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



U.S. Citizenship
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Services

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MAR 04 2010

FILE: [Redacted]
EAC 08 069 50328

Office: VERMONT SERVICE CENTER

Date:

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, as required by 8 C.F.R. 103.5(a)(1)(i).


Perry Rhew
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 petition will be denied.

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 resided with her husband and that she married her spouse in good faith.

On appeal, counsel for the petitioner submits a Form I-290B, Notice of Appeal, a brief, the petitioner's additional statement, an additional affidavit, and photographs.

As set out below, the AAO concurs with the director's determination that the petitioner has not established that she resided with her spouse and that she married her spouse in good faith. Beyond the decision of the director, the AAO also determines that the petitioner failed to establish that she was subjected to the requisite battery or extreme cruelty by her United States citizen spouse.

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 Mexico. The petitioner provided a copy of a marriage certificate showing that she married D-T-¹, a United States citizen² on December 23, 2006, in the State of New York. On the Form I-360, Petition for Amerasian, Widow(er), Special Immigrant, the petitioner indicated that she lived with D-T- from December 23, 2006 to April 30, 2007 at [REDACTED]. The petitioner filed the Form I-360 on January 8, 2008. Upon review of the record, including evidence submitted in response to the director's request for further evidence (RFE), the director denied the petition on July 27, 2009. This timely appeal followed.

Residence

In addition to her statement on the Form I-360, the petitioner initially submitted a photocopy of her spouse's earnings statement for December 30, 2006 with his name and address stamped or typed in different font than the rest of the document. The document showed his address as [REDACTED]. The petitioner also submitted a photocopy of an earnings statement for her spouse for a pay period beginning June 15, 2007 that listed his name but did not show his address. It is unclear how the petitioner had access to her spouse's earnings statement for a time period after she moved out of the claimed residence on April 30, 2007. The petitioner provided a photocopy of an envelope addressed

¹ Name withheld to protect individual's identity.

² The record includes a photocopy of the petitioner's spouse's certificate of birth showing that he was born in the State of New York. The marriage certificate in the record shows the petitioner's spouse's place of birth as Puerto Rico. The petitioner indicates that she does not know why her spouse would indicate that he was born in Puerto Rico on their marriage certificate. This inconsistency along with many others casts doubt on the legitimacy of the petitioner's marriage to D-T-.

to the petitioner and D-T- at the [REDACTED] address. The initial record also included a page from a Los Angeles Police Department Investigative Report identifying the petitioner as a victim and listing her address as [REDACTED]. The page is undated and is not completely filled in.

In response to the director's RFE, the petitioner submitted an additional page to the same police report that provided a narrative of the investigation and noted that the police officers had received a radio call for a "242 domestic" at [REDACTED] on April 30, 2007.³ The petitioner also submitted an insurance statement sent to D-T- at the [REDACTED] address that is dated January 28, 2008 for services received in December 2007. Again it is unclear how the petitioner had access to her spouse's records once she had left the claimed abuser's residence. The petitioner also submitted two affidavits in support of her claim that she resided with D-T-. The affidavit signed by [REDACTED] dated February 16, 2008, listed [REDACTED] address as [REDACTED]. Mr. [REDACTED] certified that the petitioner had resided with him from 1997 until present and also stated that the petitioner "and her family, we had lived together 4 months." The affidavit signed by [REDACTED] dated February 16, 2008, listed [REDACTED] address as [REDACTED]. Ms. [REDACTED] certified that the petitioner had lived with her since November 2005 until present and also stated: "[w]e met since 2005 and since then we had live[d] together for the period of 4 months but we continue with our friendship."

In a response to the director's second RFE, the petitioner provided a personal statement signed May 6, 2009. In her personal statement, the petitioner listed her addresses as [REDACTED] from 1997 until January 2006 when she moved to [REDACTED] with her mother and siblings. The petitioner indicated that she and D-T- moved to a rented room at [REDACTED] on December 23, 2006 where she stayed until she permanently left D-T- on April 30, 2007 at which time she returned to the apartment she had rented in January 2006 with her mother - [REDACTED]

