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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**

[REDACTED]

B9

Date: **JUN 07 2012** Office: VERMONT SERVICE CENTER

[REDACTED]

IN RE: [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:

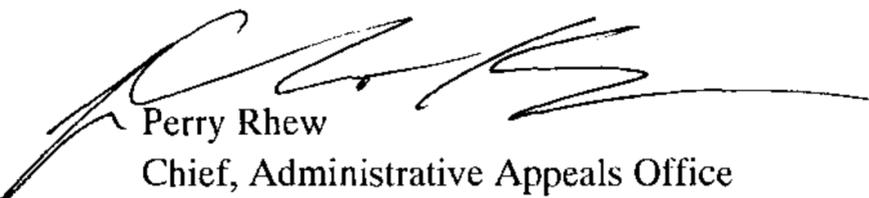
[REDACTED]

**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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. Do not file any motion directly with the AAO. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 (Form I-360) and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 U.S. citizen spouse.

The director denied the petition because the petitioner failed to establish that her spouse subjected her to battery or extreme cruelty during their marriage or that she had entered into marriage with her spouse in good faith.

On appeal, counsel submits a statement and two affidavits.

#### *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).

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:

(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 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.

\* \* \*

(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.

*Pertinent Facts and Procedural History*

The petitioner is a native and citizen of Ghana who entered the United States on January 27, 2000 as a nonimmigrant visitor. The petitioner married a U.S. citizen on September 16, 2002 in Nashua, New Hampshire. The petitioner filed the instant Form I-360 on June 10, 2008. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good faith in marrying her spouse and her spouse's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's eligibility. The director denied the petition and the petitioner timely appealed.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). A full review of the record, including the evidence submitted on appeal, fails to establish the petitioner's eligibility. The petitioner's claims on appeal do not overcome the director's ground for denial and the appeal will be dismissed for the following reasons.

*Entry into the Marriage in Good Faith*

The relevant evidence submitted below and the affidavits submitted on appeal fail to demonstrate the petitioner's entry into her marriage in good faith. The director properly reviewed and addressed the deficiencies of the relevant evidence of record below, including the prior affidavits of the petitioner and her friends.

On appeal, the petitioner asserts that she is including a detailed affidavit from her sister showing her relationship with her spouse and that the director erred in failing to consider documentation of the bona fides of her marriage which were submitted with the Petition for Alien Relative (Form I-130) filed by her spouse on her behalf and Petition to Remove Conditions on Residence (Form I-751) jointly filed by the petitioner and her spouse.

On appeal, the petitioner submits two affidavits, one from her sister and one from a friend, in which they stated that they knew the petitioner and her husband. The petitioner's friend added that she visited the petitioner and her husband several times at two different addresses. The petitioner's sister added that the petitioner had a good relationship with her husband from the time they dated until they were separated; that her sister loved her husband; and that he made her sister feel special.

In support of the Form I-130 and Form I-751, the petitioner and her spouse submitted a joint lease dated September 28, 2002; a joint lease dated August 6, 2004, a joint security deposit and rent invoice dated August 6, 2004; joint rental increase notifications dated February 28, 2005 and February 28, 2006; a Primera Life Insurance Application dated October 4, 2006 designating the petitioner's spouse as beneficiary of her life insurance; a joint Music City Invoice dated August 15, 2004; an individual past due account notice dated August 21, 2006 belonging to the petitioner's spouse; a joint Verizon bill dated March 26, 2006; an individual Charter phone bill dated March 19, 2006, belonging to the petitioner's spouse; and a copy of a joint federal income tax return from 2005. The signatures on the Form I-751 and the lease documents which purport to be the petitioner's spouse's signature do not appear to match the signature of the petitioner's spouse on the Form I-130.

The life insurance document is a copy of an application for life insurance and does not reflect that any such life insurance was issued. Additionally, the life insurance application and the past due account notice are dated after April 2006, the date on which the petitioner claimed on the Form I-360 that she and her spouse separated. Finally the tax return is not signed by either the petitioner or her spouse and there is no evidence that it was ever submitted to the Internal Revenue Service (IRS).

A full review of the relevant evidence submitted below and on appeal fails to reveal any error in the director's determination. The relevant documents show that the petitioner and her spouse were photographed together on unspecified occasions and that they were issued some joint accounts. In her affidavit, the petitioner fails to provide a detailed, probative account of her and her husband's courtship, marriage, joint residence or any of their other shared experiences. The affidavits from friends and family are almost identical in nature and also fail to discuss in probative detail their observations of the petitioner's interactions with or feelings for her spouse during their courtship or marriage or otherwise demonstrate their personal knowledge of the relationship. Accordingly, the petitioner has failed to demonstrate that she entered into marriage with her spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

#### *Battery or Extreme Cruelty*

The relevant evidence submitted below and the additional affidavits submitted on appeal fail to demonstrate that the petitioner's spouse subjected her to battery or extreme cruelty during their marriage. The director properly reviewed and addressed the deficiencies and inconsistencies of the relevant evidence of record below, including the affidavits of the petitioner, her friends and her family. The director found that the petitioner was unable to explain inconsistencies between an affidavit from [REDACTED] and her own affidavit regarding events that occurred during a cookout. The director also found that [REDACTED]'s affidavit regarding incidents of abuse contradicts an earlier statement in which she stated that she had known the petitioner and her husband to be a perfect couple since they were married.

On appeal, the petitioner asserts that the statements made by herself and by [REDACTED] were all correct, except that she forgot to include that certain actions did not occur at the same time. The petitioner states that first there was the throwing of things when [REDACTED] walked into the room, then there was the breaking of the television, then there was hitting and lastly there was the hitting of her head against the wall. The petitioner's explanation further contradicts her prior claims that [REDACTED] walked in and prevented her spouse from hitting her by calming him down and also contradicts [REDACTED] statement that the petitioner's spouse was hitting her when she walked in on them the first time and was hitting her head against a wall on the second occasion in which she walked in on them during the same day. The applicant's explanations also fail to account for the contradictions between [REDACTED] first affidavit submitted with the former couple's jointly filed Form I-751 in which she stated that the petitioner and her spouse were the perfect couple and her second affidavit in which she stated that she witnessed abuse against the petitioner.

On appeal, the petitioner submits affidavits in which the petitioner's friend and sister described an incident which occurred during a party at the friend's house in June or July of 2006, which contradicts the Form I-360 which on which the petitioner stated that she and her spouse separated in April 2006. Both affidavits lack probative details of the incident.

The petitioner's sister further added that she personally witnessed an incident in July 2003 in which the petitioner's spouse held the petitioner's blouse and punched her in the face a few times, after which the petitioner's sister threatened to call the police. The petitioner's sister's statements contradict her earlier affidavit in which she stated that the first time she heard about the petitioner's spouse abusing her was in the beginning of 2004.

When viewed in the aggregate, the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner's spouse battered her or subjected her to extreme cruelty during their marriage. In her affidavits, the petitioner's descriptions of incidents of abuse lack probative detail, are inconsistent with witness affidavits and are internally inconsistent, as discussed above. None of the affidavits by the petitioner's friends and family provide sufficient probative information regarding the alleged incidents of abuse and they are also inconsistent with other witnesses' affidavits or their own prior statements as discussed above.

The relevant evidence in this case fails to demonstrate that, during their marriage, the petitioner's spouse subjected her to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### *Conclusion*

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 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.