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



U.S. Citizenship  
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Services

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FILE:

Office: VERMONT SERVICE CENTER

Date: **MAR 24 2009**

EAC 06 210 51598

IN RE:

Petitioner:

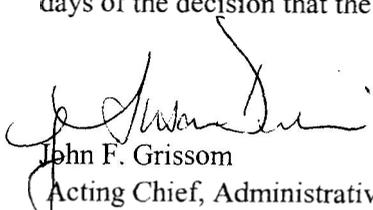
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

**INSTRUCTIONS:**

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, 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, determining that the petitioner failed to establish that she had entered into the marriage in good faith.

On appeal, counsel submits a brief.

The AAO concurs with the director's determination that the petitioner has not established that the petitioner entered into the marriage in good faith. The AAO also finds, beyond the decision of the director, that the petitioner has not established the requisite battery or extreme cruelty and has not established that she resided with the claimed abuser.

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 explained 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 explained 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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Jamaica. She married S-H-,<sup>1</sup> a United States naturalized citizen on May 21, 2002 in New York. The record includes a Form G-325A, Biographical Information Sheet, signed by the petitioner showing her address on [REDACTED] from August 2001 to December 2001 and at [REDACTED] Bronx, New York from December 2001 to the date the Form G-325A was filed in 2002. The record also includes a Form G-325A signed by the petitioner's husband showing his address as [REDACTED] Bronx, New York from June 1996 to May 2002 and at [REDACTED] Bronx, New York from May 2002 to the date of the Form G-325 was filed in 2002. The petitioner filed the instant Form I-360 on July 10, 2006. She noted on the Form I-360 that she lived with S-H- from December 2001 to December 2005 at the [REDACTED] address.

The director issued a Notice of Intent to Deny (NOID) the petition on April 24, 2007. The director notified the petitioner that the record did not establish: that she had resided with S-H- and that she had entered into her marriage in good faith. The petitioner provided a response on May 18, 2007. After considering the evidence in the record, including the evidence submitted in response to the NOID, the director denied the petition on October 18, 2007. The AAO concurs with the finding of the director that the petitioner failed to establish that she entered into her marriage in good faith. Beyond the decision of the director, the AAO determines that the petitioner has not established that she was battered or subjected to extreme cruelty by her spouse during their marriage. The AAO further finds that the petitioner has not established that she resided with the claimed abuser.

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<sup>1</sup> Name withheld to protect individual's identity

*Good Faith Entry into Marriage*

At the time of filing, the petitioner submitted a personal affidavit claiming that she initially met S-H- in Jamaica in 1982. The petitioner indicated that after S-H- returned to the United States, she and S-H- kept in touch and in 1986 when she visited her sister in the United States she and S-H- met for dinners and he bought her gifts. The petitioner noted that she lost touch with S-H- but that in July 2001 she again came to the United States to visit her sisters and bumped into S-H- in August 2001. The petitioner declared that is when she started seeing S-H- regularly. The petitioner explained that when she told S-H- that she had to leave the United States, he proposed. The petitioner stated that she really needed someone to spend her life with and she decided to live in the United States with him because she loved him and did not have any complaints against him. The petitioner noted that S-H- did not want her to leave the United States so in December 2001 she moved into his apartment. The petitioner indicated further that she and S-H- enjoyed each others company and they decided to get married in May 2002. The petitioner noted that S-H- filed a petition on her behalf in August 2002.

In a second personal statement dated March 16, 2007, the petitioner stated that she married S-H- in good faith and that she did receive some mail while living with S-H-. She noted, however, that S-H- paid the rent and the utility bills and she did not know that he could add her name on his bills and the lease and she never asked for him to do that. The petitioner also noted that in October 2002, when she got a job, she asked S-H- if they could open a joint bank account to show that they lived together as husband and wife, but he refused. The petitioner noted further that when she told him that she would open a joint account and put his name on it, he adamantly refused. The petitioner declared that “[g]radually, S-H- started fighting with [her] frequently for no reason and became abusive to the point where he changed the telephone number” and that “[t]here was no way [she] could communicate normally with him in those circumstances and ask him to add [her] name in his lease or bills so that [she] could get a green card.” The petitioner indicated further that in November 2005 when she received an appointment letter from United States Citizenship and Immigration Services (USCIS) for her green card interview, S-H- would not go to the interview and told her he had made a big mistake in marrying her, that he wished her deported, and that he did not want to see her anymore. The petitioner declared she “married S-H- because we had known each other for a long time and [she] felt he was a kind and understanding person.” The petitioner stated that although she lived with S-H- for three years and has carried his last name during this time, she has no “joint proofs” to show that.

