, 2007, and submitted additional information.

The director denied the petition on October 5, 2007, on the basis of his determination that, since the petitioner and D-H- had been divorced for longer than two years at the time the petition was filed, the petitioner had failed to establish that she had had a qualifying relationship with a lawful permanent resident of the United States within two years of the filing date of the Form I-360. On appeal, the petitioner submits a letter and additional documentation.

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

Qualifying Relationship and Eligibility for Classification as an Immediate Relative

The petitioner concedes that she and D-H- had been divorced for longer than two years at the time the petition was filed: as noted previously, the divorce became final on August 21, 2003, but the petitioner did not file the Form I-360 until January 3, 2007. However, in the petitioner's October 22, 2007 letter in support of her appeal, the petitioner states that, although the civil marriage between the petitioner and D-H- ended in divorce, she is still nonetheless still married to D-H- because she entered into a Catholic (canonical) marriage with D-H- on January 25, 1997, which remains valid.

The website of the United States embassy in Santo Domingo explains that marriages in the Dominican Republic generally fall into one of two categories: (1) civil marriages; and (2) canonical marriages.[2] Civil marriages are those in which the parties themselves register the marriage with the government, and the person officiating at the wedding ceremony is a government official. It is the couple's choice whether or not to hold a separate religious ceremony. Canonical marriages are performed by a Roman Catholic priest. The priest then registers the marriage with the government. The embassy makes clear that a canonical marriage has the same legal effect as a civil marriage.

The regulations require that, in order to establish a qualifying relationship, that the petitioner be legally married to his or her spouse. A religious marriage is considered a valid marriage for immigration purposes only if it is recognized by the sovereign in that country or state as a valid marriage. *See*, e.g., *Matter of Coletti*, 11 I&N Dec. 551 (BIA 1965) (under Italian law a religious marriage must be recorded in order to be effective, but once it is recorded it is retroactive to the date of the religious ceremony). *See also Matter of Ceballos*, 16 I&N Dec. 765 (BIA 1979) (a religious marriage in Columbia has the same validity as a civil marriage).

In the instant case, the petitioner asserts on appeal that she and D-H- entered into a canonical marriage in the Dominican Republic on January 25, 1997 and, as evidence, submits a copy and translation of her canonical marriage certificate. However, the translation submitted by the petitioner does not indicate whether the canonical marriage was registered with the government by the priest who performed the ceremony, and it is not clear that an unregistered canonical marriage has the same legal effect as a civil marriage. Although there is some support for the petitioner's assertion that canonical marriages in the Dominican Republic are not subject to legal termination, and that she would therefore still be married to D-H- if she had entered into a canonical marriage with him, there is no support for her assertion that she was in fact a party to such a marriage, and that the marriage was registered by the priest with the proper authorities. The only clear evidence of record is that the petitioner was divorced from D-H- in 2003, more than two years before the petition was filed. Accordingly, the AAO concurs with the director's finding that the petitioner has failed to establish a qualifying relationship, as required by section 204(a)(1)(B)(ii)(II)(aa)(CC) of the Act. Further, as the petitioner has not demonstrated a qualifying relationship as the spouse of a lawful permanent of the United States pursuant to section 204(a)(1)(B)(ii) of the Act, she is also not

[2] *See* http://www.usemb.gov.do/Consular/ACS/marriage_DR-e.htm (accessed February 17, 2009).

eligible for preference immigrant classification based on such a relationship, as required by section 204(a)(1)(B)(ii) of the Act.

Beyond the decision of the director, the AAO finds that the petition may not be approved for four additional reasons.

Joint Residence

There is no evidence of record, beyond the petitioner's assertions, that she ever shared a joint residence with D-H-. Nor did the petitioner provide the dates during which she and D-H- lived together as requested at Page 3 of the Form I-360. The petitioner has not established by a preponderance of the evidence that she shared a joint residence with D-H-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. For this additional reason, the petition may not be approved.

Battery and/or Extreme Cruelty

In support of her assertion that she was the victim of battery and/or extreme cruelty at the hands of D-H-, the petitioner submits several affidavits and letters. In her January 31, 2006 affidavit, the petitioner stated that D-H- was her husband, and that she had to get away from him because she was a battered wife, and that police reports were available.

In her February 28, 2007 affidavit, the petitioner stated that after her arrival in the United States D-H- became an alcoholic; that he abused the petitioner; that he raped the petitioner; that she ran away from D-H- in January 2003, as he had intentions to harm her; and that she did not call the police because the abuse was not physical.

In her August 17, 2007 affidavit, the petitioner stated that her life had become a horrible nightmare; that D-H- was an alcoholic who spent weekends ingesting spirits; that D-H- was a jealous husband; that D-H- insulted her; that everything was horrible; that D-H- sexually abused her; that D-H- threatened to denounce her to USCIS; and that D-H- felt she was his property.

In her undated affidavit, [redacted] stated that she was a witness to both "the problems" between the petitioner and D-H-, as well as the abuse the petitioner suffered from D-H-.

In his undated letter, an "advocate," stated that the petitioner had been abused; that it had become necessary for the petitioner to divorce D-H-; and that the petitioner had obtained an order of protection against D-H-. In another undated letter, [redacted] stated that D-H- had threatened to harm the petitioner if she did not pay him for an "approval notice."

The AAO notes first the inconsistencies in the record of proceeding. In her January 31, 2006 affidavit, the petitioner stated that she was a battered wife, and that police reports were available. In one of his undated letters, [redacted] stated that the petitioner had obtained an order of protection against D-H-. However, in her August 17, 2007 affidavit, the petitioner stated that she had never

called the police. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Further, even if the inconsistencies of record are ignored, the testimony of the petitioner is too vague and generalized to support a finding that she was subjected to battery and/or extreme cruelty. Generalized statements that the petitioner was the victim of abuse, that she was a battered spouse, or that D-H- insulted her are insufficiently vague. The record lacks detailed, specific, and probative information regarding the alleged battery and/or extreme cruelty she suffered. The petitioner has failed to establish that D-H- subjected her to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. For this additional reason, the petition may not be approved.

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition (in this case, during the period beginning in January 2004 and ending in January 2007).

The record, however, contains none of these items. The petitioner's affidavits do not address her good moral character, and the record lacks the requisite local police clearances or state-issued criminal background checks. 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. For this additional reason, the petition may not be approved.

Good Faith Entry into Marriage

The record contains no evidence that the petitioner entered into marriage with D-H- in good faith. There is no information regarding the couple's first introductions; the petitioner's first impressions of D-H-; their courtship; their decision to marry; their engagement; or their early life together. The petitioner has failed to establish that she entered into marriage with D-H- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. For this additional reason, the petition may not be approved.

Conclusion

The AAO agrees with the director's determination that because the petitioner had been divorced from D-H- for longer than two years at the time she filed the Form I-360, she has failed to establish

that she has a qualifying relationship with a United States citizen. As she has failed to establish the existence of a qualifying relationship with a United States citizen, she has also failed to establish that she is eligible for preference immigrant classification as an immediate relative of a citizen of the United States. Beyond the decision of the director, the petitioner has failed to establish that she shared a joint residence with D-H-; that she was subjected to battery and/or extreme cruelty by D-H-; that she is a person of good moral character; or that she entered into marriage with D-H- in good faith. Accordingly, based on the present record, the petitioner is ineligible for immigrant classification under section 204(a)(1)(B)(ii) of the Act. For all of these reasons, the AAO will not disturb the director's denial of the petition.

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 also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.

ORDER: The appeal is dismissed.