

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

U.S. Department of Homeland Security  
20 Mass Ave., N.W., Rm. 3000  
Washington, DC 20529



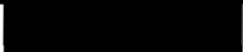
U.S. Citizenship  
and Immigration  
Services

B9

PUBLIC COPY



FILE:



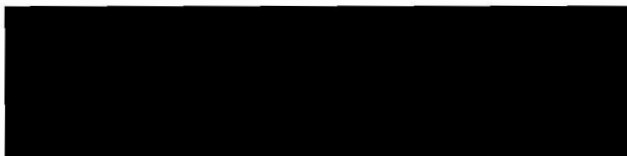
Office: VERMONT SERVICE CENTER

Date: **SEP 14 2006**

EAC 05 178 52664

IN RE:

Petitioner:



PETITION: Petition for Special Immigrant Battered 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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner seeks classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a citizen of the United States. The director denied the petition on January 4, 2006, finding that the petitioner failed to establish that she was battered by or subjected to extreme cruelty by her spouse, that she is a person of good moral character, and that she entered into her marriage in good faith. The petitioner, through counsel, filed a timely appeal on February 3, 2006.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

- (aa) the marriage or the intent to marry the citizen was entered into in good faith by the alien; and
- (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided . . . with the citizen or lawful permanent resident spouse;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
- (F) Is a person of good moral character; [and]

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(2) states, in pertinent part:

(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 abused 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) *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 United States 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 . . . 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 or lawful permanent resident 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. . . .

(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 record reflects that petitioner married [REDACTED] a United States citizen, on April 19, 2003 in Los Angeles, California. The petitioner filed the instant Form I-360 self-petition on June 6, 2005, claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, her citizen spouse during their marriage.<sup>1</sup>

---

<sup>1</sup> The record also contains an approved Form I-130, Petition for Alien Relative (WAC 95 130 51850), filed on the petitioner's behalf by her mother. The petition was filed on July 24, 1995 and approved on August 26, 1995.

With her initial submission, the petitioner submitted a personal statement, copies of her marriage certificate, driver's license, employment authorization card, social security card, and birth certificate with translation, her spouse's birth certificate, and a letter from the petitioner's employer. As evidence to support her claim of abuse, the petitioner submits what appears to be torn photos and documents and cards from the petitioner's spouse.

After conducting a preliminary review of this evidence, the director found that the petitioner had failed to establish her prima facie eligibility.<sup>2</sup> Accordingly, on June 14, 2005, the director requested the petitioner to submit further evidence to establish that she is a person of good moral character and that she married her spouse in good faith.

The petitioner responded to the director's request on August 1, 2005 by submitting a letter from the Huntington Park, California police department, three letters from the petitioner's acquaintances attesting to the petitioner's good moral character, and copies of photographs of the petitioner on her wedding day.

On August 22, 2005, the director requested further evidence to establish the petitioner's eligibility. Specifically, the director requested further evidence regarding the petitioner's residence with her spouse, that she married her spouse in good faith, that she was battered by or subjected to extreme cruelty by her spouse, and that she is a person of good moral character

The petitioner responded to the director's request on October 7, 2005 by submitting a letter purportedly written to the petitioner's "boyfriend," an invitation from the petitioner's wedding, a lease agreement and receipts, a Home Depot credit card bill, a bank statement, the petitioner's spouse's pay stubs and tax documents, six affidavits, and two letters from Kaiser Permanente. The petitioner also resubmitted the letter from the Huntington Park police department, her personal statement, her marriage certificate and wedding photos.

On January 4, 2006, after reviewing the evidence contained in the record, including the evidence submitted in response to the director's requests, the director denied the petition without the issuance of a notice of intent to deny (NOID) in accordance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii),<sup>3</sup> finding that the petitioner had failed to establish that she was battered by or subjected to extreme cruelty by her spouse, that she is a person of good moral character, and that she entered into her marriage in good faith.

