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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

B9

[redacted]

Date: JUL 28 2011 Office: VERMONT SERVICE CENTER File: [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:

[redacted]

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 Vermont Service Center director initially approved the immigrant visa petition. However, upon receipt of correspondence from the Chicago District Office, the director issued a notice of intent to revoke (NOIR), and ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The director approved the petition for immigrant classification under section 204(a)(1)(A)(iii) of 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 June 20, 2007. On October 9, 2008, the director issued a NOIR upon his finding that the evidence of record failed to establish that the petitioner resided with her former husband, entered into marriage with her former husband in good faith and she had been subjected to battery or extreme cruelty by her former husband. The petitioner, through counsel, filed a timely rebuttal to the NOIR. The director found the petitioner's response inadequate, and revoked approval of the petition on March 13, 2009. On appeal, counsel submits a short statement and additional evidence.

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Secretary of Homeland Security may, at any time, for what [she] deems to be good and sufficient cause, revoke the approval of any petition approved by [her] under section 1154 of this title." A director may revoke the approval of a petition on notice "when the necessity for the revocation comes to the attention of this Service." 8 C.F.R. § 205.2(a). As set forth below, the AAO finds that the visa petition was initially approved in error and affirms the director's revocation of that approval.

Relevant 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, 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). An alien who has divorced an abusive United States citizen may still self-petition under this provision of the Act if the alien demonstrates "a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse." Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc).

Section 204(a)(1)(J) of the Act further 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 explicated 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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> (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 or the self-petitioner's child, and must have taken place during the self-petitioner's marriage to the abuser.
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> * * *
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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 explicated 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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> * * *
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> (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.
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> * * *
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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.
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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.

Pertinent Facts and Procedural History

The petitioner is a citizen of India who entered the United States on January 3, 1993 as a nonimmigrant visitor. The petitioner married her third spouse, N-V-,[1] a U.S. citizen, on October 15, 1997 in Cook County, Illinois. U.S. Citizenship and Immigration Services (USCIS) denied the petition for alien relative (Form I-130) filed by N-V- on the petitioner's behalf with a determination that he failed to prove that the marriage was entered into in good faith. USCIS also denied the petitioner's corresponding application to adjust status (Form I-485). The petitioner was charged with remaining in the United States beyond her period of authorized stay and placed in removal proceedings. The petitioner and N-V- divorced on August 16, 2006.

The petitioner filed the instant Form I-360 on October 2, 2006, and the director approved the petition on June 20, 2007. The petitioner's removal proceedings were terminated on January 10, 2008 for the Chicago District Office to have jurisdiction over her adjustment of status application.[2] After the petitioner's adjustment interview on August 18, 2008, it was determined that the petitioner did not demonstrate eligibility for immigrant classification as an alien battered or subjected to extreme cruelty by a United States citizen. Upon receipt of correspondence from the Chicago District Office, the director issued a NOIR with a finding that the evidence of record failed to establish that the petitioner resided with her former husband, entered into marriage with her former husband in good faith and had been subjected to battery or extreme cruelty by her former husband. The petitioner, through counsel, filed a timely response to the NOIR. The director found the petitioner's response inadequate, and revoked approval of the petition on March 13, 2009. Counsel filed a timely appeal.

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[1] Name withheld to protect the individual's identity.

[2] The petitioner was served with another notice to appear in removal proceedings on October 8, 2010, charging her with remaining in the United States beyond her period of authorized stay and willfully misrepresenting a material fact to procure admission to the United States.

The issues before the AAO are whether the petitioner has established that she entered into marriage with N-V- in good faith, resided with N-V- and was subjected to battery and/or extreme cruelty by N-V-. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has not overcome the director's grounds for revoking approval of this petition and that additional grounds of ineligibility exist.

