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U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 28 2007  
EAC 06 107 50049

IN RE: Petitioner: [REDACTED]

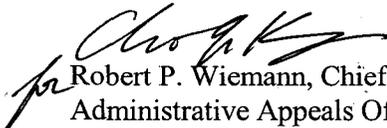
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

[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 appeal will be dismissed.

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 after the petitioner failed to respond to the director's Notice of Intent to Deny (NOID), finding that the petitioner did not establish that he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse during their marriage, that he is a person of good moral character, and that he entered into his marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

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 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.

(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. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or committed unlawful acts that adversely reflect upon his or her moral character, or was convicted or imprisoned for such acts, although the acts do not require an automatic finding of lack of good moral character. A self-petitioner's claim of good moral character will be evaluated on a case-by-case basis, taking into account the provisions of section 101(f) of the Act and the standards of the average citizen in the community. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

\* \* \*

(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 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.

(v) *Good moral character.* Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. If police clearances, criminal background checks, or similar reports are not available for some or all locations, the self-petitioner may include an explanation and submit other evidence with his or her affidavit. The Service will consider other credible evidence of good moral character, such as affidavits from responsible persons who can knowledgeably attest to the self-petitioner's good moral character.

\* \* \*

(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 Jamaica who entered the United States on July 8, 2004 as a nonimmigrant fiancé (K-1). On October 6, 2004, the petitioner married B-D-<sup>1</sup>, a U.S. citizen, in Albany, New York. The petitioner filed this Form I-360 on February 24, 2006. On May 23, 2006, the director issued a NOID based on the lack of evidence regarding the petitioner's residence with his spouse, battery or extreme cruelty, good moral character, and good-faith entry into the marriage. The petitioner failed to respond to the NOID and the director denied the petition on October 3, 2006. The petitioner, through counsel, submitted a timely appeal with additional evidence.

On appeal, counsel explains that the petitioner did not respond to the director's NOID because he had been arrested and claims that "sufficient evidence can be submitted to reverse (the director's) denial." As will be discussed, the additional evidence submitted on appeal is insufficient to overcome the findings of the director and to establish the petitioner's eligibility.

#### *Residence*

On the Form I-360, the petitioner indicated that he resided with his spouse from July 8, 2004 until December 8, 2005 and that he last resided with his spouse at [REDACTED], Albany, New York. The record contains no documentary evidence of the claimed residence such as correspondence addressed to the petitioner and his spouse, financial or tax documents, utility bills, or a lease. The testimonial evidence contained in the record does not contain any probative information about the petitioner's residence with his former spouse at this or any other address. The petitioner himself provides no details regarding his residence with his spouse. Although [REDACTED] a friend of the petitioner, indicates that he visited the petitioner and his spouse at their home "on several occasions," Mr. [REDACTED]'s affidavit does not describe the petitioner's residence or provide the approximate dates of his visits. The evidence submitted on appeal, which includes an affidavit from the petitioner, does not address the petitioner's claimed residence with his spouse.

Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Good Moral Character*

At the time of filing, the petitioner submitted no evidence regarding his good moral character. In the

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<sup>1</sup> Name withheld to protect individual's identity.

NOID, the director notified the petitioner 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. 8 C.F.R. § 204.2(c)(2)(v). As previously noted, the petitioner failed to respond to the director's NOID and the petition was denied, in part, based upon the petitioner's failure to establish that he is a person of good moral character.

On appeal, the petitioner submitted a police clearance from the city of New York indicating that the petitioner has no criminal record. In addition, the petitioner submitted evidence that the charges brought against him, which resulted in his arrest on June 25, 2006, were dismissed.<sup>2</sup> We find such evidence sufficiently overcomes the director's finding on this issue and establishes that the petitioner is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Battery or Extreme Cruelty*

With the initial filing, the petitioner submitted three statements from friends but no personal statement of his own. The statements submitted on the petitioner's behalf contain only general claims and fail to provide any specific details regarding the abuse perpetrated against the petitioner. For instance, the affidavit from [REDACTED] states that the petitioner had problems "pleasing his wife," and that her reception of Mr. [REDACTED] "was very cold" and made him feel "unwelcome." Mr. [REDACTED] further states that the petitioner told him that the petitioner's spouse's did not like the petitioner to make friends outside the home, that she objected to him leaving the house, that she would lock the petitioner out of the house and provided him with no money or car. Mr. [REDACTED] does not indicate that he personally witnessed any incidents of abuse and does not further describe any particular incident in detail except to state that one of times that the petitioner was locked out of the house, it was raining. Finally, Mr. [REDACTED] states that the petitioner's spouse "was a very controlling person" and that she "was verbally and mentally abusive" to the petitioner. Again, however, Mr. [REDACTED] does not provide examples of the verbal abuse or specific details to elaborate on his allegation of mental abuse.