The petitioner provided: (1) an April 30, 2009 affidavit signed by the manager of the property at [REDACTED] who certified that the petitioner had been his tenant for three years since January 2006; (2) a second affidavit dated May 6, 2009 signed by [REDACTED] who certified that the petitioner and her family lived at [REDACTED] since 1997, that they moved to [REDACTED] in January 2006, and that he had asked to use their address in 2008; (3) a second affidavit dated May 6, 2009 signed by [REDACTED] who certified that she currently lived at [REDACTED], that on December 23, 2006 D-T- and the petitioner came to live at her address, that "they lived there a short time from 12/23/2006 to 4/30/2007," when the petitioner left and moved back with her mother; (4) a May 6, 2009 affidavit signed by the petitioner's brother who certified that his sister got married on December 23, 2006 and moved back to their mother's apartment on April 30, 2007; and (5) a May 6, 2009 affidavit signed by [REDACTED] who certified that the petitioner and her family lived at [REDACTED] since 1997, that they

³ The narrative as it relates to the claimed abuse will be discussed further below.

moved to [REDACTED] in January 2006, and that she had asked to use their address in 2008 because of difficulty receiving mail at her address.

The director denied the petition noting the inconsistencies in the affidavits submitted and that the second affidavit of [REDACTED] did not provide the necessary detail regarding the petitioner's claimed residence with D-T-. The director found the petitioner's affidavit insufficient to establish that the petitioner had resided with D-T-.

On appeal, counsel for the petitioner provides yet another page of the Los Angeles Police Department Investigative Report which is completely filled in and shows that the date of the occurrence is April 30, 2007. The page shows that it is page one of a two-page document. The petitioner's address has been altered and is now shown as [REDACTED]. In addition, the initial page of the document provided showed that the incident is a report of a dispute battery and on the document submitted on appeal, the word "dispute" has been removed. The petitioner also provides a second personal statement. She states that once she married D-T- they went home together to a house located at [REDACTED] and lived there together until she moved out on April 30, 2007. She notes that the police report she provided with her application shows that the police were called to their home at [REDACTED]. The petitioner also asserts that her 2006 tax return lists her address at the [REDACTED] address and that although she filed as head of household, she did so because D-T- had bad credit and he wanted her to do some things in her name only. The petitioner does not provide a certified copy of her 2006 tax return. The petitioner references the information previously provided as evidence that she and D-T- lived together and contends that although the affidavits provided were confusing - the declarations were truthful and not contradictory.

The petitioner also submits a September 3, 2009 affidavit signed by [REDACTED] who verifies that the petitioner and D-T- resided at [REDACTED] at the end of 2006 to early 2007. The affiant indicates that she manages rental properties and in 2006 she was managing the rental of the home the petitioner lived in prior to moving to live with D-T- and that she recalls that the petitioner moved out in order to move in with her new husband. Although the affiant states that she has first hand knowledge of the petitioner and D-T-'s relationship and living conditions, the affiant does not provide further information regarding the property at [REDACTED] or how she knew that the petitioner moved there.

The AAO has reviewed the information submitted to establish that the petitioner resided with her spouse. Upon review of the affidavits submitted, the AAO does not find that the affiants provide consistent information regarding the petitioner's residence. For example, the April 30, 2009 affidavit signed by the manager of the property at [REDACTED] certified that the petitioner had been his tenant for three years since January 2006. This affidavit conflicts with the affidavit of [REDACTED] whose affidavit on appeal indicates that she managed the rental of the home the petitioner lived in prior to moving in with D-T-, the [REDACTED] home, and she recalls the petitioner moving out at the end of 2006 to early 2007. Not only does [REDACTED] affidavit conflict with the previously submitted April 30, 2009 affidavit, [REDACTED] does not provide any

probative testimony regarding the claimed marital home of the petitioner. Neither the petitioner nor her affiants provide consistent probative evidence discussing the petitioner's actual residence with her spouse, such as a description of the room, the couple's shared belongings, or other information which demonstrates a joint residence. The AAO does not find that the affidavit of [REDACTED] provides probative information regarding the joint residence, as noting the claimed joint residence is a room located in the same premises in which she resides does not convey the detailed information necessary to verify the couple resided in the room.

