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



U.S. Citizenship  
and Immigration  
Services

By

PUBLIC COPY



FILE: [Redacted]  
EAC 06 076 52350

Office: VERMONT SERVICE CENTER

Date: JAN 08 2007

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:

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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 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 because the record did not establish that the petitioner had resided with his spouse, that he entered into their marriage in good faith, and that he was battered by or subjected to extreme cruelty by his spouse.

The petitioner 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].

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 . . . , 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.

\* \* \*

(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 petitioner in this case is a native and citizen of Haiti. The petitioner married [REDACTED] a U.S. citizen, in Haiti on September 3, 2002. The petitioner entered the United States on February 18, 2004 as a K-3 nonimmigrant.

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

The petitioner and his spouse were divorced on October 4, 2004. The petitioner filed this Form I-360 on January 17, 2006. On April 6, 2006, the director issued a Notice of Intent to Deny (NOID). The petitioner responded to the NOID on May 30, 2006. On July 19, 2006, the director denied the petition and the petitioner filed a timely appeal.

On appeal, the petitioner states generally that the director's decision was erroneous and that the director abused his discretion. Although the petitioner submits an additional statement and evidence on appeal, upon review, we concur with the director's determinations and find that the petitioner's appellate submission does not overcome the grounds for denial of the petition.

#### *Joint Residence*

On the Form I-360, the petitioner claimed that he resided with his spouse from September 2002 until June 2004 and that they last resided together at [REDACTED] Queens Village, NY. With the initial submission, however, the petitioner failed to submit any evidence such as tax returns, utility bills, a lease, rental receipts, or other correspondence to demonstrate their residence together. Instead, the petitioner submitted evidence such as his 2004 tax returns showing his filing status as "single" and an address at [REDACTED] St. Albans, NY. While the petitioner also submitted copies of utility bills, the bills are dated in 2005, after the petitioner had already divorced his spouse. Similarly, although the petitioner submitted copies of rental receipts, the receipts are dated in 2005 and contain the name of [REDACTED] not the petitioner's spouse.

As the evidence contained in the record was both insufficient and inconsistent with the claims made by the petitioner, in the NOID issued by the director on April 6, 2006, the director requested the petitioner to submit further evidence and clarification of his claims of residence with his spouse. Specifically, the director questioned the petitioner's claim to have resided with his spouse from September 2002 through June 2004 given the evidence in the record which showed that from September 2002 until February 2004 the petitioner resided in Haiti while his spouse remained in the United States. The director also requested the petitioner to submit a detailed statement listing specific dates and the locations where the petitioner resided with his spouse, as well as documentary evidence to show their joint address.

In response to the NOID, the petitioner submitted a statement regarding his residence with his spouse. He stated:

In Haiti my wife would often visit and spend a few days with me. Sometimes we would go to Dominican Republic or stay at a Hotel in Port-au-Prince, to have our privacy. In Haiti, she would stay with me at the following address where I resided before we got married, at [REDACTED] Port-au-Prince, Haiti. Then from February 2004 when I first arrived in the United States to March 2004, the day she threw me out, we resided at [REDACTED] Miami, Florida . . . After one of our fights, my wife agreed to move with me at Kissimmee, Florida, at my Godmother's house, located at [REDACTED] Way, Kissimmee, Florida . . . where I stayed after she kicked me out. She agreed that we would live there until we settled in Kissimmee, Florida. After a few days she changed her mind and told me that her was not going to succeed there and she wanted to leave me.

Although the petitioner submitted a statement from his godmother, [REDACTED] who indicated that the petitioner's spouse stayed with the petitioner for four days at her home, and a statement from the petitioner's

brother, who indicated that he visited the petitioner and his spouse on “several occasions” at their home on the petitioner submitted no further testimonial or documentary evidence.