The letter from [REDACTED] the petitioner's dentist and friend from church, indicates that the petitioner's "marital life wasn't that amicable" and describes the petitioner as being a "hostage" to his spouse. Mr. [REDACTED] alleges that the petitioner does not have a green card because the petitioner's spouse "never filed the necessary documents." Further, Mr. [REDACTED] describes an incident where the petitioner had a dental problem and that although the petitioner's spouse paid for the petitioner's initial dental visit, she refused to pay for any future visits and did not assist the petitioner in getting to his appointment."

The remaining affidavit, from [REDACTED], states that the petitioner could not use the phone, go to church, had no money, and was "eventually put . . . out in the night in the cold." Ms. [REDACTED] does not provide any further details of the claimed abuse and does not describe how she "got to understand" the petitioner's circumstances or indicate that she personally witnessed any of the actions described in her

<sup>2</sup> Supreme Court of the State of New York, New York County, Case Number: [REDACTED]

affidavit.

On appeal, the petitioner submitted an affidavit in which he claims that when he questioned his spouse about filing the paperwork to adjust his status, she indicated that "she was too busy" and made other excuses. Although the petitioner indicates that he "didn't press the matter," in order to avoid an argument, he does not claim to have been intimidated by his spouse or to have been too scared to bring up the issue to her. The petitioner does not provide any indication that his spouse used his immigration status as a means to control him.

The petitioner further claims that his spouse yelled at him and made his life "miserable for a few days," that he was not allowed to go anywhere, except church without her company, would call him names, and not give him "pocket money" to buy food and personal hygiene items. The petitioner does not elaborate on any of these claims or provide examples of specific incidents where his wife called him names or made his life "miserable."

In July 2005, the petitioner claims that his spouse began to refuse sexual relations with him and in September began going out on the weekends without telling the petitioner where she was going and that she would lock the refrigerator, leaving the petitioner with no food "for a day or more." The petitioner does not indicate that he feared leaving the apartment or provide any other explanation as to why he could not leave the apartment or call friends from his church, for instance, while his spouse was away during these time periods. The petitioner describes incidents in November and December 2005 where his spouse locked him out of the house and he was forced to sit outside in the cold until she returned.

On appeal, the petitioner also submitted a second statement from [REDACTED], who reiterates the claims made in his previous statement regarding the petitioner's spouse's failure to assist the petitioner in obtaining a green card and getting treatment for his tooth.

We do not find the above discussed evidence establishes a claim of battery or extreme cruelty. Specifically, we find that the petitioner has made no claim of being threatened with or actually being subjected to physical abuse by his citizen spouse during their marriage. The petitioner's assertion of extreme cruelty is based upon general claims such as that his spouse did not assist him in getting his green card, that she would not give him money or help him with his dental care, would call him names, and would leave the apartment without telling the petitioner where she was going. The incidents described by the petitioner and the claims contained in the statements submitted on his behalf 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 petitioner's spouse's actions, while unkind at times, do not appear to have been part of an overall pattern of violence against the petitioner. Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

*Good Faith Entry into Marriage*

At the time of filing, the petitioner submitted no testimonial evidence of his good faith marriage to his spouse. Although counsel provided a brief description of how the petitioner met his spouse, the unsupported statements of counsel are not considered as evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The affidavits submitted on the petitioner's behalf also provide no testimonial evidence regarding the petitioner's good faith marriage. For instance, the affidavit from T. [REDACTED] states only that the petitioner met his spouse in Jamaica. Similarly, the affidavit from Eulaline Mitchell states generally that the petitioner spoke "highly" of his spouse and told Ms. [REDACTED] that he loved B-D- and hoped they would marry in the future. Neither of the affiants provides any specific, probative details regarding how the petitioner met his spouse, their courtship, wedding, or any of their shared experiences, apart from his spouse's alleged abuse. The record also contains no documentary evidence of the petitioner's good-faith entry into the marriage such as joint financial accounts, tax documents, or car, health or life insurance. On appeal, the petitioner submits an affidavit in which he describes meeting his spouse at a funeral service and becoming friends. The petitioner offers no further information regarding how their relationship evolved from a friendship to a courtship and subsequent marriage. No further testimonial or documentary evidence was provided on appeal. Accordingly, we concur with the finding of the director that the petitioner has not demonstrated that he entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.