The record includes: envelopes addressed to the petitioner at the [REDACTED] address; copies of the petitioner’s earnings statement for dates in October and December 2005 and February 2006 sent to her at the [REDACTED] address; bank statements for a period from December 15 through January 16, 2006 and for a period from October 18, through November 15, 2005 addressed to her at the [REDACTED] address; and the petitioner’s 2004 IRS Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents, showing the Throop street address.

The AAO has also reviewed the March 16, 2007 affidavit of [REDACTED] submitted on the petitioner's behalf. However, the AAO does not find the affidavit probative in this matter. The affidavit only relates information the petitioner told [REDACTED] and contains obvious factual errors such as [REDACTED] statement that the petitioner and S-H- "got married in 2000" and "[t]hings went down hill [sic] in 2004 when she got a job." The petitioner's marriage certificate indicates that she married S-H- on May 21, 2002 and the petitioner's personal statement indicates that "she got a job" in October 2002. Moreover, the affiant does not describe specific events and circumstances that substantiate that she personally witnessed the petitioner and S-H- in any particular situation.

Upon review of the petitioner's sister's April 27, 2006 affidavit, the AAO finds that although the sister references going to the petitioner's apartment to see the petitioner's spouse, she does not provide information regarding the petitioner's intent upon entering the marriage. Thus, this affidavit is likewise not probative on this issue. The AAO has further reviewed photocopies of greeting cards ostensibly addressed to the petitioner and S-H-; the AAO concurs with the director's determination that greeting cards do not address the petitioner's intent in entering a marriage. The greeting cards are not probative in establishing the petitioner's good faith in entering the marriage.

The petitioner's statements present the only evidence to show her intent upon entering the marriage.<sup>2</sup> The petitioner's statements in this matter do not provide details regarding her courtship with S-H-. She describes only generally that they went to dinners and shopping together and became so close that they started falling in love. The petitioner does not include details of their interactions with each other prior to their marriage, does not detail shared experiences, and does not provide any probative information that would assist in evaluating her intent upon entering the relationship. There are no probative details about the petitioner's initial relationship with S-H- and the subsequent interactions with S-H-, other than the alleged abuse, that allow a conclusion that the petitioner entered into the marriage in good faith. In addition, the AAO observes that the petitioner states that she moved in with S-H- in December 2001; but that S-H- on his Form G-325A indicates that he did not live at the [REDACTED] address until their marriage in May 2002. Further, the AAO notes that the petitioner **continued to receive mail at the [REDACTED] address** after she allegedly moved out in December 2005, a month after S-H- refused to attend the USCIS interview. 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). The only documentation in the record to establish the petitioner's good faith entry into the marriage is the petitioner's personal statements. As the little information in the file regarding the petitioner and S-H-'s life together contains inconsistencies and the petitioner's personal statements

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<sup>2</sup> The record also includes a report prepared by [REDACTED] a licensed clinical social worker, who recites information provided by the petitioner indicating how she felt about S-H-. As noted below, the report is based on one interview and contains inconsistencies with the petitioner's statements on other matters. The value of this report regarding the petitioner's intent on entering the marriage is, thus, negligible.

are general without descriptive detail, the petitioner has not provided sufficient evidence to establish her good faith in entering the qualifying relationship. Accordingly, the AAO concurs with the director's determination that the petitioner has not established that she entered into the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the AAO finds that the petitioner has not established that she suffered the requisite abuse to qualify to receive this benefit. The record includes the petitioner's two personal statements, an affidavit of the petitioner's sister, and the affidavit of [REDACTED] to support the petitioner's claim that she was abused by S-H-. The record further includes a thirteen-page report prepared by [REDACTED] who is a licensed clinical social worker, and who holds a number of degrees. The March 21, 2006 report is based on one interview with the petitioner on March 20, 2006.

