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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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DATE: JUL 21 2011 Office: VERMONT SERVICE CENTER FILE:

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:

SELF-REPRESENTED

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, initially approved the immigrant visa petition; however, upon review of the record, the director issued a Notice of Intent to Revoke (NOIR) approval and ultimately revoked approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. Approval of the petition will remain revoked.

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 revoked approval of the petition after determining that the petitioner had not established that she had jointly resided with a United States citizen, that she had been subjected to battery or extreme cruelty perpetrated by the United States citizen spouse, or that she had entered into the marriage in good faith. On appeal, the petitioner submits a Form I-290B, Notice of Appeal to the Administrative Appeals Office, and additional documentation.

#### *Applicable Law and Regulations*

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.

### *Facts and Procedural History*

The petitioner is a native and citizen of Ecuador. The record includes a marriage certificate showing she married A-R-<sup>1</sup>, the claimed abusive United States citizen on February 10, 1997. On November 15, 2000, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On August 15, 2001, the director approved the Form I-360 petition and the petitioner was granted conditional status. On April 30, 2004, the petitioner filed a Form I-751, Petition to Remove Conditions on Residence, and upon further review of the record, the director issued a Notice of Intent to Revoke (NOIR) approval of the petitioner. The NOIR is dated May 26, 2005. The director listed numerous discrepancies within the petitioner's testimony and the testimony of others submitted on her behalf in support of the Form I-360. The director determined that the petitioner had not submitted sufficient, consistent probative information to establish that she had jointly resided with A-R-, that she had been subjected to battery or extreme cruelty perpetrated by A-R-, or that she had entered into the marriage in good faith. The petitioner provided a response to the NOIR which was received by United States Citizenship and Immigration Services (USCIS) on or about July 20, 2005. On August 24, 2005, the director issued a decision revoking approval of the petition, again listing numerous discrepancies and inconsistencies in the evidence submitted and determining that the petitioner had not provided evidence sufficient to overcome the determinations set out in the NOIR.

On appeal, the petitioner asserts that pain, suffering, mental, psychological and emotional scars left from the marital relationship have triggered mental blocks to this date. The petitioner provides an August 31, 2005 letter signed by [REDACTED] M.D. who indicated that he had examined the petitioner and that the petitioner acknowledged difficulty processing information since secondary school. [REDACTED] noted that the petitioner demonstrated signs compatible with reactive depression and post traumatic stress disorder that warranted further psychiatric counseling and psychotropic management. [REDACTED] also signed a Form N-648, Medical Certification for Disability Exceptions, dated August 31, 2005 wherein he also noted that the petitioner narrated a history of an abusive marital relationship that impacted her memory. [REDACTED] found that a mental assessment revealed that the petitioner suffered memory lapses

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

aggravated by reactive depression and post traumatic stress disorder. The record on appeal also included an undated letter signed by [REDACTED] licensed clinical social worker, who noted that the petitioner is concerned about the inconsistencies USCIS observed in the previous assessment and that she seeks to correct the information. [REDACTED] reported that the petitioner now states that A-R- was arrested in May 1997, was incarcerated until 1998, and when he was released came to the petitioner's home and sexually assaulted her, and left for his mother's home because she would not let him stay and then was arrested a week later and incarcerated until 2000.

### *Residence*

The petitioner in this matter indicated that she jointly resided with A-R- until his arrest in May 1997. She noted in her March 14, 2001 statement that she resided with him for three months prior to his incarceration. The initial record also included utility bills and a bank statement addressed only to the petitioner. The majority of these documents were for the time period A-R- was incarcerated according to the petitioner's testimony. The record also included some utility bills addressed solely to A-R- that were dated subsequent to his release from incarceration in 2000. However, the petitioner indicated in her statements that A-R- was not allowed access to her apartment after his incarceration and that she obtained a protection order dated February 2000. The photocopies of leases submitted listed only the petitioner and covered the time period A-R- was incarcerated. The director in the NOIR informed the petitioner that the documents submitted were insufficient to establish joint residency and that the affidavits provided on her behalf were general and included information contradicting her statements. In rebuttal, the petitioner indicated that she had lived with A-R- prior to their marriage on February 10, 1997, that they cohabited as a couple from July 1996 until A-R- was removed from the home in May 1997 by the authorities. The petitioner did not provide other testimony or evidence that she had jointly resided with A-R- during the marriage.

