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



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

[Redacted]

B9

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: APR 07

EAC 06 113 51041

IN RE:

Petitioner:

[Redacted]

PETITION: Petition for Immigrant Abused 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 Immigration and Nationality Act (“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 did not establish that he was battered or subjected to extreme cruelty by her spouse during their marriage, and that he entered into his marriage in good faith.

The petitioner submits a timely appeal with 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:

(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 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 record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Guyana who entered the United States on October 18, 2001 as a B-2 visitor for pleasure with authorization to remain in the United States until April 17, 2002. On February 17, 2004, the petitioner married T-H<sup>1</sup>, a U.S. citizen, in New York. On April 28, 2004, T-H- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. Said petition was approved on August 20, 2004. On April 15, 2005, the petitioner filed a Form I-485, Application for Adjustment of Status, to that of a lawful permanent resident. Said petition is still pending.

The petitioner filed the instant Form I-360 on March 7, 2006. On May 26, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish that the petitioner resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse during their marriage, and that the petitioner entered into the marriage in good faith. The petitioner submitted a timely response to the NOID. On October 3, 2006, the director denied the petition finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during the marriage and that he entered into the marriage in good faith. The petitioner submitted a timely appeal with additional evidence. As will be discussed, we concur with the determinations of the director and find that the petitioner has failed to establish his eligibility on appeal.

#### *Battery or Extreme Cruelty*

The petitioner submitted the following evidence to establish that he was subjected to battery or extreme cruelty by his spouse:

- His February 20 and July 20, 2006 personal statements;
- A statement from the petitioner's landlord Parbattie Singh, notarized on July 5, 2006;
- Affidavit from the petitioner's friend, [REDACTED], sworn to on July 18, 2006;
- Affidavit from the petitioner's friend, [REDACTED] sworn to on July 3<sup>rd</sup>, 2006;
- Affidavit from the petitioner's friend, [REDACTED] sworn to on July 10, 2006;
- Affidavit from the petitioner's friend, [REDACTED] sworn to on July 1<sup>st</sup>, 2006;
- Copies of five receipts from Long Island Consultation Center dated April 7, 20, 25, May 2 and 9, 2005;
- Copy of police report from 103<sup>rd</sup> precinct, Jamaica, New York dated June 6, 2006;
- Letter from Safe Horizon dated September 19, 2005;
- Letter from Reverend [REDACTED] (submitted on appeal);
- Affidavit from Reverend [REDACTED] (submitted on appeal);
- Affidavit from [REDACTED] (submitted on appeal); and
- Affidavit of [REDACTED] (submitted on appeal).

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

In his February 20, 2006 personal statement, the petitioner states that his spouse abused alcohol and drugs, and verbally abused him by making unreasonable financial demands on him and when he could not fulfill the demands, yelling at him, using curse words and threatening to kill him. The petitioner states that on one occasion, he was “pushed by her and she took up a knife and told me I better give her money.” The petitioner states that he filed a report with the police at 168 and Jamaica Avenue station. The petitioner did not submit any documentary evidence of such report but states that the police referred him to Community and Mediation Services, Inc., which told him to call the Long Island Consultation Center. The petitioner submitted receipts from five visits to the Center, however, the receipts do not state the nature of the services rendered or provide any other probative information. In his July 20, 2006 personal statement, the petitioner states in general terms that his wife had several problems, and that he was not aware of her alcohol and drug problems. He went on to say that he “suffered a lot” without telling anyone including his friends because she is the love of his life, and he did not want to get the police involved. The petitioner failed to mention specific incidents of abuse by his wife.

The letter from Safe Horizon states that the petitioner contacted them on May 3, 2005 requesting assistance related to his issues as a victim of domestic violence. The report reiterates the petitioner’s claim that he had been in an abusive relationship with his wife, for several years which, recently came to an end when she abandoned him; that his wife refused to work and help financially support their lives, constantly berated him, and on many occasions forced him to give her a large portion of his income. The report states that his wife rejected him, and made belittling comments and abused him financially. As a result, the petitioner felt isolated and unable to cope with the rejection. The petitioner also claimed that his wife threatened to kill him and deport him back to his native country of Guyana. Although the petitioner claimed in his statement to Safe Horizon that he had been abused by his wife for several years, there is no evidence to substantiate that the petitioner and the wife have been married for several years. The report from Safe Horizon simply repeats the petitioner’s claims and fails to provide probative, detailed information sufficient to demonstrate that the behavior of his wife rose to the level of battery or extreme cruelty.