Entry into the Marriage in Good Faith

The relevant evidence submitted below and on appeal fails to demonstrate the petitioner's entry into her marriage in good faith. In her first letter, dated April 12, 2006, the petitioner stated, "I married [N-V-] on October 15, 1997 in good faith." She recalled, "I thought we would lead a happy family life with a good father figure for my children. But this was not the case." In response to the NOIR, the petitioner submitted a second letter, dated October 31, 2008, in which she stated that she married N-V- "in good faith" and she was "very happy with him" at the beginning of their relationship. The petitioner recalled, "[w]e lived an honest and simple life." On appeal, the petitioner submitted an additional statement, dated April 1, 2009, in which she declared, "I remain true to my word that I entered all marriages in my lifetime in good faith." She asserted, "[t]he fact of the matter is that I did marry [N-V-] on October 15, 1997. I did *not* do this for immigration benefits" (emphasis in original). The petitioner also submitted a supporting letter from her [redacted] daughter, [redacted], dated April 12, 2006, which stated, "[t]he marriage of my mother and step-father started out as a happy one." She recalled, "[y]ou could tell they loved each other just by looking at them." She noted, "I could not deny my mother's newfound happiness" and N-V- "was a funny guy who had a genuine love for kids." The petitioner and her daughter did not further describe how the petitioner met her former husband, their courtship, wedding, joint residence or any of their shared experiences, apart from the alleged abuse.

The director also accurately assessed the relevant documents submitted below. Those documents show that the petitioner and N-V- were jointly responsible for utility bills, had a joint credit card account, jointly held car insurance, signed amended income tax returns and signed a joint lease agreement. The director correctly determined that the dates of the documents suggest that the accounts were created following the petitioner's I-130 interview. The petitioner also submitted some photographs of herself and N-V-. The photographs, however, are all undated and the locations of the pictures are unspecified, rendering them of little probative value. The documents contain other deficiencies that render them alone not probative of the petitioner's good-faith marriage with N-V-. For example, although the petitioner and her spouse were married from October 15, 1997 until August 16, 2006, she submitted as supporting evidence copies of amended tax returns for 2002, 2003 and 2004 that were amended in 2005 to reflect her and N-V-'s status as "married filing jointly." The petitioner asserts on appeal that she did not initially file joint tax returns with N-V- because he "had an IRS tax debt under his name"; however, she does not explain her decision to amend the returns with his name in 2005. She also has not shown that these amended returns, or any other joint tax returns, were actually filed with the IRS.

The director reached other conclusions to find that the petitioner did not marry N-V- in good faith. The director noted that while the petitioner was married to her second husband, F-B-, she purchased

a home with her first husband, with whom she had two children, V-G-. The director further noted that while the petitioner was married to her third husband, N-V-, she had a child with her first husband, V-G-. The director determined that even during the petitioner's marriage to N-V-, she continued to maintain an intimate relationship with V-G-. The director further stated that the petitioner's intention in marrying her second husband, F-B-, was under scrutiny because they separated after two months and public records do not show that they shared accounts or leases.

The petitioner asserts on appeal that she never resided with V-G- after their divorce, but she helped V-G- with his mortgage to "help[. . .] [her] children's father who was trying to make a better life for his children." She further asserts, "[h]aving a child with [V-G-] was an emotional mistake, which [N-V-] is aware of and for which he forgave me." Counsel also asserts on appeal, "[t]he existence of prior acquired marital property, the fact that the parties continued to have social contact in order to raise their mutual children is a reasonable and fair situation which and of itself is not supportive of the 'marriage fraud' conclusion. . . ." Counsel contends, "the birth of a child with her first husband while suffering through an abusive relationship with [N-V-], is certainly understandable and easily explained away." In regard to the petitioner's relationship with F-B-, counsel asserts, "[a]t no time did [the petitioner] seek any relief whatsoever before the Service based upon her marriage to [F-B-]." Counsel further notes, "the shortness of a marriage alone is hardly justification for a showing of marriage fraud."

The AAO agrees that the petitioner's marriage to F-B- is not at issue in these proceedings as there is no evidence that he filed an immigrant petition on her behalf. Regardless of the petitioner's extramarital affair with V-G-, she has not established by a preponderance of the evidence her good faith at the time of marriage to N-V-. Although she submitted some joint documents, she has not offered any testimony regarding how she met N-V-, their courtship, wedding ceremony, shared residence and her experiences with N-V-. Nor has she submitted affidavits of persons with personal knowledge of her marital relationship with N-V-. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with N-V- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record also fails to demonstrate that the petitioner resided with N-V-. On the Form I-360, the petitioner stated that she lived with N-V- from January 1997 until January 2006 and that their last joint residence was in Skokie, Illinois. The Form I-360 requests self-petitioners to specify the address of their last residence with their abusive spouse or former spouse. In the instant case, the petitioner failed to provide on the Form I-360 the address of her last residence with N-V-.

