

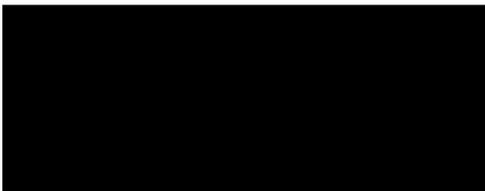
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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JAN 05 2011

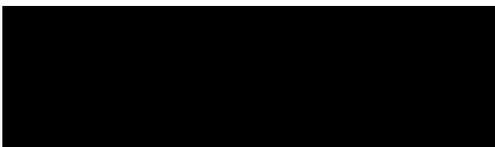
IN RE:

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:

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 Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain 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 May 7, 2010, the director denied the petition, determining that the petitioner had not established that she had been subjected to battery or extreme cruelty perpetrated by her United States citizen spouse and that she had failed to establish that she entered into the marriage in good faith.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, and a brief in support of the appeal.

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:

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen

... spouse, must have been perpetrated against the self-petitioner ... and must have taken place during the self-petitioner's marriage to the abuser.

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

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(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.

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(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

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

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(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 India. She entered the United States on or about July 29, 1997 on

a B-2 visa. The petitioner and her first husband divorced on April 28, 1998 in the State of Nevada in the United States. On June 15, 1998, the petitioner married E-J-<sup>1</sup>, the claimed abusive United States citizen. On or about July 2, 1998, E-J- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The petitioner concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. The Form I-130 was denied on December 18, 2000, and the petitioner's Form I-485 was denied on June 21, 2004, after the Board of Immigration Appeals (BIA) dismissed E-J-'s appeal of the Form I-130. On July 1, 2002, E-J- filed a second Form I-130 on the petitioner's behalf, which was denied on January 20, 2009 when the petitioner and E-J- failed to appear for a scheduled interview. On June 30, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On the Form I-360, the petitioner indicated that she had resided with E-J- from June 1998 to December 2002.

### *Abuse*

In support of the petitioner's claims that she was subjected to battery and extreme cruelty, the petitioner provided her personal statement dated June 25, 2009. The petitioner declared that E-J- began drinking excessively after the couple's experience with the immigration service at their March 2000 interview. The petitioner stated that when E-J- was intoxicated he became verbally abusive and called her derogatory names. The petitioner stated that when E-J- wanted money to buy alcohol he became physically abusive by pushing her around until she agreed to give him the money. The petitioner noted that she was afraid to call the police because he had threatened to have her arrested by immigration and deported to India. She noted further that E-J- would abuse her in the presence of her sons, which she found humiliating. The petitioner also related an incident in December 2000 when E-J- grabbed her in a chokehold in front of her children while he was drunk and her sons got her cousin to come and free her from E-J-'s chokehold. The petitioner related a second incident, in January 2001, when E-J- demanded money to buy alcohol in front of one of her friends and when she told E-J- that he had to wait, he threw her off the couch to the floor. The petitioner noted that her friend started to call 911 but that E-J- quickly apologized and went to another room for the rest of the evening. The petitioner noted that in December 2001 E-J- came to her job site intoxicated and asked for keys to her car and when she refused he became belligerent and started cursing in front of a co-worker and that evening yelled at her because she had been disrespectful to him in front of her co-worker. The petitioner also noted that in August 2002, E-J- became intoxicated and verbally abusive when the petitioner's friend and her husband came to visit and that this type of behavior continued throughout 2002 until the couple separated. The petitioner added that E-J- demanded unnatural sexual activity, that he made her feel socially isolated, and he began restricting her participation in religious activities outside their home.

On December 29, 2009, the director issued an RFE, noting that petitioner indicated that many of the abusive incidents mentioned in her affidavit occurred in front of family, co-workers, or friends and that it was reasonable to request that statements from these individuals be offered to corroborate the petitioner's testimony. In response to the director's RFE, the petitioner provided the same personal

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

statement initially provided. The record includes no other information regarding the claimed abusive actions of E-J-. The director determined that as the petitioner failed to present third party testimony as requested she had not established that she had been battered by or been the subject of extreme cruelty perpetrated by her United States citizen spouse.

On appeal, counsel repeats several of the incidents mentioned in the petitioner's statement and asserts that the director's determination that the petitioner's own statement was insufficient is reversible error.