Upon review, we concur with the findings of the director that the petitioner has failed to establish that he resided with his spouse. While the petitioner blames the lack of documentary evidence on his “short marriage,” this explanation is not persuasive. First, a marriage of nearly four years is not a “short” marriage. Regardless, although the short duration of the former couple’s purportedly joint residence might explain the lack of documentation, the testimonial evidence fails to establish that the petitioner resided with his spouse. In his own statements, the petitioner does not provide any probative information about their purported joint residences. For example, the petitioner does not describe their home or apartment, any of his spouse’s or their jointly owned belongings or their daily routines or shared activities at home. There is no evidence that the petitioner’s spouse ever went to Haiti after their marriage, much less that she resided with the petitioner there. The sole evidence, either testimonial or documentary of her stay in Haiti after their marriage, consists of the petitioner’s general statement that she “would often visit and spend days” with the petitioner. These random visits are not sufficient to establish the petitioner’s residence with his spouse. As it relates to their residence in the United States, the record contains no documentary evidence such as lease, utility bills or even correspondence to show that they resided together. We note that although the petitioner claims on the Form I-1360 that he last resided with his spouse in New York, the record contains no evidence that the petitioner’s spouse ever went to New York. In fact, in his statement, the petitioner claimed that when he came to New York to get his “life back on track,” his spouse returned to Miami and told the petitioner that she “wanted nothing to do with [him].” The remaining evidence which consists of general statements from the petitioner’s godmother and brother are not sufficient to establish that the petitioner resided with his spouse.

On appeal, the petitioner provides no further evidence to overcome the director’s findings. As it relates to his residence with his spouse, the petitioner states that in Haiti, his spouse used to “spend a few weeks” with the petitioner, either at his home or at a hotel. We note that the claim on appeal that the petitioner’s spouse would spend “a few weeks” at a time, contradicts his previous statement that she would spend “days” at a time. Further, we note that the petitioner refers to the home that they stayed in as “my house,” not *our* home. The petitioner offered no further statement or evidence to document their claimed residence in the United States. Accordingly, 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.

*Battery or Extreme Cruelty*

In his initial statement, the petitioner claimed that after coming to the United States, his spouse became a “boss,” and prohibited everything, including the phone and the Internet. He stated that he had to “obey her rules” and accept that she would go out at night with her friends while he remained home. The petitioner generally claimed that his spouse used his immigration status against him, that she abused drugs, and forced the petitioner to have sex with her and others against his will. The petitioner then describes an incident where her spouse’s son came to the petitioner’s home, pointed a gun at the petitioner, and asked the petitioner to leave. While the petitioner also submitted a psychological evaluation documenting the claimed abuse, the claims made in the evaluation are not consistent with the claims made by the petitioner in his statement. For instance, while the evaluation states that the petitioner was often called derogatory names and that his spouse threatened to call “INS or the police,” the petitioner does not describe any verbal abuse or threats such as indicated in the evaluation. Further, the evaluation describes incidents where the petitioner’s spouse would push the petitioner, spit at him, and throw

things. The petitioner, however, does not make any of these claims in his statement. Moreover, the evaluation fails to address the claims made in the petitioner's statement regarding his spouse's "sexual illness" and allegations of forcing the petitioner to have sex against his will. In the statement provided in response to the director's NOID, the petitioner reasserts the claims regarding his wife's controlling nature and "forced" sex. He then asserts a claim of verbal abuse, describing generally being cursed at by his spouse. The affidavit submitted by [REDACTED] a friend of the petitioner, indicates that the petitioner told Mr. [REDACTED] of his "short but ruff [sic] relationship," and that his spouse "abused him verbally and morally in several occasions." Mr. [REDACTED] does not indicate that he was a witness to any of the purported abuse or provide any details regarding specific incidents of verbal or "moral" abuse. The affidavit from [REDACTED] indicates that the petitioner's spouse "flipped," and that they discovered they had "cultural differences." While Ms. [REDACTED] mentions the incident described in the petitioner's statement where the petitioner's spouse's son "pulled a gun," Ms. [REDACTED] does not indicate that she was a witness to or had knowledge of any incident of abuse perpetrated against the petitioner by his spouse. Abuse perpetrated by a third party against the petitioner is not sufficient to establish the petitioner's eligibility for this classification.

On appeal, the petitioner provides the same arguments and claims regarding his abuse. He does not provide any explanation for the discrepancies noted between the claims made in his statement and in his evaluation. As discussed above, based upon the general claims and the inconsistencies in the evidence, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty by his spouse. This finding has not been overcome by his general statements on appeal. Accordingly, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act..

*Good Faith Entry into Marriage*

In the statement submitted by the petitioner at the time of filing, the petitioner provided very few details related to his claim of a good faith marriage. He states:

In July, I met [REDACTED] on the phone through [a friend] who considers me as her own son. Since our relationship started to develop we became inseparable. Then in September 2002 we signed a marriage contract in Port-au-Prince. We promised each other to remain faithful for the rest of our lives. She used to frequently go visit me in Port-au-Prince and two years after we got married; she requested a K3 visa, which allowed me to come [to] the United States.

While the petitioner also submitted an evaluation from [REDACTED] LCSW, the information contained in the evaluation, which was provided by the petitioner, contradicts the petitioner's statement. Specifically, in contrast to the petitioner's claim that he met his wife over the phone after being introduced by a friend, the evaluation indicates that the petitioner and his spouse met over the Internet. The evaluation provides no further details regarding the petitioner's courtship or feelings for his spouse. The petitioner also submitted photocopies of photographs of the petitioner and his spouse on their wedding day, letters between the petitioner and his spouse, and copies of their wedding vows. The correspondence between the petitioner and his spouse, which is the only documentary evidence of the petitioner's relationship with his spouse during the nearly 18-month period after their marriage prior to his arrival in the United States, does not independently establish the petitioner's good faith in marrying her husband. Similarly, the photographs of the petitioner's wedding day do not sufficiently document events over the course of their marriage and provide little probative value in

establishing the petitioner's good faith marriage.

In the statement submitted in response to the director's RFE, the petitioner provides no further details of the events leading up to his marriage or his relationship and courtship with his spouse prior to their marriage. Instead, the petitioner begins his statement by describing the events that took place *after* their marriage. Accordingly, the statement offers little probative value in determining the petitioner's intent at the time of their marriage. The petitioner also provided a document entitled "Banking Attestation" which indicates a savings account in the petitioner's name, opened September 6, 2002, in which his spouse had "withdrawal right[s]." The petitioner provided no evidence of the joint use of the account or evidence to show that her "withdrawal rights" were exercised or were similar in some way to joint ownership of the account. The affidavits submitted by the petitioner's friends and relatives provided no further details to establish that the petitioner entered into the marriage in good faith. The letter from [REDACTED] indicates only that he was a witness to the petitioner's marriage. He does not provide any details about their relationship, the petitioner's feelings for his spouse, or his intent in marrying his spouse. Similarly, the letter from [REDACTED] indicates only that she was "aware of [the petitioner's] marital relationship." The petitioner's brother does not provide any probative information related to a good faith marriage.

On appeal, the petitioner resubmits copies of documents previously submitted. The petitioner also submits additional photographs and copies of what appears to be receipts for a trip. The petitioner provides no explanation for this documentation or statement to describe how it relates to his claim of a good faith marriage. Regardless, 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 NOID or prior to the denial. *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 explained the significance of the documentation submitted on appeal in relation to his claim of a good faith marriage, the AAO need not and would not consider the evidence on appeal. As discussed above, the petitioner has failed to establish that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the present record fails to establish that the petitioner had a qualifying relationship with a U.S. citizen under section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act and that he was eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on such a relationship. The Form I-360 petition was filed on January 17, 2006 and the petitioner's marriage was legally terminated on October 4, 2004. As concluded by the director and affirmed in this decision, the petitioner has failed to establish that his former wife battered or subjected him to extreme cruelty during their marriage. Consequently, the petitioner has not established that the legal termination of their marriage was connected to his former wife's battering or extreme cruelty, as required by section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act. Additionally, because the petitioner did not have a qualifying relationship with his former wife under section 204(a)(1)(A)(iii)(II) of the Act, he has also not established that he is eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

Additionally, the petitioner has failed to establish that he is a person of good moral character. The regulation at 8 C.F.R. § 204.2(c)(i) indicates 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. The evidence contained in

the record indicates that during the three-year period prior to filing, the petitioner resided in Haiti, Florida, and Indiana; however, the petitioner only provided a police clearance from the state of New York and did not address his good moral character in his affidavit. Without police clearances from Florida and Indiana, as well as a statement regarding his good moral character, specifically including a statement regarding any criminal history in Haiti,<sup>2</sup> the petitioner has failed to establish that he is a person of good moral character.

For these additional reasons, the petition may not be approved. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

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. 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 appeal is dismissed.

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<sup>2</sup> The Department of State website at <http://www.travel.state.gov/visa/reciprocity/Country%20Folder/H/Haiti.htm> indicates that police clearances from Haiti are not available.