The petitioner submitted a police report dated June 6, 2006, that reiterates the petitioner’s claim that while he was waiting at a bus stop on June 5, 2006, his spouse drove up to him and stated “I’ll pay somebody to kill you,” after asking the petitioner for money and then drove away. This incident caused the petitioner “annoyance and alarm.” The police report was based solely on the petitioner’s account and includes no observation by the police of specific instances of abuse.

The letter from Reverend [REDACTED] states that the petitioner brought his “marital problems” to his attention, and that he subsequently offered his services to counsel them, but the petitioner’s wife did not attend. Reverend [REDACTED] also said that he has been to their home to counsel and advice them. This letter is of general nature and does not include the specifics of the petitioner’s “marital problems” or the nature and duration of counseling given. The letter from Reverend [REDACTED], says that he knew the petitioner for about two years, invited the petitioner and his wife to church service at his church and organized prayer meetings at the home of petitioner and his wife. [REDACTED] states

that one evening, the petitioner called him to pray for him and his wife because his wife was “acting crazy,” and when he talked to the petitioner’s wife on the phone, she told Reverend [REDACTED] to pray for the petitioner because she may “hurt him and send him to the hospital.” The Reverend pleaded with her and calmed her down. Reverend [REDACTED] further states in the letter that the petitioner called him some other time saying that he thinks his wife is on drugs because she screams that she is going to kill him, and that while [REDACTED] was on the phone with the petitioner, he could hear in the background several curse word and swearing by the petitioner’s wife. This letter is based on the petitioner’s statements and there is no indication that the Reverend witnessed any specific incidents of abuse. Reverend [REDACTED] provided no details regarding what he heard the petitioner’s wife say to the petitioner while he was on the phone with the petitioner.

The letter from [REDACTED], the petitioner’s co-worker, states that he noticed that a few months after the petitioner’s marriage, the petitioner began arriving late at work, sometimes untidy, wearing the same soiled working suit and that as the months progressed, the petitioner’s performance at work began to deteriorate slowly, and he had difficulty completing the task at hand. Mr. [REDACTED] stated that on many occasions, the petitioner’s wife would visit the work place demanding money and yelling at the petitioner, and that on some of those occasions, she was under the influence of alcohol and used obscene language towards the petitioner. The letter from [REDACTED] does not establish that the behavior of the petitioner’s wife, as observed by [REDACTED], rose to the level of battery or extreme cruelty or that the petitioner’s poor performance and untidiness were causally related to such abuse.

The letter from [REDACTED] dated October 16, 2006 says that he has known the petitioner for several years before he got married. He visited the petitioner and his wife, and during one of his visits to their home, he witnessed the petitioner’s wife using obscene language and calling the petitioner a loser, miser and lunatic. [REDACTED] says that while the petitioner and her spouse were arguing about a telephone plan, he observed the petitioner’s wife reach across the table and slap the petitioner and threw her coffee onto his clothes. The petitioner did not claim that his wife assaulted him in this manner and does not explain this discrepancy on appeal.

The letter from [REDACTED] dated July 5, 2006 says that he heard a loud noise from the petitioner’s apartment, that his wife was in a rage, and when he went to find out what was going on, the petitioner’s wife used several curse words and told him to get out of their apartment. The letter does not describe any specific incidents of abuse by the petitioner’s wife. The affidavit from petitioner’s friend Mr. [REDACTED] simply states in general terms that he is familiar with some of the problems the petitioner and his wife are having and have spoken to both of them and advised them. The affidavits from [REDACTED] dated July 3, 2006, [REDACTED] dated July 10, 2006 and [REDACTED] dated July 1, 2006, all fail to articulate any specific instance of abuse by the petitioner’s wife. On the contrary, the affidavits say that the petitioner and the wife love and care for each other very much.