---

<sup>2</sup> The determination of prima facie eligibility is made for the purposes of 8 U.S.C. § 1641, as amended by section 501 of Public Law 104-208. A finding of prima facie eligibility does not relieve the petitioner of the burden of providing additional evidence in support of the petition and does not establish eligibility for the underlying petition, is not considered evidence in support of the petition and is not construed to make a determination of the credibility or probative value of any evidence submitted along with that petition.

<sup>3</sup> The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

*Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

The petitioner, through counsel, submitted a timely appeal and appellate brief. On appeal, counsel argues that the director's decision "is an abuse of discretion and violates [the petitioner's] statutory and constitutional right to due process of the law." We are not persuaded by this argument. Counsel has failed to show that the director violated any provision of the statute or regulations, much less that such violation resulted in "substantial prejudice" to the petitioner. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). The petitioner has fallen far short of meeting this standard. A review of the record and the director's decision indicates that the director properly applied the statute and regulations to the petitioner's case. As will be discussed, we concur with the determination of the director and find that the petitioner's appellate submission does not overcome the director's findings.

*The petitioner's claim that she was battered by or subjected to extreme cruelty by her citizen spouse.*

In denying the petition, the director noted the petitioner's claim that her spouse used drugs and that her spouse gave her cards with "malicious sayings." However, the director then noted that the petitioner failed to mention the "significance of the cards," how the petitioner came into possession of the cards, and how they impacted the petitioner. As it relates to the statements provided by the petitioner's witnesses, the director stated that the statements were "brief and provide no insight into specific instances of abuse or a pattern of abuse." The director concluded by finding that the evidence submitted by the petitioner did not carry sufficient weight to establish that the petitioner had been battered by or subjected to extreme cruelty by her spouse.

On appeal, counsel argues that the petitioner's statement, combined with the statements of her witnesses and the "vulgar writings and cards" sent to her by her spouse, are sufficient to establish that the petitioner was "physically abused" and "suffered extreme cruelty at the hands of her husband." We do not agree.

In her statement, the petitioner claims that when her spouse starting using drugs, "his personality changed" and he started being "very abusive . . . from verbal, emotional, mental, financially and physical abuse abuse . . . ." The petitioner then describes one incident which occurred on March 6, 2005 in which her spouse was verbally and physically abusive. The petitioner alleges that the police were called and that her spouse was arrested and jailed for domestic violence. Despite these claims and the director's specific request for reports or statements from the police, judges, or court officials and photographs of the claimed injuries, the petitioner failed to submit any police report or court documents. Given the petitioner's claim that her spouse was arrested and jailed for domestic violence, we would expect the police to have a written report and documentation regarding the petitioner's injuries and for there to be court documents related to the petitioner's charge for domestic violence.

The statements from two of the petitioner's co-workers contain general statements regarding the petitioner's claim of abuse. For instance, although the affidavit from [REDACTED] indicates that she witnessed the "emotional, mental, physical abuse" by the petitioner's spouse, she provides no details regarding specific instances or descriptions of what she believed constituted the "emotional, mental [and] physical abuse." Further, although Ms. [REDACTED] says she saw evidence of visible bruising on "different occasions" she provides no further details about specific instances. It is noted that the petitioner's

statement only details one incident of the claimed physical abuse. The second affidavit from [REDACTED] indicates that she witnessed bruises on the petitioner's face, eye, arms, breast, stomach and thigh. However, while the affiant then claims that ever since the petitioner was married "she seems very depress [sic] and always crying," the affiant does not indicate that the petitioner was subjected to abuse by her spouse.

Regarding the "vulgar writings and cards," in his decision the director indicated that although "we can assume these cards are from your spouse and directed at you, your affidavit does not mention the significance of these cards, how you came into possession of them or how they impacted you." No further evidence regarding these cards has been submitted on appeal. Without a specific statement from the petitioner to explain the relevance of these cards to her claim of abuse and an explanation of the circumstances surrounding these cards, such as when she received them and their effect on the petitioner, the letters do not carry sufficient weight to establish that the petitioner has been battered by or subjected to extreme cruelty by her spouse.

In accordance with the above discussion, we concur with the finding of the director that the petitioner has failed to establish that she was battered by or subjected to extreme cruelty by her spouse.