The petitioner submitted a letter from [redacted], which the petitioner cites on appeal as evidence of her joint residence. [redacted] stated that he is the executor of the [redacted] who owned an apartment building at [redacted], and the petitioner and N-V- resided in the apartment building from November 1998 until June 2003. Although [redacted] indicated that the petitioner and N-V- resided at an apartment in the building, he is the executor of the estate and he does not indicate that he has any personal knowledge of the petitioner's residence with N-V. The petitioner also submitted a joint lease and joint bills

addressed to , Illinois and Illinois. The petitioner's copies of amended joint tax returns for 2002 and 2004 reflect Illinois as an additional residential address. The address, however, is in conflict with the letter from , which stated that she resided with N-V- at from November 1998 to June 2003.

In the NOIR, the director stated that electronic public records reflect that the petitioner resided with V-G- during her marriage to N-V-. In response to the NOIR, the petitioner explained, "[V-G-] helped my children to have internet service to do their homework. The landline was also under his name, as he is the father of my children, and it is the least he can do [to] help with expenses." On appeal, the petitioner submitted V-G-'s social security statements, telephone bills and immigration documents to reflect that she did not reside with V-G- during her purported residence with N-V-. Even if the petitioner did not reside with V-G- during her marriage to N-V-, she must still prove joint residence with N-V-. The petitioner submitted in response to the NOIR a copy of a 2001 voter registration letter addressed to N-V- at the residence, but the mailing envelope for this letter has a "not deliverable/return to sender" stamp imprinted on it. The petitioner also submitted a copy of a social security statement addressed to N-V- at the residence, but it is dated April 26, 2006, which is outside the period of joint residence the petitioner claims on her Form I-360. In her letters, the petitioner does not specify the dates or addresses of her residence with N-V- and she does not describe their home(s) or shared residential routines in any detail. Also, the submitted photographs are not identified as having been taken at any specific residence that the petitioner shared with N-V-. Accordingly, the record does not establish that the petitioner resided with N-V-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

We find no error in the director's determination that N-V- did not subject the petitioner to battery or extreme cruelty. In her initial letter, the petitioner stated that N-V- became an alcoholic and "was demanding money everyday." She stated that he hit, pushed and kicked her and that he threatened to kill her if she called the police. The petitioner also asserted that N-V- hit and slapped her middle daughter, She noted that N-V'-s abusive treatment resulted in her daughter's hospitalization for depression and a suicide attempt. In the letter the petitioner submitted in response to the NOIR, the petitioner further asserted that N-V- used "very demeaning and hurtful words." She stated that on one occasion N-V- pushed her down the stairs, on another occasion he hit her on her back when she was pregnant, and he once pushed her against a stove while she was cooking, causing a burn on her arm. The petitioner explained that N-V- neglected, verbally abused and hit her daughter . She claimed that because of N-V'-s neglect, her daughter "was out on the street with her friends with no one to watch her or tell her what to do," and was then sexually assaulted by another individual. She stated that her daughter began drinking because of N-V-'s behavior. She claimed that she is suffering from severe clinical depression as a result of the alleged abuse. The petitioner reiterated these claims in her letter filed on appeal.

The petitioner's eldest daughter, stated in her letter that N-V- was an alcoholic who pushed and kicked her mother. She stated that N-V- would slap and beat her younger sister, resulting in

depression. She noted that she remembers "being beaten a couple of times but not as much as [her] sister."

The instances of alleged abuse described in these letters occurred, according to the petitioner and her daughter, at the home they shared with N-V-. The petitioner, however, has not established that she resided with N-V-. Her failure to satisfy this requirement diminishes the credibility of the allegations of battery she claims she and her daughter suffered during her marriage to N-V-.

