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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

Date: **JUN 25 2012** Office: VERMONT SERVICE CENTER File: [REDACTED]

IN RE: Self-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)

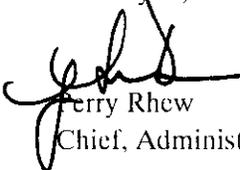
ON BEHALF OF PETITIONER:

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 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 in accordance with the instructions on 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,

  
Jerry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, (“the director”) denied the immigrant visa petition 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 for failure to establish that the petitioner entered into marriage with her husband in good faith. The petitioner has failed to overcome this ground for denial on appeal. In addition, beyond the director’s decision, the petitioner has not demonstrated that she resided with her husband and that he subjected her or any of her children to battery or extreme cruelty during the marriage.<sup>1</sup>

### *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:

(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,

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<sup>1</sup> 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).

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.

\* \* \*

(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:

(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.

### *Pertinent Facts and Procedural History*

The petitioner is a citizen of Ghana who entered the United States on October 12, 2002, as a nonimmigrant visitor. The petitioner married a U.S. citizen on May 30, 2008 in Ohio. After the Columbus, Ohio Field Office denied the petition for alien relative (Form I-130), filed by the petitioner's husband on her behalf and 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.<sup>2</sup>

The petitioner filed the instant Form I-360 on November 18, 2010. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good-faith entry into the marriage, residence with her husband and her husband's battery or extreme cruelty. The petitioner, through counsel, timely responded with additional evidence which the director found insufficient to establish the petitioner's good-faith entry into the marriage. The director denied the petition on that ground and counsel timely appealed. On appeal, counsel submits a brief, additional evidence and copies of documents submitted below. 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 and the appeal will be dismissed for the following reasons.

### *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 affidavit, dated October 25, 2010, the petitioner stated that she met her husband in 2007 at a restaurant and that they exchanged telephone numbers and began seeing each other. After five months of dating, the petitioner accepted her husband's proposal because she "felt it was time to settle down" and he was "great with [her] children." The petitioner stated that the couple was wed at a chapel in Columbus with family and friends, but she did not further identify the location of the ceremony or the individuals who witnessed the marriage. In 2009, the petitioner stated that she became pregnant, but her husband abandoned her before their daughter was born. The petitioner submitted the birth certificate for her daughter who was born on October 20, 2009. The certificate identifies the petitioner as the child's mother and gives the child the petitioner's husband's surname, but no individual is identified as the child's father on the birth certificate.

In her October 15, 2011 affidavit submitted in response to the RFE, the petitioner did not further describe how she met her husband, their courtship, engagement, wedding, joint residence or any of their

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<sup>2</sup> The petitioner remains in removal proceedings before the Cleveland Immigration Court and her next hearing is scheduled for July 2, 2012. On January 8, 2010, the Board of Immigration Appeals dismissed the petitioner's husband's appeal of the denial of the first Form I-130. The petitioner's husband filed a second Form I-130 on the petitioner's behalf, which the Columbus Field Office denied on March 30, 2010.

shared experiences, apart from the alleged abuse. The petitioner explained that she did not have her husband listed as their daughter's father on the child's birth certificate because she was upset that he was not a part of the baby's birth. The petitioner also stated that her name was not on any of their household accounts because she did not have a social security number, was unable to contribute to the family's finances and her husband "took care of all the bills."

The petitioner submitted letters from her friends, [REDACTED] [REDACTED] [REDACTED] and [REDACTED] all of whom briefly state that the petitioner and her husband lived happily together until they encountered financial hardship due to her husband's behavior. None of the petitioner's friends provide any probative information about the petitioner's entry into the marriage or otherwise establish that they have personal knowledge of the relationship.

The record contains a copy of the petitioner's husband's residential lease to which she was added as an occupant and a copy of a voided check in the petitioner's name as trustee for her husband. The petitioner also submitted copies of photographs of her, her husband and children taken on three or four unidentified dates. The director correctly concluded that the evidence submitted below was insufficient to establish the petitioner's good faith in entering the marriage.

On appeal, the petitioner submits copies of three bank statements for the account in her name as trustee for her husband. The statements do not support her claim, however, because they are dated from September to November 2011, two years after the petitioner stated that her husband had abandoned her. The fact that the petitioner held a bank account as trustee for her husband also contradicts her claim that she was not a party to any of the couple's financial accounts.

On appeal, counsel asserts that the director should have issued a Notice of Intent to Deny (NOID) and given the petitioner an opportunity to review and respond to derogatory information before the petition was denied. Counsel is mistaken. The regulations do not require the issuance of a NOID prior to the denial of the petition. 8 C.F.R. § 103.2(b)(8). The regulation cited by counsel, 8 C.F.R. § 103.2(b)(16)(i)-(ii), only pertains to derogatory information unknown to the petitioner. The record contains no evidence that the director relied on such information in reaching his determination. To the contrary, the director's decision references only evidence that was submitted by the petitioner herself.

