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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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Bq

[REDACTED]

FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: AUG 01 2006  
EAC 05 053 52590

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:  
[REDACTED]

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 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 classification as a special immigrant pursuant to 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, finding that the petitioner failed to establish that his U.S. citizen wife battered or subjected him to extreme cruelty, that he resided with her, or that he entered into their marriage in good faith.

On appeal, counsel submits a letter.

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 the alien's child 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).

The corresponding regulation at 8 C.F.R. § 204.2(c)(1) 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 . . ., 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 standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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.

\* \* \*

(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 born in the United States, 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 petitioner in this case is a native and citizen of Thailand who entered the United States on September 11, 2000 as a nonimmigrant visitor (B-1). On June 7, 2001, the petitioner married [REDACTED] a U.S. citizen, in Texas. On December 11, 2004, the petitioner filed this Form I-360. On July 21, 2005, the director issued a notice requesting the petitioner to submit additional evidence of, *inter*

*alia*, his residence with Ms. [REDACTED] her battery or extreme cruelty, and his good faith marriage to her. The petitioner submitted further evidence on September 19, 2005. On December 12, 2005, the director denied the petition because the record failed to establish the requisite battery or extreme cruelty, joint residence and good faith marriage. The petitioner, through counsel, timely appealed.

On appeal, counsel submits a letter in which he states the petitioner's purported responses to the director's grounds for denial of the petition. Counsel's letter is not signed by the petitioner and is not accompanied by an affidavit or any other supporting statement from the petitioner. Consequently, we cannot accept counsel's statements on appeal as the petitioner's own. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

We concur with the director's conclusion and find that counsel's claims on appeal do not overcome the grounds for denial. Nonetheless, the petition will be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

#### *Battery or Extreme Cruelty*

As evidence of battery or extreme cruelty, the petitioner initially submitted his own affidavit notarized on December 6, 2004. The petitioner states that Ms. [REDACTED] demanded money from him, spoke to him with harsh words, insulted him, made fun of his accent and threatened to have him deported if he did not give her everything she wanted. The petitioner states that he sought counseling to overcome his distress, but does not submit corroborative records from his counselor.

In response to the director's request for additional evidence, the petitioner submitted a second affidavit notarized on September 15, 2005 in which he adds that soon after their marriage, Ms. [REDACTED] started to come home late and once shouted at him in anger when he explained that he had no money to give her. The petitioner further states that Ms. [REDACTED] called him and his son useless and laughed at their broken English. The petitioner reports that Ms. [REDACTED] moved out, but continued to insist that the petitioner support her and threatened to have him deported and make his life difficult if he did not give her money. The petitioner further explains, "I want to tell you more and in better detail but I have just gotten out of the hospital for the second time with bleeding ulcer and stomach surgeries when [sic] I feel weak and I know my 60 days to respond are up." However, the petitioner submitted no medical records of his hospitalizations or other evidence that he suffered poor health as a result of Ms. [REDACTED] behavior.

The petitioner also submitted statements from his son and friend [REDACTED]. The petitioner's son, [REDACTED] states that Ms. [REDACTED] started asking the petitioner for more and more money after they were married. If the petitioner did not have any money, his son reports that Ms.

██████████ would call the petitioner names such as “idiot” and “useless.” Ms. ██████████ states that some time after the petitioner’s marriage to Ms. ██████████ she noticed that they looked less happy than before, she heard them argue more often and the petitioner borrowed money from Ms. ██████████ many times to give to Ms. ██████████

We concur with the director’s determination that these documents do not establish the requisite battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), and we do not repeat the director’s discussion here. The petitioner, his son and Ms. ██████████ do not describe any particular incidents of Ms. ██████████ alleged abuse in significant detail and their statements are of little probative value. Despite the director’s specific request, the petitioner did not submit evidence to support his statement that he received counseling for the effects of Ms. ██████████ alleged abuse. The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The present record does not demonstrate that Ms. ██████████ subjected the petitioner to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Joint Residence*

On his Form I-360, the petitioner states that he resided with Ms. ██████████ from July 2001 to February 2004 and lists their last joint address as ██████████ in Houston, Texas. The petitioner initially submitted only his December 6, 2004 statement as evidence of the former couple’s joint residence. The petitioner states that after their marriage, the former couple moved into the house of the friend who introduced them. The petitioner does not state the address of that or any other residence, which he shared with Ms. ██████████ and he does not name or submit a supporting statement from the friend they lived with.

