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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  
and Immigration  
Services**



B9

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JAN 04 2011**  
[REDACTED]

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 the \$630 fee. 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. The matter is now before the Administration 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 a United States citizen.

On July 16, 2010, the director denied the petition, determining that the petitioner had failed to establish that she had been subjected to battery or extreme cruelty by her United States citizen spouse<sup>1</sup> and had failed to establish that she had entered into the marriage in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and provides a statement on the Form I-290B and previously submitted documentation.

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 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.

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<sup>1</sup> The director also referred to the residence requirement when stating which elements the petitioner had failed to satisfy to establish eligibility for this benefit; however, the body of the decision quite clearly sets out the petitioner's failure to establish that she had been subjected to battery or extreme cruelty in this matter. As a complete reading of the director's decision sets out the deficiencies of the petitioner's evidence regarding the abuse element, we find the director's typographical error when reciting the applicable numbered element to be harmless.

(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 Colombia. She entered the United States as a B-2 visitor on November 22, 1997. She married R-Z,<sup>2</sup> the claimed abusive United States citizen spouse on January 30, 2006. On November 13, 2007, the petitioner filed her first Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The director issued two requests for evidence (RFE) in conjunction with the first filed Form I-360 and the petitioner provided a response to each RFE. On February 18, 2009, the director denied the first filed Form I-360, determining that the petitioner had not established that: she had jointly resided with [REDACTED]; she had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse; and she had entered into the marriage in good faith. The petitioner subsequently appealed the decision through counsel and the AAO dismissed the appeal on September 14, 2009, concurring with the director's analysis and determination. On November 2, 2009, the petitioner filed the Form I-360, which is the subject of this appeal. The director again issued two RFEs and upon review of the responses received determined that the petitioner had not established that she had been subjected to battery or extreme cruelty and that she had entered into the marriage in good faith.

#### *Abuse*

In the petitioner's September 8, 2007 affidavit, the petitioner stated that: [REDACTED] abused her verbally by insulting her constantly and calling her names; used drugs in her presence; demanded that she remain at home to care for him rather than working; and told her that he wanted to be with an additional woman. The petitioner stated that although [REDACTED] never physically abused her, he told her that because he is so tall, he would kill her if he hit her. The petitioner also provided three psychological evaluations. In his October 16, 2007 evaluation, [REDACTED] stated that: the petitioner reported that shortly after marriage, [REDACTED] became both physically and verbally abusive; he grabbed her arm and threw her against the wall, threatened her immigration status, called her names and attempted to rape her. In [REDACTED] January 6, 2009 evaluation, he stated that the petitioner "was exposed to verbal and psychological abuse," and that she had been under psychiatric treatment and had been prescribed antidepressant medications. In [REDACTED]

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<sup>2</sup> Name withheld to protect the individual's identity.

March 26, 2009 evaluation, he stated that the petitioner suffered from Post Traumatic Stress Disorder and Major Depressive Disorder, and that his office had been treating her since January 12, 2007. The record also includes several letters from the petitioner's friends that speak generally of R-Z's personality and his ill-treatment of the petitioner.

In an undated statement submitted in support of the instant petition, the petitioner added that: [REDACTED] would bring friends home, drink, and use drugs and ask her to have sex with his friends; he threw her against the wall when she did not comply with his demand to have sex with his friends; and that he told her he would pay her \$2,000 if she helped him sell "papers" from Puerto Rico to her friends in Colombia. The petitioner indicated that when she told him no, he pushed her and told her he was leaving, took all her money from the bank and all their papers, and told her he was going to call immigration. The petitioner also provides a fourth evaluation prepared by [REDACTED] on January 12, 2007 through January 18, 2007. In this evaluation, [REDACTED] noted that the petitioner had been referred to him to determine the extent of psychological disabilities and treatment recommendations following a work related accident that occurred on September 15, 2001. [REDACTED] opined that the petitioner's symptoms were causally related to her traumatic experience at ground zero, where the petitioner had worked.

The director determined that the evidence of the record showed significant discrepancies between the severity of the claims in the petitioner's own statements and those of [REDACTED] evaluations. The director concluded that the evidence was not sufficiently reliable to demonstrate the petitioner's eligibility and that the petitioner's inconsistent reporting diminished the reliability of her own statements.

