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U. S. Citizenship and Immigration Services
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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 07 066 50337

Office: VERMONT SERVICE CENTER

Date: JUL 17 2009

IN RE:

Petitioner:

PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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.

John F. Grissom

Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks 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.

The director denied the petition because the petitioner did not establish that she had a qualifying relationship as the spouse of a United States citizen, that she is eligible for immigrant classification based upon that relationship, that she resided with her husband, married him in good faith, and that her husband subjected her to battery or extreme cruelty during their marriage.

On appeal, the petitioner submits a letter, additional evidence, and copies of documentation previously submitted.

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, 8 U.S.C. § 1154(a)(1)(J) 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, 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 filed 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.

(ii) *Relationship.* A self-petition file by a spouse must be accompanied by evidence of . . . the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner

(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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Pakistan who was admitted into the United States on October 3, 2003, as a K-1 nonimmigrant. Information on the petition indicates that on March 21, 2001, the petitioner married S-C-¹, a naturalized U.S. citizen, in Lahore, Pakistan.

The petitioner filed the instant Form I-360 on January 4, 2007, and concurrently filed a Form I-485, Application to Register Permanent Residence or Adjust Status. On July 16, 2007, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite qualifying relationship, joint residency, good-faith entry into the marriage, and battery or extreme cruelty. The petitioner, through former counsel, responded with additional evidence. On March 3, 2008, the director denied the instant I-360 petition because the petitioner did not establish that she had a qualifying relationship as the spouse of a United States citizen, that she was eligible for immigrant classification based upon that relationship, that she resided with her husband, married him in good faith, and that her husband subjected her to battery or extreme cruelty during their marriage. On May 28, 2008, the director denied the I-485 application, based on the denial of the instant I-360 petition. The petitioner timely appealed the denial of the instant I-360 petition.

On appeal, the petitioner explains or discounts certain factual inconsistencies and discrepancies cited by the director. The petitioner asserts that her marriage to S-C- was a valid marriage, that she resided with her husband, that he abused her, and that she entered into the marriage in good faith. The petitioner submits the following additional evidence: a personal statement; a video DVD of her marriage ceremony; copies of her wedding photos; affidavits from her sister-in-law, her brother, her parents, the priest who recited the marriage vows, and a representative of the Islamic Center in New York; and a copy of a letter from the petitioner's former counsel.

Qualifying Relationship and Eligibility for Immediate Relative Classification

On the Form I-360, the petitioner stated that she married S-C- in Lahore, Pakistan on March 21, 2001. As noted by the director, however, the petitioner was the beneficiary of a Form I-129F, Petition for Alien Fiancé(e), filed on June 27, 2002 and approved on October 19, 2002, which reflects her marital status as single, and the petitioner was admitted into the United States on October

¹ Name withheld to protect individual's identity.

3, 2003, as a K-1 nonimmigrant. As indicated by the director, the evidence in the record contains documents submitted in support of the I-129F petition listing the petitioner's marital status as single, including: the DS-156 and the DS-156K, U.S. Department of State (DOS) Nonimmigrant Visa Application, signed by the petitioner on March 20, 2003 and April 29, 2003, respectively; and the DS-230, U.S. DOS Application for Immigrant Visa and Alien Registration, signed by the petitioner on March 20, 2003. Also on the Form G-325A, Biographic Information, signed by the petitioner on January 9, 2002, the petitioner indicated that she was unmarried. In addition, in their undated affidavits submitted as supporting documents for the I-129F petition, both the father and the brother of S-C- stated that the petitioner and S-C- were engaged and that their engagement took place in Lahore, Pakistan on March 19, 2001. In addition, the "Police Character Certificate," dated April 10, 2003, for the petitioner from Lahore, Pakistan, lists the petitioner as "Miss" and "D/O" (Daughter of), not "Mrs." and "W/O" (Wife of), and the petitioner's Pakistani passport, issued on February 24, 2003, prefaces the petitioner's name with "Miss" and additionally lists her father's name, not the name of a husband. Also noted by the director, in the November 10, 2003 police report, S-C-'s father tells the police that the petitioner is engaged to his son. On appeal, the petitioner states that her father-in-law and her husband prepared all the documents for her passport and visa, and that her father-in-law most likely destroyed all the signed copies of her and S-C-'s marriage certificate. The record contains the following additional documents related to the issue of qualifying relationship:

