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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 03 146 52167

Office: VERMONT SERVICE CENTER

Date: APR 23 2007

IN RE: Petitioner: [REDACTED]

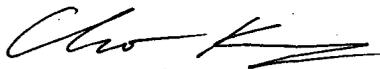
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

ON BEHALF OF PETITIONER:

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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Acting Director (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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 an 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 his United States citizen spouse.

The director denied the petition because the petitioner failed to establish the requisite battery or extreme cruelty and good faith marriage.

On appeal, the petitioner submits copies of evidence previously submitted, as well as additional evidence.

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 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 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 explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 standard and 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:

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.

* * *

(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 entered the United States as a K-1 nonimmigrant fiancé on December 9, 2002. The petitioner married P-B-¹, a U.S. citizen, on December 15, 2002 in Las Vegas, Nevada. On April 7, 2003, the petitioner filed the instant Form I-360 with supporting documentation.² The director subsequently issued a Request for Evidence (RFE) on April 28, 2004 of, *inter alia*, the battery and/or extreme cruelty inflicted upon the petitioner

¹ Name withheld to protect individual's identity.

² Although not at issue in this proceeding, the record also contains a Form I-130, Petition for Alien Relative, which was filed by the petitioner's spouse on the petitioner's behalf on January 8, 2003 and denied on August 30, 2004 due to the petitioner's spouse's failure to respond to a request for evidence.

by his spouse and the petitioner's good faith entry into marriage. The petitioner responded to the director's request on July 20, 2004. On January 4, 2006, the director denied the petition because the petitioner failed to establish the requisite battery or extreme cruelty and good faith marriage.

On appeal, the petitioner submits copies of evidence previously submitted and additional evidence. However, as will be discussed, the evidence does not overcome the director's grounds for denial. Nonetheless, the case will be remanded because, prior to denying the petition, the director did not issue 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

The petitioner's assertion of abuse is based upon the claim that his spouse had an affair, forced him to pay for household expenses, yelled and raised her voice, and isolated him from his friends. While the petitioner also alleges that his spouse slapped him on several occasions, the petitioner describes only a single incident in detail. The testimonial and documentary evidence related to this single incident does not persuasively establish that the petitioner was battered by his spouse. The police report submitted by the petitioner regarding this incident, which is dated February 27, 2003, indicates that the incident actually took place on February 23, 2003, four days before the report was filed. Despite the assertion made by the petitioner in his statement that he was hit several times and that he suffered a split lip, the police report indicates that the petitioner had "no visible injuries." It is noted that the petitioner has not submitted any evidence that his spouse was arrested, charged, or convicted as a result of the incident documented in the police report. While the petitioner also submitted a letter from [REDACTED] who indicated that she saw the petitioner on the morning after his wife allegedly hit and injured him, Ms. [REDACTED] does not describe any injuries to the petitioner and states only that the petitioner looked "extremely haggard as though he had been crying." While we also acknowledge the submission of an email, purportedly from the petitioner's spouse offering an apology for slapping the petitioner, we, like the director, question the legitimacy of the email as the record does not contain sufficient evidence to establish that this document was actually written by the petitioner's spouse. Given the disparate information between the account given by the petitioner and what was documented in the police report and by Ms. [REDACTED], we do not find the email to be sufficient to establish that the petitioner was battered by his spouse.

The remaining testimonial evidence is also insufficient to establish the petitioner's claim of battery or extreme cruelty. The letter from [REDACTED], a marriage and family therapist, generally claims that the petitioner's spouse was "argumentative" and "violent." The letter does not provide any details describing any specific incident of abuse or violence. More importantly, Ms. [REDACTED]'s statement that the petitioner was forced to "leave the house after four months of marriage" contradicts the petitioner's claim that he only resided with his spouse for two months. While this contradiction may be a simple error on the part of the Ms. [REDACTED], the error combined with the vague statements regarding the alleged abuse, diminish the probative value of the letter in establishing the petitioner's claim of abuse.

Further, the affidavits from Ms. [REDACTED] and [REDACTED] contradict the claims made by the petitioner in his personal statement. For instance, although the petitioner claimed that his spouse "forbade him to go out and have friends," Ms. [REDACTED] indicates that she and her spouse met the petitioner while he was out at a party. Mr. [REDACTED] indicates that he was a friend of the petitioner for a year and a half and that although he never met the petitioner's wife, "he would stop by [the petitioner's home] on several occasions." Regarding the petitioner's claim of physical abuse, Mr. [REDACTED]'s letter does not indicate his knowledge of any abuse or provide details regarding any specific incident other than to state that the petitioner was "unhappy"

and that his spouse made his life "very difficult." While the petitioner also submits an affidavit from [REDACTED] [REDACTED] claims that on one occasion she "wasn't treated correctly" on the telephone and was hung up on by the petitioner's spouse, but she does not indicate that she was a witness to any of the alleged abuse against the petitioner. We note that Ms. [REDACTED] resides in France and has not seen the petitioner or his spouse since each individually left France prior to their marriage.

On appeal, as it relates to the police report's failure to document his injuries, the petitioner states that there were no longer any visible injuries four days after the incident. While the petitioner also states that Ms. [REDACTED] was the only person who could describe "his physical state," as previously noted, Ms. [REDACTED]'s affidavit does not describe any injuries to the petitioner's face or body. The petitioner does not submit any further statement from Ms. [REDACTED] on appeal or further evidence to show that his wife was charged for this incident.