As observed above, the affidavit of [REDACTED] is not probative as it contains factual errors. The AAO notes as well that [REDACTED] affidavit provides general information reported to her by the petitioner and does not provide any sort of chronological timeline to assist with assessing the affiant's actual knowledge of the petitioner's situation. Similarly, the petitioner's sister's affidavit does not include personal knowledge of the alleged abuse, as the petitioner's sister begins her statement with: "[m]y sister [the petitioner] has complained to me on several occasions of her husband, S-H-'s behavior towards her." The petitioner's sister does note that she and another sister visited S-H- in December 2005 to speak to him but after he let them in he went to the bedroom and closed the door. The petitioner's sister also indicates that "on another night in December 2005" she received a call from the petitioner who was crying and asked for her help in moving her things from the apartment as S-H- was angry and upset that her sisters came to visit him. Although the sister's affidavit notes her involvement in picking the petitioner up from the [REDACTED] apartment in December 2005, the affiant does not provide details of abuse that she personally witnessed. Neither affiant provides substantiating information of the claimed abuse allegedly suffered by the petitioner. Neither affidavit is probative in establishing that the petitioner was subjected to abuse by S-H-.

Upon review of [REDACTED] report, the AAO notes that the report includes information that is inconsistent with the petitioner's statements. For example, the petitioner indicated that she lost touch with S-H- after she returned to Jamaica in 1986 and did not meet again until she bumped into S-H- in 2001. Mr. [REDACTED] indicated that after the petitioner returned to Jamaica in 1986, the petitioner and S-H- kept in close contact but wrote to one another less often during the next several years. In addition, the petitioner's report of the claimed abuse included S-H-'s annoyance at receiving the petitioner's phone calls and his change of the couple's phone number; his unhappiness when the petitioner started a job; his taking her apartment keys and changing the locks requiring the petitioner to stand outside the door and beg to be let in; his complaints about her cooking; his drug and alcohol use and his increasing use of statements indicating that he did not like her; and his refusal to assist her with the USCIS interview. [REDACTED] report, on the other hand, indicates that the petitioner reported that she suffered physical abuse including being pushed off the bed, pushed and shoved on several occasions, being raped several times, and subjected to verbal abuse, as well as changing the locks on the apartment, monitoring her

mail, and changing the phone number. As the petitioner does not provide any information, let alone detailed information, regarding the alleged physical abuse noted in [REDACTED] report, the AAO finds that the petitioner has not established that she was subjected to any sort of battery. In addition, the petitioner does not detail the verbal abuse allegedly used by S-H- and thus [REDACTED] report is not useful in substantiating the claimed verbal abuse. Further, [REDACTED] report attempts to show that the petitioner felt isolated and unable to talk to anyone about her situation, a common occurrence for immigrant women; however, [REDACTED] acknowledges that the petitioner talked to her pastor and to her two sisters about her situation. The inherent inconsistencies in the report and the fact that the report was based on one interview undermine the probative value of the report. The AAO finds that the conclusion reached by [REDACTED] that the petitioner suffered physical, sexual, emotional, verbal, and financial abuse and suffers from posttraumatic stress disorder and depression as a result is based on information that has not been substantiated. The AAO also observes that [REDACTED] does not indicate that he recommended any treatment for the petitioner.

The AAO has also reviewed the petitioner's personal statements regarding the alleged abuse. The AAO finds again that the petitioner provides general information that provides little chronological timeline regarding the claimed abuse. The AAO notes, for example, that although the petitioner claims that she had to stand outside the door of her apartment on an undisclosed number of occasions and beg to be let in, she provides no substantiating evidence of this. The petitioner does not provide evidence that she was isolated, that she was subjected to verbal abuse, that she was subjected to physical abuse, or provide any of the probative details necessary to assess the veracity of the petitioner's statements. Moreover, the petitioner offers no specific testimonial evidence regarding alleged abuse perpetrated against her by S-H- which demonstrates that his behavior rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes (but is not limited to) actions such as forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. Accordingly, the petitioner failed to establish that she was battered or subjected to extreme cruelty by S-H- during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

In addition, beyond the decision of the director, the petitioner has not established that she resided with S-H-. The AAO notes that the director found the petitioner's explanation regarding why she had not provided evidence of her joint residence with S-H- satisfactory. The AAO does not. Again, we point to the inconsistencies in the petitioner's statements and the Form G-325A signed by the petitioner's husband regarding the date that S-H- lived at the [REDACTED] address. Further, although the petitioner received mail at the [REDACTED] address, the AAO notes that she continued to receive mail and obtain access to the mail after she allegedly moved out of the [REDACTED] address. 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. *Matter of Ho*, 19 I&N Dec. at 591. Furthermore, although the petitioner indicates that the apartment was not clean when she initially saw the apartment, the petitioner does not provide any probative testimonial evidence describing the apartment, its location, their shared belongs or other information that could be used to demonstrate a joint residence. The record is insufficient to establish that the

petitioner resided with the claimed abuser as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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.