- An affidavit from [REDACTED] dated January 13, 2004, affirming that he recited the "*Nikka* of the petitioner and [REDACTED] - on March 21, 2001, and that the father of S-C- had not returned the record after verification from the Union Council No. (116);
- A letter dated October 10, 2005, from [REDACTED], Imam of the Islamic Center of South Shore DBA: Masjid Hamza, in Valley Stream, New York, certifying that he saw the video of the petitioner's marriage and that the marriage was legal because "all the rituals carried out in the wedding ceremony are according to the Islamic law";
- An undated statement from [REDACTED], of Alexandria, Virginia, who stated that he viewed the petitioner's wedding video and that "the rituals performed during the wedding are the same as the rules 'goes' in Pakistan for the legitimate civil and [religious] marriage.";
- An undated statement from the petitioner's brother, [REDACTED] who states, in part, that the petitioner was married to S-C- on March 21, 2001, and that he attended the wedding;
- An affidavit, dated September 25, 2007, from the petitioner's sister-in-law, [REDACTED] stating, in part, that the petitioner and her husband were married in Lahore, Pakistan on March 21, 2001;
- An affidavit, dated September 25, 2007, from the petitioner's brother, [REDACTED], stating, in part, that the petitioner and her husband were married in Lahore, Pakistan on March 21, 2001, in a gathering of 300 people;

- A letter, dated June 23, 2004, addressed to S-C- from the petitioner's former counsel, stating, in part, that the petitioner informed counsel that she was legally married to S-C-;
- Affidavits, both dated May 3, 2008, from the petitioner's brother, [REDACTED], and sister-in-law, [REDACTED], stating that they were present with 300 other guests at the petitioner's March 21, 2001 wedding, that S-C- and the petitioner were married in good faith, and that S-C-'s father took all four copies of the marriage certificate "before it was registered with the Union council" and destroyed them;
- Undated statements from the petitioner's mother, [REDACTED] and father, [REDACTED], stating that they were present with 300 other guests at the petitioner's March 21, 2001 wedding, that the petitioner and S-C- were married in good faith, and that S-C-'s father took all four copies of the marriage certificate "before it was registered with the Union council" and destroyed them;

Photographs and a DVD of the March 2001 ceremony; and

- Internet information regarding Pakistani marriages.

From the above documents, it is clear that the evidence of record contains conflicting information regarding the petitioner's alleged marriage to S-C-. As discussed above, the petitioner was admitted into the United States on October 3, 2003, as a K-1 nonimmigrant, and the supporting documentation pertaining to her K-1 visa indicates that she was single, which conflicts with her assertion that she and S-C- were married on March 21, 2001. The petitioner's Pakistani passport, issued on February 24, 2003, also reflects the petitioner's marital status as single, as does the April 10, 2003 "Police Character Certificate" for the petitioner from Lahore, Pakistan. Upon review of the evidence in its entirety, the petitioner's explanation on appeal that her father-in-law and her husband prepared all the documents for her passport and visa is equivocal and does not fully resolve the discrepancies regarding her alleged marriage to S-C-. As noted by the director, the petitioner did not submit the requested copy of the *Nikah Nama*, or marriage certificate, pertaining to her marriage to S-C-. The affidavits and statements listed above, alleging that the petitioner and S-C- were married on March 21, 2001, in accordance with Islamic law, and the photographs and the DVD of the March 2001 ceremony, are noted. However, given the unresolved discrepancies and the lack of a *Nikah Nama*, or marriage certificate, these documents alone do not establish that the petitioner had a qualifying relationship as the spouse of a United States citizen, and that she is eligible for immigrant classification based upon that relationship.

As discussed above, the petitioner has failed to demonstrate that her marriage to S-C- was a valid marriage. Therefore, she is unable to establish that she had a qualifying relationship as the spouse of a United States citizen and that she is eligible for classification based upon that relationship, as required by section 204(a)(1)(A)(iii)(II)(aa) and (cc) of the Act; 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa), (bb).

