

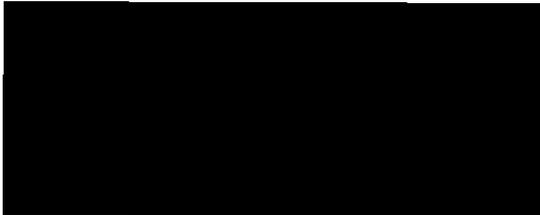
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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FILE: [REDACTED]  
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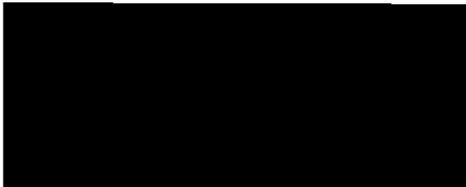
Office: VERMONT SERVICE CENTER

Date: APR 07 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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 remains denied.

The petitioner seeks immigrant classification pursuant to 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 her United States citizen spouse.

On July 13, 2010, the director denied the petition, determining that the petitioner had not established she had been subjected to battery or extreme cruelty perpetrated by her United States citizen spouse and had not established that she entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and additional documents.

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 based on his or her relationship to the abusive spouse, 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 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 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 set forth 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 Peru. She entered the United States on or about September 8, 2002 as a visitor. The petitioner's first husband died on February 4, 2004. The petitioner married again and was divorced from her second husband on July 6, 2007. On June 27, 2008, the petitioner married L-V-<sup>1</sup>, the claimed abusive United States citizen. On September 29, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the Form I-360 that she resided with L-V- from January 2008 to August 2009. On February 1, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by L-V- and that she had not established that she had entered into the marriage in good faith. The petitioner timely submitted an appeal and additional evidence.

#### *Abuse*

In the petitioner's September 24, 2009 statement submitted with the Form I-360, she declared that: after L-V- moved into her apartment, he began speaking to her with a demeaning attitude; he screamed at her in the supermarket which was a scary experience; he began staying out for days; he depleted the money in their joint savings account and became unemployed; and one day he came to the house dirty and looking crazy and started throwing things on the floor. The petitioner also noted that L-V- was jealous, investigated her phone calls, and demanded that she sit in a specific spot and not move. The petitioner reported that her son became very nervous and would cry when he saw L-V- screaming at her. The petitioner indicated that she did not tell anyone of L-V-'s behavior because she was embarrassed and L-V- would threaten that she had better not call the police. The petitioner also indicated that L-V- left her after six months of marriage and in April 2009 she saw him on the street with another woman who he indicated was his wife. The petitioner noted further that she had not seen her husband since April 2009 and that she did not know where he was.

In response to the director's RFE, the petitioner provided her medical records. The records included the North Central Bronx Hospital Chart for the petitioner indicating that the petitioner reported verbal abuse (put downs, yelling) and controlling/isolating behavior by her husband and that her husband tried to hit her on one occasion. The documenting writer, [REDACTED]

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

clinical social worker, also noted that the petitioner denied that her husband made any threats to her and that she believed her husband might be doing drugs and if so his actions would be unpredictable. The petitioner was referred to a mental health clinic and scheduled for an October 21, 2009 appointment.

In the petitioner's initial intake sessions (October 21, 2009 and October 26, 2009) and Clinical Assessment, the petitioner voiced her frustration to the evaluator, [REDACTED] at getting involved with someone so wrong for her. The petitioner recounted to [REDACTED] that: she had been married since June 2008; about six months into the marriage, her husband began to change, becoming verbally abusive and distant; once married, her husband became dominant and controlling; and in April 2009, she found him with another woman and decided to end the relationship. The petitioner was scheduled for a psychiatric evaluation and subsequently was provided medication. In a November 13, 2009 Psychiatric Examination: Initial Visit Note, the petitioner reported that she was in a sad mood since her husband had left her for another woman in June 2008. In an Individual Progress Note for November 30, 2009, the petitioner noted that her husband planned to make her life miserable by not agreeing to give her a divorce. Progress notes for the petitioner's subsequent visits on December 2, 2009, December 14, 2009, and December 30, 2009 indicated that the petitioner reported feeling better since entering into psychiatric treatment. In a January 4, 2010 Individual Progress Note, the petitioner reported that she felt nervous after receiving a text from her husband wishing her Merry Christmas and noted that her husband had not physically been aggressive toward her but she felt intimidated after learning he used drugs. A Quarterly Treatment Plan Update dated February 11, 2010 indicated that the petitioner's symptoms were secondary to a past abusive marital relationship that ended after the petitioner was abandoned by her husband. [REDACTED] provided a February 22, 2010 letter indicating that the petitioner had been diagnosed with adjustment disorder and depressed mood and that the petitioner had reported her symptoms were generated by a past abusive marriage that ended after her husband abandoned her.