There is no requirement that the petitioner submit corroborating testimony to establish her claim that she was subjected to battery or extreme cruelty. The director's implication to the contrary is withdrawn. However, the petitioner in this matter has provided perfunctory descriptions of significant events without the requisite detail that would allow a conclusion that her testimony is credible. In addition, although the record includes no information from friends, family, or co-workers, the petitioner has provided an October 7, 2001 letter from her temple which indicates that the couple regularly attended the temple since June 1998. This letter appears to conflict with the petitioner's statement that her husband began restricting her participation in religious activities outside of their home. Similarly, the record contains an October 2001 statement from [REDACTED] who declares that the couple frequently visited his home and attended his birthday party in March 2001. This letter conflicts with the petitioner's statement that her husband isolated her socially. Because the petitioner's statement is critical in establishing extreme cruelty or battery, the statements must include sufficient detail of specific events and incidents and consistent information to result in a conclusion that the petitioner was subjected to battery or extreme cruelty. The generality and inconsistency of the petitioner's statements do not allow an informed decision regarding the credibility of the statements. Upon review of the totality of the record, the petitioner has not met her burden of establishing that she was subjected to battery or extreme cruelty perpetrated by E-J-, her second former spouse.

#### *Good Faith Entry into Marriage*

The petitioner has also failed to establish that she entered into the marriage in good faith. The director in this matter noted that the petitioner initially provided only her marriage certificate to show that she was married. In response to the director's RFE on the issue of the petitioner's intent in entering into the marriage, the petitioner provided photographs. The director observed that the photographs submitted appeared staged as the petitioner and E-J- were wearing the exact same clothes in photographs taken in 1998 and 1999. The director questioned the credibility of the evidence submitted and determined that the petitioner had not established that she had entered into the marriage in good faith.

On appeal, counsel for the petitioner asserts that the director failed to consider other photographs submitted and failed to consider the voluminous amount of bills, receipts and other household records that were collected by the petitioner and E-J- during their period of cohabitation.

Upon review of the petitioner's only statement in support of the Form I-360, the petitioner speaks generally of her separation from her first husband in March 1998 and her first husband's relocation to Nevada to proceed with a petition for the dissolution of their marriage which was finalized on April 28, 1998. The petitioner notes that she met E-J-, a widower, in April 1998 in a park, they became friends and romantically involved, and in May 1998, E-J- proposed marriage and they were married on June 15, 1998. The petitioner also speaks generally of helping E-J- with financial support of his two daughters, although they lived with their maternal grandparents. The petitioner indicates generally that the petitioner, E-J-, his two daughters, and sometimes her two sons would all go out together and that they enjoyed the zoo, shopping, dinner, and movies. The record includes bills and receipts submitted that show that the petitioner and E-J- received mail at the same addresses, although the statements are addressed to either the petitioner or to E-J- but not jointly, that they reported to the Internal Revenue Service (IRS) that they were married, as well as statements from [REDACTED] and the [REDACTED] indicating that the couple attended functions together. Upon review of the totality of the evidence in the record, however, the record is insufficient to establish that the petitioner's intent in entering into the marriage was in good faith. The record is deficient in establishing the petitioner's intent to establish a life together with E-J-. An intent to obtain something other than or in addition to love and companionship from that life does not make a marriage a sham. Rather, the sham arises from the intent not 'to establish a life together.'" *U.S. v. Orellana-Blanco*, 294 F.3d 1143, 1151 (9<sup>th</sup> Cir. 2002). In this matter, considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner entered into marriage with E-J- to establish a life together. Although the couple received mail at the same addresses and reported to the IRS that they were married, this information does not assist in establishing the petitioner's intent. The petitioner's general statement and the brief comments made by [REDACTED] and the [REDACTED] do not include the necessary detail to establish that the petitioner entered into the marriage in good faith. The record is insufficient in establishing that the petitioner entered into the marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the director's decision, we find that the petition is also not approvable because the record fails to establish that the petitioner has established that she is a person of good moral character. The record does not include police clearances for the different versions of the petitioner's name. For this reason, the petitioner has failed to establish that she is a person of good moral character and the petition must 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, with each considered as a separate and independent alternative basis for the decision. As always, the burden of

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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.