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that she resided with her husband:

- The petitioner's personal statement dated November 20, 2006; her affidavit dated October 1, 2007; and her statement, dated May 1, 2008, submitted on appeal;
- The petitioner's Form G-325A, Biographic Information, signed by her on September 1, 2006, on which she stated that she resided at [REDACTED] in Elmont, New York, from October 2003 through June 2004;
- The September 25, 2007 affidavits and the May 3, 2008 affidavits from the petitioner's brother and sister-in-law, [REDACTED] and [REDACTED] stating that the petitioner lived with her husband at the [REDACTED] address from 2003-04;
- The undated statements from the petitioner's parents, [REDACTED] and [REDACTED] also stating that the petitioner lived with her husband at the [REDACTED] address from 2003-04; and
- The November 10, 2003 police report listing the petitioner's address as: [REDACTED] in Valley Stream, New York.

As noted by the director, the record contains numerous inconsistencies regarding the petitioner's claimed joint residence with S-C-. On the Form I-360, the petitioner stated that she resided with her husband from October 2003 until November 2003. In her November 20, 2006 statement, the petitioner also stated that she moved in with her husband and his family at the [REDACTED] address, and after a month, S-C- kicked her out, at which time she called the police. This information conflicts with the information she provided in her October 1, 2007 affidavit, in which she states that she lived with her husband and his family upon her arrival to the United States on October 3, 2003, and continued living with them from 2003-04. It also conflicts with the information the petitioner provided on the Form G-325A, Biographic Information, which she signed on September 1, 2006, stating that she resided at the [REDACTED] address from October 2003 to June 2004. It is also noted that the November 10, 2003 police report lists the petitioner's address as: [REDACTED] in Valley Stream, New York, and states that, while the petitioner told the police officers that she resided at the [REDACTED] address, the police officers determined that she did not reside at the [REDACTED] address and sent her home with her brother, [REDACTED] who lived at the [REDACTED] address. In addition, in their September 25, 2007 and May 3, 2008 affidavits (the latter submitted on appeal), the petitioner's brother and sister-in-law, [REDACTED] and [REDACTED], both stated that the petitioner lived with her husband at the [REDACTED] address from 2003-04, which conflicts with the information on the instant petition, the petitioner's November 20, 2006 statement, and the November 10, 2003 police report. In their undated statements submitted on appeal, the petitioner's parents, [REDACTED] and [REDACTED] also stated that the petitioner lived with her husband at the [REDACTED] address from 2003-04, which again conflicts with the information on the instant petition, the petitioner's November 20, 2006 statement, and the November 10, 2003 police report. While the petitioner is not required to have lived with her husband for any specific amount of time, her inconsistent statements and the inconsistent statements submitted on her behalf regarding her claimed joint residence detract from the credibility of her testimony.

In sum, the relevant evidence contains unresolved discrepancies regarding the petitioner's alleged residence with her husband. Consequently, the petitioner has not established by a preponderance of the evidence that she resided with her husband, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

In her November 20, 2006 statement, the petitioner states that her marriage with S-C- was arranged by their parents, which is their custom. The petitioner states that she met S-C- about a week before the wedding, that they lived together during that period of time, but S-C- spent most of that time in the hospital due to severe stomach problems. The petitioner also states that they had a wedding ceremony, attended by about 300 witnesses, after which S-C- and his family returned to the United States. The petitioner explains that two years later, she received her visa to travel to the United States, whereupon she moved in with the petitioner and his family at the "[REDACTED]" address in Elmont, New York, until she was kicked out by her husband a month later.

In her October 1, 2007 affidavit, the petitioner contradicts her November 20, 2006 statement by stating that, upon her arrival to the United States, she moved in with her husband and his family at the "[REDACTED]" address, where she lived in 2003-04.

In her May 1, 2008 statement submitted on appeal, the petitioner states that she entered the marriage in good faith without knowing the criminal mentality of S-C- and his family.

As discussed above, the petitioner has not provided the requested copy of the *Nikah Nama*, or marriage certificate, showing that her marriage to S-C- was a valid marriage, and she provides conflicting information regarding her claimed joint residence with J-C-.

The petitioner is not required to submit preferred primary or secondary evidence. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). However, the petitioner has not demonstrated that her marriage to S-C- was a valid marriage, or that she had a good faith intent to establish a married life with S-C-. In sum, the relevant evidence 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.

Battery or Extreme Cruelty

We affirm the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. In addition to the documentation mentioned above, the record contains a June 24, 2004 police report.