The petitioner submitted a letter from her friend and former coworker, stated "there were hints that [the petitioner's problems] had to do with her husband, [N-V-]." He recalled that he noticed she had injuries, but the petitioner "never went into any detail as to how she got these [sic] injuries." He concluded, "[w]e never went into any detail in discussing her husband since most of her conversations about her family centered around her daughters and her family in India." statement is of little weight as it does not describe any particular incident of abuse that he had knowledge of or witnessed.

The petitioner submitted a letter from a licensed clinical professional counselor, dated September 7, 2006. stated that the petitioner "is not living with her husband due to physical and verbal abuse." further stated that the petitioner's "second husband also abused the two girls, and was hospitalized two times for depression and suicide attempts." concluded that "it would benefit [the petitioner] to have her petition approved." The petitioner also submitted a letter from M.D., dated May 25, 2006. stated that the petitioner "presented to [her] office seeking help for depression and anxiety." noted that the petitioner "believes that her symptoms are the direct consequence of the abuse she received from her second husband." She diagnosed the petitioner with adjustment disorder with depressed mood. In the NOID, the director noted that these letters refer to abuse by the petitioner's second husband, F-B-, and not the petitioner's third husband, N-V-. In response to this finding, the petitioner submitted a letter from licensed professional counselor, stated, the petitioner "is the expert in the details of her own life. . . . it is possible that the doctor misheard or misunderstood to which husband patient was referring." The AAO will accept the petitioner's claims that she was referring to her third husband, N-V-, and not her second husband, F-B. However, the letters from lack detail on the abuse the petitioner alleges she suffered. reports on the alleged abuse consist of a few sentences and fail to provide probative information to support the petitioner's claims.

The director correctly determined in the NOID that the hospital records submitted by the petitioner reflect that the petitioner's daughter, is suffering from significant medical conditions, but that the sexual abuse and subsequent depression do not appear to be the result of N-V-'s behaviors. The medical records from Children's Memorial Hospital reflect that was admitted to the hospital for alcohol intoxication. At the hospital she had a consultation with a psychologist who diagnosed her with major depressive disorder and post traumatic stress disorder. The psychological evaluation states that was raped by an unknown assailant when she was 12 years old at a park near her home. The evaluation notes that resides with her mother and sister in Illinos, and has been followed by a psychiatrist and counselor "to address concerns about frequent family moves." The petitioner asserts on appeal that she requested the medical documentation to show that her

daughter "became mentally and emotionally unstable, and this was the direct result of a child abused and neglected by her step-father." The psychological evaluation, however, makes no mention of N-V- as residing with or as a figure in family life. Nor does the psychological evaluation state that N-V- committed any actual or threatened violence, psychological or sexual abuse, or other behavior that constituted battery or extreme cruelty against .

Upon a full review of the evidence, we find that the relevant evidence does not establish that N-V- subjected the petitioner or any of her children to battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The submitted psychological evaluation and statements from fail to provide probative accounts of any particular incidents of battery or extreme cruelty by N-V-. While the petitioner and her daughter have described incidents of battery at the petitioner's home, the credibility of these allegations is diminished by the petitioner's failure to establish that N-V- resided with them. Accordingly, the petitioner has not established that N-V- subjected her or her child to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

Beyond the director's decision, the petitioner has also failed to demonstrate a qualifying relationship with N-V- and her corresponding eligibility for immediate relative classification.[3] The record shows that the petitioner and N-V- were divorced on August 16, 2006 before this petition was filed on October 2, 2006. As the petitioner has failed to establish the requisite battery or extreme cruelty, she has also failed to demonstrate any connection between her divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that she had a qualifying relationship with a U.S. citizen and was eligible for immediate relative classification based on such a relationship, as required by subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) and (II)(cc) of the Act.

Conclusion

On appeal, the petitioner has failed to overcome the director's determinations that she did not establish the requisite entry into the marriage in good faith, residence with her husband, and battery or extreme cruelty. Beyond the director's decision, the petitioner has also not established a qualifying relationship with her former husband and her corresponding eligibility for immediate relative classification based on such a relationship. She is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

In these proceedings, the petitioner bears the burden of proof to establish her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N

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[3] 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).

Dec. 369, 375 (AAO 2010). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the reasons stated above.

ORDER: The appeal is dismissed.