Based upon the information in the record, the director denied the petition on July 13, 2010. On appeal, counsel for the petitioner submits an undated letter signed by [REDACTED] the letter-writer, indicates that one day she believes in mid-September, she and her husband saw L-V- hitting and shoving the petitioner in the street and L-V- cursed at them when they tried to stop him. [REDACTED] notes that the petitioner's arm was hurt but she would not call the police. The record includes a photograph of the petitioner and another woman that shows bruising on the petitioner's right arm. [REDACTED] notes further that the petitioner told her that L-V- was stealing money from her, that he screamed at her, and that he left in the Christmas season, but returned in February and stayed for a week and then left again and that the petitioner had not seen him since.

The record on appeal also includes a July 7, 2010 Psychoemotional and Marital Dynamics Assessment, prepared by [REDACTED] licensed mental health counselor. [REDACTED] notes in the petitioner's report that: after a few months of marriage, her husband became hostile and aggressive; he started staying out late and would become verbally abusive and threatening when confronted with his behavior; her husband tried to hit her once but she was able to get away; she did not call the police because he threatened that she would be deported if she did;

once her husband left the house for two weeks and came back dirty and when she asked him about what had happened, he yelled and called her names; her husband left the home early last year (2009); and she was contacted by one of his friends she believes in April asking her for money because her husband had been arrested; and she is unaware of his whereabouts since her contact with him at that time. [REDACTED] concluded that the petitioner developed a clinically significant anxious-depressive condition after being exposed to multiple instances of spousal abuse.

Counsel asserts that the petitioner has provided sufficient evidence to overcome the director's erroneous decision.

Upon review of the record, the petitioner's statement does not provide the detailed, probative evidence that establishes eligibility for this benefit. The petitioner's statement is general and lacks specific information regarding the claimed abuse. In addition, the petitioner has provided inconsistent information to United States Citizenship and Immigration Services (USCIS) and her therapists. For example, in the petitioner's initial statement, she does not report any battery perpetrated by L-V-, only generally mentioning the screaming and his demeaning attitude and one threat that she had better not call the police. In the petitioner's statements documented by [REDACTED] she specifically denied that L-V- made any threats and noted that he tried to hit her on one occasion, but was unsuccessful. In the petitioner's statements to [REDACTED] she stated that her husband had not been physically aggressive toward her but she felt intimidated after learning he used drugs. On appeal, the petitioner reported to [REDACTED] that her husband tried to hit her once but she was able to get away and she did not call the police because he threatened she would be deported if she did. Based upon the petitioner's inconsistent statements, it is not possible to conclude that she was subjected to battery perpetrated by L-V-. Moreover the report by [REDACTED] submitted on appeal, regarding a specific incident in mid-September of L-V- hitting and shoving the petitioner and the photograph apparently submitted to substantiate the claim, is not probative as it directly contradicts the petitioner's own statements that she was not hit by L-V- and that he had not been physically aggressive toward her. Similarly, the petitioner has not provided a consistent account regarding when or whether she was actually threatened by L-V- and if so the specific circumstances of any threat. She fails to describe any threat in detail and fails to indicate that any threat was accompanied by violence or threats of physical or mental injury.

In addition, the petitioner has not provided the requisite probative detail regarding arguments and the claimed isolating and controlling behavior of L-V-. The petitioner's statements to her counselors focus primarily on the fact that L-V- left her and was involved with another woman. This action is not sufficient to establish that the petitioner was subjected to extreme cruelty as defined in the statute and regulation. The petitioner does not provide specific information regarding L-V-'s behavior or actions against her son. The petitioner does not provide consistent information regarding when the alleged screaming and other behaviors of L-V- started. For example, she initially indicated that L-V-'s actions began when he moved into her apartment. She later indicated to her counselor that L-V-'s behavior changed six months after their marriage. Upon review of the complete record, the petitioner has not presented a consistent

account of her relationship with L-V- and thus her testimony is insufficient to establish that she was subjected to battery or extreme cruelty perpetrated by L-V-.