On appeal, counsel does not address the director's determination that the petitioner had not established she had been subjected to battery or extreme cruelty perpetrated by [REDACTED].

Upon review of the documentation in the record, we concur with the director's analysis and find that the petitioner has not provided consistent testimony establishing that she was subjected to battery or extreme cruelty as defined in the statute and regulation. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient, consistent detail of specific events and incidents to result in such a conclusion. In this matter, the petitioner has not provided such evidence. The petitioner does not provide the requisite detail to demonstrate that R-Z's actions are comparable to the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

#### *Good Faith Entry into Marriage*

The petitioner has also failed to establish that she entered into the marriage in good faith. In the petitioner's statement in support of the instant petition, she provides a cursory description of how she met [REDACTED] and subsequently moved in together and married. Although the record includes photographs of the couple's wedding and letters from friends, these documents do not assist in establishing the petitioner's intent in entering into the marriage. The petitioner's statements do not provide any specific information regarding her intent in entering into the marriage.

The director determined upon review of the record, that the significant discrepancies in the petitioner's testimony brought the reliability of her testimony into question and that her statement that she had

entered into the marriage in good faith was insufficient and not probative. The director determined that the record did not include sufficient evidence to demonstrate the petitioner's eligibility under this requirement.

On appeal, counsel for the petitioner asserts that the director erroneously concluded that copies of bank cards that were submitted were bank cards that were issued after the petitioner no longer resided with [REDACTED]. Counsel contends that [REDACTED] bank card was issued in May 2006 and that the petitioner's card was a duplicate card issued at a later date.

Upon review of the totality of the record, the petitioner has not provided a detailed statement with specific information regarding her intent in entering into the marriage. A finding of good faith involves an exploration of the dynamics of the relationship leading up to the marriage, to determine if this was a marriage of two people intending to share a life together. For immigration purposes, evidence of good faith should demonstrate the emotional ties, commingling of resources, and shared financial responsibilities often associated with a bona fide 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). The petitioner's statements when reviewed in their totality do not demonstrate that her intent to enter into the marriage was in good faith. 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 photocopy of the claimed bank cards does not assist in establishing the petitioner's intent in entering into the marriage. The AAO acknowledges the petitioner's claim that the alleged abuser destroyed all the couple's documents; however, her testimonial evidence and the testimony submitted on her behalf in this matter fail to support a finding that she entered into the marriage in good faith. The generality and bareness of detail included in the submitted statements fail to establish the bona fides of 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.

### *Residence*

Beyond the decision of the director, the record does not establish that the petitioner jointly resided with [REDACTED]. On the instant Form I-360 the petitioner claimed that she resided with [REDACTED] from June 5, 2005 to December 2006. On the first filed Form I-360, the petitioner stated that she had resided with [REDACTED] from January 2006 to September 2006. In the petitioner's September 8, 2007 personal affidavit, the petitioner states that [REDACTED] left the marital residence in October 2006 and in an affidavit dated August 15, 2007 signed by [REDACTED], she claimed that [REDACTED] left the marital home in "May." In the petitioner's personal statement in support of the instant Form I-360, she does not state when she allegedly resided with [REDACTED]. On appeal, counsel for the petitioner references: (1) [REDACTED] Form I-864, Affidavit of Support, dated June 20, 2006; (2) Forms G-325, Biographical Information sheets, dated February 20, 2006, signed by the petitioner and by [REDACTED]; (3) [REDACTED] driver's license issued March 31, 2006; and (4) correspondence addressed to either the petitioner or [REDACTED] at a post office box. Counsel contends that the petitioner was unable to provide other documents as the evidence was destroyed by the alleged abuser.

Upon review of the evidence in the record, the petitioner has not established that she resided with the

claimed abusive spouse. The petitioner does not provide a consistent account of when the couple jointly resided together. Receiving mail at a post office box or a particular address does not establish that the couple established a joint residence. As the AAO noted in its previous decision, 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. Upon review of the totality of the information in the record, the record fails to establish that the petitioner resided with the claimed abuser. The petitioner has provided insufficient evidence to establish the requisite joint residence during the marriage. For this additional reason, the petition will not be approved.

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.