In her November 20, 2006 statement, the petitioner states that upon her arrival to the United States, when she began to live with her husband and his family, she immediately knew that S-C- did not love her and only wanted someone to take care of the house. The petitioner also states that S-C- showed only anger towards her, which his family ignored. The petitioner states that S-C- told her that she had to do all the housework and laundry and, if she wanted to stay in the United States, she

had to do everything he said. The petitioner reports that after one week in the United States, S-C- called her bad and lazy, and called her a slut when she wanted to have intimate relations with him. The petitioner reports further that after another week, S-C- pulled her hair and punched her in the back, causing her to fall. The petitioner states that S-C- repeatedly called her a slut and threatened to kill her. The petitioner also states that, after a month, her husband kicked her out of the house without her belongings or any money, at which time she filed a complaint with the police. The petitioner explains that she then went to live with her brother, where she currently lives, and one day while she was helping her brother at his shop, her father-in-law showed up and threatened to kill her if she did not return to his house. The petitioner explains further that she again called the police and filed a report, and has been in hiding ever since and does not go out unless she is with her brother.

In her October 1, 2007 affidavit, the petitioner states that S-C- brought her to the United States to be a housekeeper and that he hit her and pulled her hair. The petitioner also states that he refused to file the paperwork for her permanent residence.

In her May 1, 2008 statement submitted on appeal, the petitioner states that S-C- "abused the marriage" and tried to keep her in his house as a slave. The petitioner also states that S-C- and his father destroyed the copies of her marriage certificate, thereby trapping her in a K-1 visa and destroying her marriage and her life.

In her May 3, 2008 affidavit, the petitioner's sister-in-law, [REDACTED] states that she personally observed her brother, S-C-, abusing the petitioner on a regular basis. In her September 25, 2007 affidavit, [REDACTED] states that she knew S-C- hit the petitioner, pushed her around, mistreated her, and refused to file for her permanent residence. [REDACTED] also states that S-C- once threw a plate full of food in her face while at the dinner table with other family members, an incident which the petitioner herself does not mention in any of her statements.

In his undated statement, the petitioner's brother, [REDACTED] states that when his sister, the petitioner, moved into S-C-'s house, S-C- physically abused her and beat her after she told her father-in-law about the abuse. [REDACTED] also states that S-C- continues to threaten the petitioner and thus she continues to hide at different places. In his September 25, 2007 affidavit, [REDACTED] states that he knew S-C- used to strike the petitioner and push her around, and that S-C- treated the petitioner like a housemaid and refused to file for her permanent residence.

As noted by the director, the November 10, 2003 police report did not cite any abuse of the petitioner by S-C-. Also noted by the director, the June 24, 2004 police report cites a threat towards the petitioner by S-C-'s father, not by S-C-, and thus does not establish abuse by S-C-, or that S-C- condoned or was aware of such a threat.

In this case, we do not find the petitioner's evidence to be credible or sufficient to meet the petitioner's burden of proof. As discussed above, neither of the police reports cites any abuse from S-C-, and the petitioner's sister-in-law, [REDACTED] reports abusive behavior by S-C- that the petitioner herself does not discuss in any of her testimony. In addition, although the petitioner states

in her November 20, 2006 statement that she has been in hiding and does not go out unless she is with her brother, the record contains a birth certificate of the petitioner's child, [REDACTED] born on August 27, 2005, in Chicago, Illinois, and listing the father of the child as [REDACTED], and also listing a Chicago address for the petitioner. As the petitioner's child's birth certificate indicates that the petitioner resides in Chicago, it is not clear that the petitioner is in hiding and does not go out unless she is with her brother, who lives in Valley Stream, New York. As discussed above, the petitioner has not resolved the numerous inconsistencies in the record that diminish the evidentiary value of her statements. As described, the actions by S-C- do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The claims made by the petitioner fail to establish that she was the victim of any act or threatened act of physical violence or extreme cruelty, that S-C-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner.

Upon review of the record in its entirety, the record does not indicate that S-C- subjected her to battery. The relevant evidence also fails to demonstrate that S-C- subjected her to extreme cruelty during their alleged marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that she had a qualifying relationship as the spouse of a United States citizen, that she is eligible for immigrant classification based upon that relationship, that she resided with her husband, married him in good faith, and that her husband subjected her to battery or extreme cruelty during their marriage. She is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and her petition must be denied.

The present record fails to demonstrate the petitioner's eligibility for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii), that was in effect that time the petitioner filed the petition, directs that USCIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of her case.

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 that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.