Similarly, the AAO questions the authenticity of the police report provided. The AAO has noted that the petitioner's address has been altered on the various pages provided. In addition, the officers do not confirm that the petitioner and D-T- resided at [REDACTED] only that they were called to this house on a report of a domestic dispute. The photocopy of the envelope does not establish that the couple resided at the [REDACTED] address, but only that on one occasion mail was directed to that location. The photocopy of the petitioner's spouse's earnings statement appears altered to include his address; however, even if not altered, the petitioner's spouse's receipt of mail at the [REDACTED] address does not establish that the petitioner lived there with him. These documents do not have independent value in establishing that the petitioner resided with D-T-. The information in the record regarding the petitioner's residence with D-T- contains inconsistencies and does not include supporting indicia establishing that the petitioner actually resided at the [REDACTED] address with D-T-. Accordingly, the petitioner has not established that she resided with her spouse as required by the regulation at 8 C.F.R. § 204.2(c)(1).

Good Faith Entry into Marriage

The petitioner initially did not provide a statement or any information describing her courtship and subsequent marriage to D-T-. The initial record included photographs of the couple's wedding ceremony but nothing else demonstrating that the marriage was entered into in good faith. In response to the director's RFE, the petitioner indicated in her personal statement that she met D-T- at a party in 2005, that they exchanged phone numbers and addresses, that D-T- called her each day and invited her to the movies and to eat out, and that their friendship developed into a "love relation." The petitioner also stated that D-T- proposed to her in October 2006 and they decided to get married on December 23, 2006.

Several of the affidavits submitted on the petitioner's behalf reference either attending the petitioner's wedding or helping the petitioner with her wedding. The petitioner's brother noted his belief that his sister loved D-T-. [REDACTED] indicated that she attended the same party where the couple met and that their relationship grew into a love relation. [REDACTED] indicated that the petitioner met D-T- at a party and that he visited the petitioner and that she met D-T- at the petitioner's house.

The director determined that the affidavits submitted did not provide insight into the dynamics of the petitioner's relationship and the petitioner's statement alone was insufficient to establish that she entered into the marriage in good faith.

On appeal, the petitioner states that she “did not know [D-T-] very long before we were married,” that he pushed her to get married to start a family, and that they had a wonderful wedding. The petitioner notes that she did not marry D-T- for immigration status. She claims that if she had married D-T- for immigration status she would have asked him to file the necessary papers for her, but she never asked him to file papers for her as she saw very quickly that marrying D-T- was a mistake. Counsel references that photographs of the couple dancing together are attached to the appeal. The photographs are blurry but appear to show the petitioner and D-T- at a party. The photographs are undated and there is no indication of where they were taken.

Upon review of the record, the AAO concurs with the director’s determination that the evidence of record fails to establish that the petitioner entered into the marriage in good faith. The AAO has reviewed the petitioner’s statements, the affidavits submitted on her behalf, and the photographs of the wedding and the couple together at a party. However, the petitioner in this matter has not detailed the courtship and circumstances leading up to the marriage proposal in any detail. Other than stating that the couple went to the movies and out to eat, the petitioner has provided no information of events or circumstances that demonstrate her intent upon entering the marriage. The record requires more than a statement that the individual entered into the marriage in good faith. In this matter, the petitioner provided only a cursory description of the courtship from 2005 to the proposal in October 2006 and the marriage in December 2006.

The AAO has reviewed the statements and affidavits submitted on the petitioner’s behalf. The AAO finds that the affiants indicate that the petitioner met her husband at a party and that they attended or helped prepare for the wedding. The affiants provide no probative details regarding their observations of the petitioner’s allegedly good faith entry into the marriage. The affiants do not describe any particular incidents wherein they witnessed the alleged *bona fides* of the couple’s marital relationship. The general statements provided do not substantiate that the petitioner’s intent upon marrying D-T- was to establish a life together. The statements are bare of the essential detail necessary to assist in determining the legitimacy of the marriage. The petitioner’s marriage certificate and the photographs of the wedding confirm the marital relationship but do not establish the petitioner’s own good faith in entering into the marriage. The evidence submitted does not establish the petitioner’s intent in entering into the marriage and does not otherwise establish a requisite good faith marriage.