Upon review of the assessments submitted by the North Central Bronx Hospital Chart and subsequently [REDACTED] the medical records do not provide a causal connection between the petitioner's depression and anxiety and specific incidents of abuse. Likewise, [REDACTED] evaluation of the petitioner, which was written after a single session, is based on statements that have been found to be inconsistent with other evidence in the record. The evaluation is, therefore, not probative in establishing that the petitioner's spouse's actions were a causative or contributing factor to her mental health condition. [REDACTED] evaluation submitted on appeal lacks sufficient consistent, substantive, and probative information indicating that L-V-'s behavior included actual threats, controlling actions, or other abusive behavior that was part of a cycle of psychological or sexual violence. Based on the length of the interview, [REDACTED] perfunctory conclusions appear speculative and diminish the value of the evaluation.

Upon review of the totality of the record, the petitioner has not offered consistent probative testimony or other evidence that demonstrates she was the victim of any act or threatened act of physical violence or extreme cruelty, that L-V-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over her. The petitioner's statement and the statements she made to others lack the consistent detail necessary to establish that L-V- subjected her to battery or that his actions constituted extreme cruelty as defined in the statute and regulation. The petitioner fails to establish that her spouse's actions rose 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.

### *Good Faith*

In the petitioner's initial September 24, 2009 statement, she indicated that she met L-V- in January 2008 at a gathering and that they went out to movies, dinner, and breakfast and were married in June 2008 and L-V- moved into her apartment. The record also includes an envelope addressed to both the petitioner and L-V- at an address on [REDACTED] a voided check listing the couple as the account holders living at the address on [REDACTED] in the Bronx, and a bank statement issued to the couple covering a period from September 2008 to October 2008.

The petitioner did not provide any further information regarding her intent in entering into the marriage in response to the director's RFE. The director determined on July 13, 2010, that the petitioner had not established that she had entered into the marriage in good faith.

On appeal counsel submits an undated letter signed by [REDACTED] the letter-writer, declares that: she and her husband have known the petitioner for four years; in January 2008, the petitioner met L-V- and seemed happy; she met L-V- when the petitioner brought him to lunch; and the petitioner informed her that she would be getting married in June 2008 and invited her to the wedding but she could not attend.

Counsel asserts that USCIS has not offered any evidence that the petitioner's marriage is not a bona fide marriage. Counsel speculates that if the petitioner only wanted to get a green card from the marriage, she would have insisted that L-V- file a Form I-130, Petition for Alien Relative, on her behalf. Counsel contends that the lack of joint name bills and accounts is due to the fact that the petitioner's husband seldom had a job and "they stay with his mother until his disappearance (rumors of his incarceration)." Counsel asserts that the information submitted should suffice to establish a good faith marriage.

Upon review of the totality of the information in the record, the petitioner has not established that she entered into the marriage in good faith. The petitioner does not set forth her intent in probative detail in her statement submitted to USCIS. In addition, the letter submitted by [REDACTED] does not describe in probative detail any particular incidents where [REDACTED] or her husband witnessed the alleged *bona fides* of the petitioner's marital relationship. The bank statement is not accompanied by any evidence that the petitioner or L-V- used the joint account throughout their marriage. Receiving mail at a particular address also fails to assist in establishing the petitioner's intent when entering into the marriage.

The petitioner's marriage certificate confirms the marital relationship, but does not establish the petitioner's own good faith in entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). Contrary to counsel's implied assertion, the burden of establishing good faith intent in entering into a marriage is on the petitioner. The record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with L-V- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the petitioner has also failed to establish that she jointly resided with L-V- during marriage. The petitioner has not provided probative information regarding her claimed joint residence, such as a description in detail of their residential building, their apartment, their home furnishings, their neighbors, any of the jointly-owned belongings, or any of their daily routines within the residence. The envelope and bank statement discussed above only show that a joint bank account was opened and a bank statement was mailed to a particular address; this information is insufficient to establish that the petitioner and L-V- jointly resided at the address. In addition, the record includes inconsistencies in the petitioner's statement and other documentation submitted. For example, the couple's marriage certificate shows that the couple used an address on [REDACTED] when obtaining the marriage certificate. L-V-'s driver's license also includes this address. The petitioner states, however, that L-V- moved into her apartment when they married. Moreover, counsel indicates on appeal that L-V- and maybe the petitioner lived with L-V-'s mother at some point in the relationship. Further, the petitioner does not provide consistent information regarding the length of time the couple actually resided together. The petitioner indicates on the Form I-360 that the joint residence lasted from January 2008 to August 2009; however, she also indicates in various statements in the record that L-V- left in early 2009, that he left in April 2009, and that she had not seen him from either February 2009 or April 2009. Thus, the record lacks consistent, detailed information regarding the petitioner and L-V-'s alleged joint

residence. For this additional reason, the petition will be denied.

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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons. As always, the burden of proof in visa petition proceedings 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. The petition remains denied.