The petitioner does not provide further evidence or probative testimony on appeal that establishes that she jointly resided with A-R-. The numerous inconsistencies listed by the director in the NOIR were not adequately addressed in either the rebuttal to the NOIR or on appeal. Moreover, 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, 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, including the documentation submitted on appeal, the record fails to establish that the petitioner jointly resided with the claimed abuser.

### *Battery and/or Extreme Cruelty*

The petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by A-R- during the marriage. The director listed numerous inconsistencies and discrepancies within the petitioner's testimony to USCIS, to her therapist, and to the New York Supreme Court in divorce proceedings terminating the petitioner's marriage to A-R-. The record does not include credible testimony from the petitioner clarifying her statements and each subsequent statement provided reveals further inconsistencies. We acknowledge [REDACTED] brief letter and Form I-751 submitted on appeal and note his finding that the petitioner narrated a history of

an abusive marital relationship that impacted her memory and his mental assessment of the petitioner that revealed she suffered memory lapses aggravated by reactive depression and post traumatic stress disorder. [REDACTED] however, does not provide sufficient information or evidence that demonstrates that the petitioner's reactive depression and post traumatic stress disorder were caused by specific incidents of battery or extreme cruelty perpetrated by A-R-. Moreover, [REDACTED] findings appear to be based upon a single interview with the petitioner and, as such, fail to reflect the insight and elaboration commensurate with an established relationship with a mental health professional. Further, [REDACTED] does not provide his educational and professional credentials and thus his expertise has not been established. Upon review of [REDACTED] brief assessment, the assessment has limited probative value. [REDACTED] in her undated letter on appeal, simply provides further information reported by the petitioner and does not provide an analysis of the petitioner's mental health condition or an explanation of the disparate information submitted by the petitioner regarding her interactions with A-R-. The record in this matter does not include sufficient credible, probative evidence to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by A-R-. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the petitioner's statements must provide some credible evidence that she has been subjected to battery or extreme cruelty perpetrated by her former spouse in order to meet her burden of proof. In this matter, she has failed to provide credible testimony. We concur in the director's assessment of the relevant evidence and do not find that the petitioner has provided a credible account of the claimed battery or extreme cruelty. Accordingly, the record does not establish that the petitioner was subjected to battery or extreme cruelty.

#### *Good Faith Entry Into Marriage*

The evidence submitted in this matter is insufficient to establish the petitioner's intent when entering into the marriage. Upon review of the petitioner's personal statements, she does not provide probative testimony regarding her courtship with A-R-, probative testimony regarding their interactions in the United States prior to their marriage, or probative testimony detailing her reasons for marrying A-R-. The statements submitted by the petitioner and individuals submitting statements on her behalf lack probative detail providing insight into the petitioner's intentions upon entering into the marriage; they provide no information regarding any shared experiences apart from the alleged abuse. The petitioner fails to provide a detailed account of the couple's courtship and marriage which would assist the AAO in evaluating her intentions upon entering the marriage. For example, she fails to describe, in any meaningful detail, the couple's first introductions; her first impressions of A-R-; their decision to date; their first date; their courtship; their decision to marry; their engagement; their wedding; or any of their shared experiences. Neither the petitioner nor the individuals who submitted statements on her behalf provides probative credible testimony regarding the petitioner's intent when 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). The petitioner's statement that she "met and fell in love with [A-R-]" is insufficient to establish her good faith intent in entering into the marriage. The record does not include probative, credible testimony that establishes the petitioner's actual intent when entering into the marriage. Upon review, the record in this matter

does not include sufficient probative evidence establishing that the petitioner entered into marriage with A-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Conclusion*

The decision of the director to revoke approval of the petition will be affirmed 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 approval of the petition remains revoked.