On appeal, counsel further asserts that although the petitioner's husband is not identified on her daughter's birth certificate, "It is an unequivocal fact that because he is her husband, by default and law, he is deemed the father." Counsel fails to cite any law to support his claim. Counsel also explains why the petitioner does not have additional joint documentation with her husband and counsel correctly notes that lack of documentary evidence alone is not sufficient to conclude that a marriage was not entered into in good faith. Counsel does not, however, address the paucity of relevant information in the petitioner's affidavits and the letters of her friends. When viewed in the aggregate, the relevant evidence submitted below and on appeal fails to demonstrate that the petitioner entered into marriage with her husband in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Joint Residence*

Beyond the decision of the director, the record also fails to demonstrate that the petitioner resided with her husband as the relevant evidence contains insufficient and discrepant information regarding the location and dates that the petitioner allegedly lived with her husband. On the Form I-360, the petitioner stated that she lived with her husband from June 2008 to January 20, 2009. However, in her first affidavit, the petitioner stated that her husband abandoned her before their daughter was born on October 20, 2009, after which the petitioner never saw him again. In her second affidavit, the petitioner stated that her husband "came periodically" after the baby was born, "but left finally around December 2009."

In addition to her inconsistent statements regarding the duration of her residence with her husband, the petitioner also presented inconsistent evidence of their joint address. On the Form I-360, the petitioner listed their last joint address as a residence on [REDACTED]. The petitioner's husband's residential lease for this address is for the term of June 27, 2008 to July 31, 2009 and the petitioner's name is handwritten onto the lease as an additional occupant. The [REDACTED] residence is not, however, the address for the petitioner listed on the bank account she held as trustee for her husband. On appeal, counsel asserts that the petitioner used a post office box for the account because her husband kept overdrawing the funds, but the petitioner herself does not explain this situation in her affidavits. The unsupported assertions of counsel on appeal are not evidence and are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In addition to not specifying the dates or addresses of her residence with her husband, the petitioner also did not describe their home(s) or shared residential routines in any detail, apart from the alleged abuse. Although the petitioner's friend, [REDACTED], stated that the petitioner and her husband stayed with him for "some months" after they were evicted from their apartment, the petitioner does not discuss this residential period in either of her affidavits. [REDACTED] and the petitioner's other friends do not provide any probative information regarding the former couple's shared residence(s) and the photographs are not identified as having been taken at any specific home that the petitioner shared with her husband. Accordingly, the record does not establish that the petitioner resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

Beyond the decision of the director, the record also fails to establish that the petitioner's husband subjected her or any of her children to battery or extreme cruelty during their marriage. In her first affidavit, the petitioner stated that her husband would verbally abuse her when he was intoxicated and on one occasion threw food on the wall, smashed dishes and grabbed her. The petitioner briefly stated that her husband would threaten that if she did not do certain sexual things, he would not process her immigration papers, but the petitioner did not describe any particular incident in detail or provide other probative information regarding the threats. On another unspecified occasion, the petitioner recounted that her husband was hospitalized because of the interaction of his anti-anxiety medication and his alcohol consumption, but the petitioner did not indicate that this incident involved any abuse. Her

husband's hospital discharge instructions also contain no reference to any abusive actions and the documents are dated January 20, 2010, which is after the petitioner stated that her husband abandoned her and she never saw him again.

In her second affidavit, the petitioner recounted incidents of her husband yelling at her when he was intoxicated and on one occasion charging at her and banging on the door she shut against him. The petitioner stated that her husband threatened to "call immigration" if she did not do certain unspecified things or if she complained about his drinking, but again, she did not describe any particular incident in detail. The petitioner also asserted that their relationship was unbalanced because her husband was the sole provider and maintained control of the finances, however, the evidence of the bank account that the petitioner held in trust for her husband contradicts her claim of his complete financial control.

The petitioner's friends all briefly attribute the former couple's marital problems to the petitioner's husband's excessive drinking and financial difficulties, but none of the petitioner's friends recounts any particular incident of battery or extreme cruelty that they witnessed or otherwise describe their knowledge of such abuse in probative detail. In an undated, one-sentence letter, the petitioner's pastor, [REDACTED] affirmed that she began counseling the petitioner in September 2010, but she did not state the reasons why the petitioner sought counseling or provide any other relevant information.

The petitioner submitted a psychological evaluation by [REDACTED] a licensed professional clinical counselor, who diagnosed the petitioner with major depression and post-traumatic syndrome. While we do not question [REDACTED] professional expertise, her description of the abuse differs from the petitioner's own accounts. [REDACTED] stated that the petitioner reported that her husband: repeatedly threatened her with physical violence including one occasion where he grabbed her so hard she could not breathe; isolated her by monitoring her telephone calls and not allowing her to be with friends; and that he was very possessive and jealous. The petitioner did not discuss any of these behaviors in her own affidavits. The significant difference between the descriptions of the alleged abuse in the petitioner's own statements and in [REDACTED] report detracts from the credibility of the petitioner's claims.

Upon de novo review, the relevant evidence fails to demonstrate that the petitioner's husband subjected her or any of her children to battery or extreme cruelty during their marriage. The petitioner's brief statements do not provide sufficient probative information to demonstrate that her husband's behavior constituted battery or extreme cruelty, as that term is defined at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's friends attest to her husband's drinking and financial problems, but they do not discuss any incidents of battery or extreme cruelty. The petitioner's pastor confirms that she counseled the petitioner after the former couple separated, but she also does not discuss any abuse. Although [REDACTED] attributes the petitioner's mental health conditions to her husband's abuse, her description of such abuse differs too significantly from the petitioner's own accounts to support the petitioner's claims. Accordingly, the record fails to demonstrate the battery or extreme cruelty required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Conclusion*

On appeal, the petitioner has failed to overcome the director's determination that she did not enter into the marriage in good faith. Beyond the director's decision, the petitioner has also not established that she resided with her husband and that he subjected her or any of her children to battery or extreme cruelty during their marriage. 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 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, with each considered an independent and alternative basis for denial.

**ORDER:** The appeal is dismissed.