In response to the director’s request for further evidence, the petitioner submitted his second affidavit and the statements of his son and Ms. ██████████. None of these testimonials provide any probative details about the former couple’s allegedly joint residence. The petitioner also submitted copies of joint 2002, 2003 and 2004 income tax returns for himself and Ms. ██████████. The 2002 and 2003 returns state the former couple’s address as ██████████ in Houston, Texas, but two W-2 forms for the petitioner dated 2002 and 2003 list his address as ██████████, Apartment ██████████ in Huntsville, Texas. The amended 2002 return and the 2003 return are not signed by Ms. ██████████ and were signed by the petitioner on March 5, 2004, a month after he states that the former couple separated. The 2004 return lists the petitioner’s present address, at which he never claimed to reside with Ms. ██████████ and the return is dated February 10, 2005, a year after the petitioner and Ms. ██████████ separated. Accordingly, the tax returns are of little probative value in establishing the former couple’s joint residence.

The petitioner also submitted an undated envelope from First Convenience Bank jointly addressed to the petitioner and Ms. ██████████ at the ██████████ address and an undated envelope from the Social

Security Administration addressed to Ms. [REDACTED] at the petitioner's current address. Neither of these documents establishes the former couple's joint residence. The petitioner submitted no other evidence of his alleged residence with Ms. [REDACTED] of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii). Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

We concur with the director's determination that the evidence submitted below does not establish that the petitioner resided with Ms. [REDACTED] as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Good Faith Entry into the Marriage*

As evidence of his good faith marriage to Ms. [REDACTED], the petitioner initially submitted his December 6, 2004 affidavit in which he states that he met Ms. [REDACTED] in April 2001 at the home of a mutual friend. The petitioner reports that he and Ms. [REDACTED] were interested in each other's cultures, that Ms. [REDACTED] took him under her wing and taught him a lot, that they went to many places together, got along very well and got married after dating for a couple of months. The petitioner does not further describe the couple's courtship in any detail and does not discuss their wedding or any of their shared experiences apart from Ms. [REDACTED]'s alleged abuse.

In response to the director's request for additional evidence, the petitioner submitted his second affidavit, the statements of his son and Ms. [REDACTED], the aforementioned income tax returns, and copies of six photographs of the petitioner and Ms. [REDACTED] which appear to have been taken at their wedding and on one other occasion. In his second affidavit, the petitioner repeats his general description of how he met Ms. [REDACTED] and their courtship. He also states, "I married her because I felt that we would make a good couple together." The petitioner's son states that at first, Ms. [REDACTED] got along with the petitioner very well and that the petitioner seemed to be very happy when he was with her. Ms. [REDACTED] states that the petitioner and Ms. [REDACTED] often visited her and her family and that they usually came on the weekends for dinner. Neither the petitioner's son nor Ms. [REDACTED] provides any probative details about the former couple's relationship or the petitioner's alleged good faith in marrying Ms. [REDACTED].

The photographs indicate that a wedding took place and that the petitioner and Ms. [REDACTED] were together on one other occasion. The photographs alone provide no probative evidence of the petitioner's good faith in marrying Ms. [REDACTED]. As discussed above, Ms. [REDACTED] did not sign three of the income tax returns, three of the returns were signed by the petitioner after the former couple separated, two of the petitioner's W-2 forms list his address as different than that stated on the 2002 and 2003 tax returns, and the 2004 return lists the petitioner's current address where he never claimed to have resided with the petitioner. The tax returns thus provide no probative evidence of the petitioner's good faith marriage to Ms. [REDACTED].

We concur with the director's determination that the evidence submitted below does not establish that the petitioner married Ms. [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act and we do not repeat the director's discussion here.

The present record fails to establish that Ms. [REDACTED] battered or subjected the petitioner or his son to extreme cruelty during their marriage, that the petitioner resided with Ms. [REDACTED] or that the petitioner married Ms. [REDACTED] in good faith. Accordingly, the petitioner is ineligible for immigrant classification under 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) directs that Citizenship and Immigration Services (CIS) 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 his 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.