As it relates to his spouse's purported email admission affirming that she slapped the petitioner, the petitioner asserts that if he manufactured this document as evidence against his spouse, he would not have included an "unfavorable statement" about himself. We assume the "unfavorable statement" that the petitioner refers to is the statement that the petitioner called his spouse a name. The petitioner also claims that he did not have access to his spouse's computer and accessed his own mailbox from an outside computer. We are not persuaded by the petitioner's statements. First, the petitioner need not have access to his spouse's personal computer to access her account. It is possible that he obtained the information necessary to access her account and created the document in which she allegedly admits to slapping the petitioner. We note that the petitioner has both an educational and employment history in computers and computer programming. In fact, on appeal, the petitioner indicates that he is close to completing his "second master in computer science." Second, the fact that the email contains an "unfavorable statement" about the petitioner is not persuasive evidence that the petitioner did not write the email himself. Given the vague testimonial evidence and the fact that the petitioner's witness did not support the petitioner's claim, we do not find this evidence sufficient to establish that the petitioner was battered by his spouse.

As it relates to the report from Dr. [REDACTED] and the incorrect information cited in her letter regarding the dates that the petitioner and his spouse resided together, on appeal the petitioner states that "any misunderstanding could have been clarify [sic] directly with her." Given this statement, it appears that the petitioner mistakenly presumes that the burden is on the Service to resolve inconsistencies in the record and establish the petitioner's ineligibility. This is not the case, however. Section 291 of the Act provides, in pertinent part:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant, immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be.

The law goes on to state that the person must establish eligibility "to the satisfaction" of the adjudicating officer. Section 291 of the Act, 8.U.S.C. § 1361. This burden is confirmed in *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965) and *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). Therefore, the onus is on the petitioner, not the Service, to clarify the mistakes that were contained in the report submitted by the

petitioner. The petitioner failed to submit any statement from Dr. [REDACTED] on appeal addressing the statements contained in her letter. Accordingly, the petitioner's general refutation and claims of error on her behalf are not sufficient to meet his burden. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On appeal, the petitioner also submits documentation regarding treatment he received from a second doctor. The documentation, which consists of the session notes taken by Dr. [REDACTED] in July and August 2004, does not support the petitioner's claim of abuse. The sole reference to the petitioner's spouse does not describe any incident of physical abuse or extreme cruelty but rather indicates that the petitioner was "previously married to a woman who used him and threw him out of her home that she was renting."

As discussed above, the evidence does not demonstrate that the petitioner was battered by his spouse or that his spouse subjected him to extreme cruelty during their marriage. The documentation submitted by the petitioner is either equivocal or fails to corroborate the petitioner's statements regarding his spouse's physical actions, thus detracting from the credibility of his testimony. The petitioner also fails to describe in sufficient, probative detail the other actions of his spouse to support a finding of extreme cruelty. Accordingly, the present record fails to establish that any of these actions by the petitioner's spouse constituted extreme cruelty by involving threatened violence, psychological abuse or by being part of an overall pattern of domestic violence. See 8 C.F.R. § 204.2(c)(1)(vi).

Accordingly, the present record fails to establish that the petitioner's wife battered or subjected him to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

The petitioner has failed to submit any supporting documentary evidence such as bank statements or other financial documents, leases or utility bills to demonstrate that he and his spouse were co-owners of accounts and jointly responsible for liabilities. In his second personal statement the petitioner explains the lack of joint documents by the fact that he was not working and because of the fact that his "INS status was still pending [and he] didn't have a social security number." Although we do not dispute the petitioner's justification, we are not persuaded by his explanation. The fact that the petitioner did not have a social security number would not preclude him from obtaining health, car, or life insurance, from filing taxes with his spouse, or even opening a bank account. While the lack of documentary evidence of a good faith marriage is not automatically disqualifying, the testimonial evidence submitted by the petitioner does not establish his good faith marriage. In his personal statement, the petitioner explained that he met his spouse when they were both residing in France. He states that they dated for over a year and a half before he decided to come to the United States to marry her. However, the petitioner did not marry her on his initial visit to the United States and instead returned to France. After returning to the United States a second time, the petitioner and his spouse were married in Las Vegas. The petitioner offered no other details regarding his relationship with his spouse, shared events, or other descriptions of their life together other than as it relates to his claim of abuse.

The affidavits submitted on the petitioner's behalf also fail to establish the petitioner's good faith marriage. The affidavit submitted by [REDACTED] is consistent with the petitioner's account of how he met P-B- in France but provides few details about their courtship after P-B- returned to the United States continuing up to their

marriage. Ms. [REDACTED] explains that after the petitioner's marriage to P-B-, their communication stopped and she provides no further details about the petitioner's good faith marriage. The affidavit from [REDACTED] primarily discusses the alleged abuse and provides no probative information about the petitioner's marriage to P-B-. Similarly, the affidavit from [REDACTED] does not describe any particular incidents where he witnessed the alleged bona fides of their marital relationship. In fact, Mr. [REDACTED] indicates that he never met P-B-. Accordingly, the record does not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

As discussed above, the petitioner failed to establish the requisite battery or extreme cruelty and good faith marriage. Consequently, 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 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.