*The petitioner's claim that she is a person of good moral character.*

As evidence to support her claim that she is a person of good moral character, the petitioner submitted a letter from the Huntington Park police department in California and affidavits from acquaintances who state that the petitioner is a person of good moral character. Although the record also contains a personal statement from the petitioner, the affidavit does not address the petitioner's good moral character.

In determining that the petitioner failed to establish that she is a person of good moral character the director indicated that the petitioner failed to "submit your own affidavit," that she failed to establish that "a police clearance from California is not available," and that the affidavits submitted by the petitioner's friends were not "sufficient to demonstrate your eligibility under this requirement."

On appeal, counsel states that there is "no question" that the petitioner submitted her own affidavit and that her local police department does not issue police clearances. Counsel then argues that in the absence of the police clearance, the director should have considered the affidavits from the petitioner's acquaintances as secondary evidence of the petitioner's good moral character. We are not persuaded by counsel's statements.

While we acknowledge that the record does contain a personal statement from the petitioner, the statement does not address the petitioner's good moral character in any way. The regulation at 8 C.F.R. § 204.2(c)(2)(i) indicates that primary evidence of the petitioner's good moral character is *an affidavit from the petitioner accompanied by a police clearance* from each place the petitioner has lived for at least six months during the 3-year period immediately preceding the filing of the self-petition. Although the regulation does not specifically indicate what information regarding the petitioner's good moral character must be contained in the affidavit, it is an inherent requirement that in order to establish that the petitioner is a person of good moral character, the affidavit must contain at least some information regarding the petitioner's character. The regulatory requirement regarding good moral character would be rendered meaningless if the petitioner's good moral character could be established based upon a statement that has no relation to the petitioner's good moral character. The statement contained in the record does not indicate whether the petitioner has ever committed a crime, whether she has ever been arrested, or had any other involvement with law enforcement or the legal system.

Counsel's argument regarding secondary evidence is similarly unpersuasive. The regulation at 8 C.F.R. § 103.2(b)(2) provides:

*Submitting secondary evidence and affidavits. (i) General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Although the letter from the Huntington Park police department indicates that it does not issue police clearance letters, it specifically indicates that police clearances may be obtained from the California Department of Justice, Bureau of Criminal Identification. While counsel also indicates that the petitioner requested a clearance from the California Department of Justice, the record does not contain any police clearance from the California Department of Justice or other result of the petitioner's request. Accordingly, the petitioner has failed to show that the required police clearance is not available or cannot be obtained.

Given that the petitioner has failed to demonstrate the unavailability of the required police clearance, the submission of affidavits from the petitioner's friends cannot overcome the unavailability of the police clearance. Moreover, even if the affidavits were accepted in place of the primary evidence of the petitioner's good moral character, we note that the statements are too general to make a finding that the petitioner is a person of good moral character. The affidavits, which contain identical language, state only that the petitioner is a person of good moral character. The affiants do not indicate whether the petitioner has ever been arrested or had any trouble with law enforcement, or provide characteristics or descriptions about the petitioner's character so as indicate the reason for which to determine that she is a person of good moral character.

Accordingly, we concur with the determination of the director that the petitioner has failed to establish that she is a person of good moral character.

*The petitioner's claim that she entered into her marriage in good faith.*

As evidence to support her claim that she entered into the marriage in good faith, the petitioner submitted copies of photographs, a love letter purportedly written by the petitioner to her spouse prior to their marriage, a wedding invitation, and the petitioner's marriage license. The petitioner also submitted copies of a lease and receipts and bills and tax documents. In his decision, the director determined that the record did not contain sufficient evidence to establish that the petitioner entered into her marriage in good faith, finding in part, that the bank statement and credit card bill were in the petitioner's name only and that the insurance information did not identify joint coverage.

