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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
EAC 03 203 50833

Office: VERMONT SERVICE CENTER

Date: NOV 10 2005

IN RE: Petitioner: [Redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a native and citizen of South Korea who is seeking classification as a special immigrant 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 the battered spouse of a citizen of the United States.

According to the evidence contained in the record, the petitioner wed United States citizen [REDACTED] in Las Vegas, Nevada on May 17, 1999. The petitioner's spouse filed a Form I-130 on the petitioner's behalf on January 6, 2000. The petitioner filed a Form I-485 on that same date. The Form I-130 and Form I-485 were denied on August 21, 2001 for abandonment. On June 30, 2003, the instant self-petition was filed by the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse during their marriage. The petition was denied on February 28, 2005.

The petitioner, through counsel, submits a timely appeal dated March 21, 2005.

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 United States 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.

With the initial filing, the petitioner submitted a copy of his passport and Form I-94, Arrival and Departure Record, and a copy of his petition for dissolution of marriage. The director found this evidence was not sufficient to establish eligibility. Accordingly, on June 9, 2004, the director requested the petitioner to submit additional evidence to support the petitioner's claim that he resided with his spouse and that he married his spouse in good faith. As it relates to the petitioner's claim of abuse and good moral character, the director specifically requested evidence to include:

- Reports and affidavits from police, judges, court officials, medical personnel, etc., evidence that you have sought refuge in a shelter for the abused, photographs of injuries, or a statement describing how the petitioner's life was affected by the abuse, the type of abuse suffered, such as whether it was physical or verbal, and whether the petitioner's spouse was possessive or socially isolated the petitioner.
- An affidavit, supported by police clearances from each place the petitioner lived for at least six months during the past three years.

On July 30, 2004, the petitioner responded to the director's request by submitting a psychological evaluation, letters from the petitioner, his daughter, and the petitioner's former attorney, an insurance policy, and joint tax returns for 2000, 2001, and 2002. The petitioner also requested an extension of time in order to submit additional documentation. On September 9, 2004, the director granted the petitioner's request for additional time.

The petitioner submitted no further documentation and the director denied the petition, finding that the petitioner failed to establish that he has been battered by or subjected to extreme cruelty by his spouse and that he failed to establish he is a person of good moral character.

On appeal, counsel for the petitioner indicates that a brief and/or evidence would be submitted to the AAO within 30 days. To date, more than seven months after the filing of the appeal, the record contains no further submission from the petitioner. We, therefore, consider the record to be complete as it now stands.¹

¹ We note that in instances where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Therefore, even if the petitioner had submitted additional evidence on appeal, the AAO need not and would not consider the sufficiency of the evidence.

On the Form I-290B, the petitioner states:

- I have lived in USA since July 1999.
- My spouse battered me for four years.
- I am 46 years old with good character.
- I would suffer extreme hardship if I am deported now.

The petitioner submits a statement regarding the extreme hardship he will suffer if removed from the United States. We note, however, that the issue of extreme hardship is no longer a consideration in the Form I-360 determination; accordingly, we will not address it on appeal.²

The issues to be considered on appeal are whether the petitioner has submitted sufficient documentation to establish that he has been abused and whether he is a person of good moral character. As it relates to his claim of abuse, the record contains the petitioner's letter, his daughter's letter, and a psychological evaluation. In his unsworn statement, the petitioner claims that his spouse didn't like his daughter, that she lied and had the petitioner arrested, and "loved to waste money." Although the petitioner states, "these facts can all be proven," he submits no such supporting documentation. The petitioner also claims that his spouse "never let me out anywhere," that he is "totally socially isolated and . . . seen as a pariah, an outcast," yet he also describes being able to work outside of the home in his own business, spending time with his daughter and having "many business and social connections." These contradictory statements cast doubt upon the petitioner's claims. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The psychological evaluation, which is based upon statements made by the petitioner during a single session, indicates that his daughter was "frightened and intimidated" by his spouse's scowl and glare, and that the petitioner was forced to send his daughter back to her birth mother and pay child support. We note, however, that the statement made in the psychological evaluation regarding the petitioner sending his daughter back to her birth mother is contradicted by petitioner's daughter's statement. In her statement, the petitioner's daughter does not describe ever residing with the father on a full-time basis, but rather only describes visits to the petitioner's home "for about three months in the summer." We note that such contradictions cast further doubt on the petitioner's claims.

Although the evaluation indicates that the petitioner feels "ashamed," is "wracked with guilt by his weakness and lack of assertiveness," and feels "disappointment over the exposure of his daughter to the horrid experience she had with the woman he entrusted with his faith and hope for a wholesome family life," the petitioner fails to establish that these feelings are the result of abuse perpetrated by his spouse. Even if the petitioner had documentary evidence to support the statements made regarding his claimed abuse, the

² On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a U.S. citizen is no longer required to show that the self-petitioner's removal would impose extreme hardship on the self-petitioner or the self-petitioner's child. *Id.* section 1503(b), 114 Stat. at 1520-21.

statements do not describe any incidents of physical abuse or acts or patterns of extreme cruelty. The fact that the petitioner's daughter did not feel comfortable spending time with the petitioner's spouse because she wouldn't talk to her, would stare at her "with a scary, creepy glare," or that the petitioner's spouse had an "insatiable hunger for material security" are not claims that establish that the petitioner was subjected to extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The sole evidence related to the petitioner's good moral character is a letter from [REDACTED] attorney, who states, "pursuant to our recent investigation with the West Justice Center . . . there is no case pending in the West Justice Center or any other courts against you." The petitioner has not submitted a clearance from any local, state or federal law enforcement agency. Moreover, as the petitioner's statement indicated that he had been arrested, the director's request for evidence specifically indicated that the petitioner should submit a copy of his arrest report, court documents, and relevant excerpts of law related to his arrest. The petitioner has submitted no documentation that shows what crime the petitioner was arrested for or that indicates the outcome of his arrest.

As discussed above, the petitioner has failed to establish that he was battered by his spouse or subjected to extreme cruelty and that he is a person of good moral character. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed