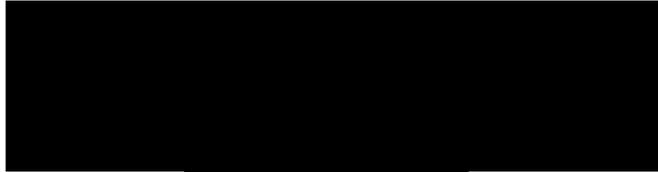


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FILE: [REDACTED]
EAC 04 096 52840

Office: VERMONT SERVICE CENTER

Date: JAN 18 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:



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 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 a United States citizen.

The director denied the petition because the petitioner did not establish that he was a person of good moral character.

On appeal, counsel submits 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 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:

(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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

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.

* * *

(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. . . . 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.

The record in this case provides the following relevant facts and procedural history. The petitioner is a native and citizen of Trinidad who entered the United States on May 19, 1999 as a nonimmigrant visitor (B-2). On July 7, 1999, the petitioner married K-W¹, a U.S. citizen, in New York. The petitioner filed this Form I-360 on February 12, 2004. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good moral character. The petitioner, through counsel, responded with further documentation. On September 15, 2005, the director issued a Notice of Intent to Deny (NOID) the petition because the record contained insufficient evidence regarding the dismissal of the petitioner's criminal charges. The petitioner, through counsel, responded to the NOID with additional evidence. On March 23, 2006, the director denied the petition for lack of good moral character. Counsel timely appealed.

On appeal, the petitioner claims that all of his criminal charges were dismissed after adjournment in contemplation of dismissal and that the criminal proceedings involved no plea, admission or finding of guilt and no punishment, penalty or restraint on his liberty. Although the record shows that for purposes of immigration law the petitioner was not convicted of any the criminal charges, the

¹ Name withheld to protect individual's identity.

petitioner has not established his good moral character and the evidence submitted on appeal fails to overcome the ground for denial.

The record shows that the petitioner was arrested and charged with criminal offenses on January 28, 2002; May 19, 2003; June 4, 2003 and June 9, 2003. The petitioner submitted evidence that all of the charges against him were dismissed after adjournment in contemplation of dismissal. The record shows that the petitioner's criminal dispositions are not convictions, as that term is defined in immigration law. Section 101(a)(48)(A) of the Act states:

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

The petitioner submitted the charging documents (on appeal), the court transcripts and his record with the New York State Division of Criminal Justice Services (DCJS). The evidence shows that on at least one occasion, the petitioner's liberty was restrained when he was subjected to an order of protection in connection with the case arising from his January 28, 2003 arrest (New York Criminal Court, Kings County Docket Number [REDACTED]). While the order of protection meets the second prong of the definition of conviction under immigration law, the evidence fails to meet the first prong because the conviction records do not show that the petitioner was found guilty by a judge or jury, that he entered a plea of guilty or nolo contendere or that he admitted sufficient facts to warrant a finding of guilt during the court hearings arising from his January 28, 2003 arrest or during any of his other criminal proceedings. Accordingly, none of the petitioner's four arrests resulted in a conviction under immigration law.

However, court transcripts state that the petitioner was subject to several orders of protection and the petitioner has submitted no evidence regarding the final disposition of any of these orders. In the June 9, 2003 hearing (New York Criminal Court, Kings County Docket Number [REDACTED]), the judge states, "I'm looking through the registry information and there are prior orders of protection – there are many." The court transcripts also make repeated references to orders of protection issued against the petitioner in Family Court. In his statement submitted on appeal, the petitioner reports that he first obtained an order of protection against his wife on June 4, 2003 and that his wife filed false complaints against him in retaliation. The petitioner states that the judge's admonition to him to stay away from his wife (in the court transcripts) was simply a reiteration of the fact that his wife had an order of protection against him and the petitioner maintains that those orders were based on her false accusations. However, the only documentation of any order of protection in the record is a copy of one page of a temporary order of protection issued by an unidentified family court on June 4, 2003, with a

notation that the order was extended until July 29, 2003. The petitioner failed to submit a complete copy of this order or any other evidence that the order was obtained by him against his wife.

The petitioner does not provide copies of the orders of protection issued against him and does not submit any evidence regarding their final disposition. Without such evidence, we cannot determine that the petitioner is a person of good moral character.

The petitioner has not demonstrated that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.