On appeal, counsel states that the director “completely disregarded” and “ignored” the petitioner’s photographs at their wedding and “subsequent thereto,” and their rental statements showing they resided together. Counsel then argues that based upon “such an adverse finding the [director] has implied mal intent of the applicant in not being married in good faith.” We are not persuaded by counsel’s statements. First, contrary to counsel’s assertion, the director made no finding of marriage fraud; rather, the director found that petitioner had failed to meet her burden and to establish that the marriage was entered into in good faith. The fact that the petitioner failed to establish that she entered into her marriage in good faith marriage and to produce affirmative evidence of the bona fides of the marriage, by itself, is not sufficient to establish that the marriage was a sham marriage and was entered into in order to evade the immigration laws. *Compare* 8 C.F.R. § 204.2(a)(1)(iii)(B), and (D), *with* 8 C.F.R. § 204.2(a)(1)(ii).” Second, counsel’s assertion that the director “disregarded” and “ignored” the petitioner’s evidence, is without merit. The evidence that counsel claims was disregarded was specifically discussed by director. The fact that counsel disagrees with the weight accorded to the petitioner’s evidence and the director’s ultimate decision, does not establish that the petitioner’s evidence was ignored. As it relates to counsel’s argument regarding the evidence of the petitioner joint residence, we note the fact that the petitioner and her spouse resided together does not de facto establish that the petitioner entered into her marriage in good faith.<sup>4</sup>

Upon review of the evidence contained in the record, we concur with the finding of the director that such evidence is not sufficient to establish that the petitioner entered into her marriage in good faith. While the petitioner’s marriage certificate is evidence that a legal marriage took place, it is not considered evidence of the petitioner’s good faith intent at the time of her marriage. Similarly, although the photographs submitted by the petitioner are evidence that the petitioner and her spouse were together at a particular place and time, they provide no evidence regarding the petitioner’s intent at the time of her marriage. Despite a claimed relationship of at least two years, nearly all of the petitioner’s photographs consist of photographs taken on her wedding day. Although counsel references photographs taken “subsequent” to the petitioner’s marriage, the remaining three photographs are undated and uncaptioned. The record does not contain any photographs which document the period of time leading up to their marriage which would assist in establishing that the marriage was entered into in good faith.

The record also contains a Home Depot credit card statement and a bank statement. However, as both accounts are in the petitioner’s name only, they cannot be considered as evidence of the petitioner’s good faith marriage and her intent to establish a life with her spouse. The petitioner also submitted copies of her spouse’s tax documents and medical insurance letters written to the petitioner and her spouse. Again, however, as the tax documents do not show that the petitioner and her spouse filed as a married couple (either jointly or separately) and the insurance letters provide no indication of joint coverage, such evidence carries no weight in establishing a good faith marriage.

The remaining piece of evidence which consists of the petitioner’s statement also does not carry sufficient weight in establishing that she entered into the marriage in good faith. In her statement, although the petitioner indicates that in the first year of her relationship she fell in love with her spouse, she then states that in the second year when they got married “everything started to change.” On appeal, counsel asserts that the petitioner’s statement “specifically addresses the manner of how she and her husband met, their feelings toward each other at that time,

---

<sup>4</sup> It is noted that while the petitioner submitted a copy of her spouse’s pay stub as evidence of their joint residence, his pay stub indicates his marital status as “single.”



and the events that led to the couple's separation." While we do not dispute that the petitioner's statement does cover the details mentioned by counsel, such details do not address the petitioner's feelings *at the time of their marriage* (rather than when they first met) and her intent at that time. The one sentence afforded to the time leading up to the petitioner's marriage is not sufficient to establish that she intended to establish a life with her spouse in good faith.

Upon review, the record contains no documentation, such as financial, insurance or tax documents which show that the petitioner and her spouse shared assets and were attempting to establish a life together. The petitioner's statement provides no specific details upon which to find that she entered into the marriage in good faith. Further, despite the submission of numerous affidavits on behalf of the petitioner, not one of the affidavits contains any reference to the petitioner's good faith marriage.

In accordance with the above discussion, we concur with findings of the director that the record is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by her spouse, that she is a person of good moral character, and that she entered into her marriage in good faith. The petitioner has not overcome this finding on appeal. Despite our support of the director's findings, however, the director's decision cannot stand because of the director's failure to issue a notice of intent to deny to the petitioner prior the issuance of the denial. Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a notice of intent to deny as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

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.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.