The record lacks any independent documentary evidence suggested by the regulation including: proof that one spouse has been listed as the other’s spouse on insurance policies, property leases, income tax forms, or bank accounts; detailed testimony or other evidence regarding courtship, the wedding ceremony, the shared residence, and experiences; or other types of readily available evidence such as police, medical, or court documents providing information about the relationship. The AAO finds that while the lack of documentary evidence is not necessarily disqualifying, the petitioner’s testimonial evidence and the testimony submitted on her behalf also fail to support a finding that she entered into this marriage in good faith. There are no probative details about the petitioner’s initial relationship with D-T- and the subsequent interactions with D-T- that allow a conclusion that the petitioner entered into the marriage in good faith. The record lacks credible

detailed information sufficient to establish the good faith intent of the petitioner in entering into the marriage. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that she entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

Beyond the decision of the director, the AAO finds that the petitioner has not established that she suffered battery or extreme cruelty at the hands of her husband. In the petitioner's May 6, 2009 statement, she stated generally that a short time after her marriage, her husband started to drink, constantly screamed at her, and called her names. She noted that she did not want to continue having sexual relations with her husband but he forced her to have sex with him, often when he was drunk and that he physically hurt her each time. The petitioner indicated that her husband made her feel like his property and that she felt dirty, ashamed, and stupid. The petitioner also stated that her husband knew she wanted to leave him and threatened to kill himself if she did. The petitioner noted, generally:

One day, he was screaming at me and I argued back at him. He hit me and he ever [sic] hit me like that. It hurt a lot. Previously he has pushed me but not hit me hard. At that time I realized that I had to get my myself [sic] away from him. He was always drunk and screaming.

On April 30, 2007 I left him permanently. He was at work. I packed up my things, and took to my mother's apartment which I rented on January 2006.

The petitioner does not mention the police report. In the May 6, 2009 affidavit of [REDACTED] she states that after the couple came to live at her address, D-T- would hit the petitioner and threaten and humiliate her in front of people. The affiant does not further describe any physical abuse or describe the circumstances of D-T- hitting the petitioner. The affiant does not provide further details regarding the alleged threats and humiliation. The other affidavits submitted on the petitioner's behalf generally indicate that each affiant knew about the difficulties of the marriage but do not state that they witnessed any of the claimed abuse.

The narrative in the police report indicated that upon arrival at [REDACTED], the petitioner told them that she and her husband had argued, that the husband insulted the petitioner, that the petitioner had slapped her husband, and that the husband had slapped the petitioner on the leg. D-T- also stated that the couple argued and the petitioner slapped him on the hand and he slapped her on the leg. The police officer interviewed two witnesses. Witness one indicated that he did not want to be identified and that he only saw and heard a dispute. Witness two indicated that he saw no physical contact. The officers noted that their investigation did not reveal visible injuries and they could not substantiate either story and both parties declined an arrest.

On appeal, the petitioner states that after suffering from a great deal of emotional abuse and some

physical abuse inflicted by her husband, the marriage was over. She notes that there was an altercation and the police were called and that the police calmed them down and she was able to leave. The petitioner also indicates that D-T- would get mad over any little thing, not necessarily at her, but would take it out on her. The petitioner states that D-T- did not threaten her with physical injury but that he would tell her he was going to hurt himself and make her watch.

Upon review of the totality of the information provided regarding the claimed abuse, the AAO finds the information provided is not only general but is also inconsistent. As noted above, the affiants do not describe incidents that they witnessed and the affiants do not provide detail of specific abuse. The petitioner has not provided detailed testimony regarding her claim of abuse. The AAO observes that in the petitioner's May 6, 2009 statement she did not specifically mention the altercation that involved the police on April 30, 2007 and indicated that she left D-T- while he was at work. This appears inconsistent with her statement on appeal that after the police calmed them down she was able to leave. These statements lack the detail that would allow the AAO to ascertain the veracity of the incident. The AAO notes that the police report clearly shows that there was no evidence that abuse occurred. The petitioner's general statements regarding D-T-'s drunkenness, his screaming at her, and forcing her to have sex are insufficient in and of themselves to establish the petitioner's credibility and are sufficiently vague as to not lend themselves to evaluations regarding credibility.

The petitioner has not provided consistent probative testimony that establishes that she suffered abuse at the hands of D-T-. The petitioner has not established that her husband's actions constituted psychological or sexual abuse or was otherwise part of an overall pattern of violence or constituted any acts that rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner fail to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty, that D-T-'s behavior was accompanied by any substantiated coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over her. The AAO finds that the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty.

Accordingly, the petitioner failed to establish that she was battered or subjected to extreme cruelty by her former spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) 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


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has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.