As described above, we find the testimonial evidence insufficient to establish the petitioner’s claim of abuse. The general statements made by the petitioner and on his behalf do not demonstrate that the petitioner’s former spouse’s actions were aimed at maintaining control over the petitioner and 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.

On appeal, counsel for the petitioner argues that the director “erred in disregarding the specific circumstances of this petitioner’s marriage with his U.S. citizen spouse” and that the behavior of the petitioner’s wife amounted to extreme cruelty. As discussed above, counsel’s claim is not supported by the record. The director considered the relevant evidence submitted below and we find no error in his determination.

We concur with the director’s determination that the petitioner 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*

To support his of claim good-faith marriage, the petitioner submitted two personal statements, several statements from friends, four photographs of what appears to be the petitioner and his spouse and an unidentified card purportedly written to the petitioner and his wife. In his February 20, 2006 statement the petitioner claims that he met his wife, fell in love and got married on February 17, 2004 in New York. He claims that their marriage was great and wonderful for about six months, that his wife was a positive influence in his life until she started going out and staying out late at nights. From then on things got worse. In his July 20, 2006 statement, the petitioner claims that he married his wife in good-faith and for a lasting relationship. He claims that his wife had a problem with drugs and alcohol, that he was not aware of. The petitioner claims that despite these problems, he was prepared to do whatever in his power to help her, because he loves his wife. He reiterates that his marriage was for “real and in good faith” and that they planned to live together as husband and wife, but his wife came and went as she likes in the home. The petitioner did not provide details of how he met his spouse, their courtship, wedding, joint residence and shared experiences, other than as it relates to the claimed abuse.

The statement from the petitioner’s friend [REDACTED] states that he has known the petitioner for over seven years and met his wife prior to their marriage. He states that the petitioner loved his wife very much and tried to protect her against the law. He claims that he knows for a fact that the petitioner and his wife got married and decided to make a life together, and that the petitioner tried to make his wife happy. Mr. [REDACTED] did not provide any probative details regarding the behavior or interactions of the petitioner and his wife before, during or after the marriage. The statement from [REDACTED], the petitioner’s landlord, states that the petitioner and his wife came to look at the apartment they wanted to rent, and two weeks later they came back together and the petitioner gave him the down payment for the apartment. He observed the petitioner’s wife was very quiet and did not talk much. The petitioner and his wife moved into the apartment on February 20, 2005. The statement does not provide probative details sufficient to establish the claim by the petitioner of good faith marriage.

The affidavit from [REDACTED] states “I have known [REDACTED] and [REDACTED] to be husband and wife for over one year” and “I have visited them and socialized with them on many occasions.” The latter sentence is repeated in the affidavits of [REDACTED] and [REDACTED]. None of these three individuals describe any visits or social occasions in detail or provide any further probative information. The petitioner submitted two additional statements of a general nature from friends. The relevant statements fail to provide probative details sufficient to support his claim that he entered into his marriage in good faith. The petitioner did not submit any documentary evidence of the types listed in the regulation at 8 C.F.R. § 204(c) (2) (vii) and in the NOID. 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. §§103.2 (b)(2)(iii), 204.1 (f)(1), 204.2(c)(i).

The petitioner also submitted four photographs and an undated card written to the petitioner and his wife. Three of the photographs appear to show the petitioner and his wife at three different locations and the fourth photographs shows the petitioner’s wife without the petitioner. These documents are of little probative value.

On appeal, counsel submitted two additional statements from the petitioner’s friends, and two church ministers. Counsel argues that these attestations that the petitioner and the wife lived together “shall be sufficient evidence to prove the bona fide marriage.” These statements do not contain probative details sufficient to establish the petitioner’s claim of good faith marriage. The letter from Reverend [REDACTED] states “I can also state that I know that they (petitioner and wife), live together as husband and wife. I have been to their home to counsel and advise them.” Reverend [REDACTED] provides no probative details regarding the couple’s marital relationship. The affidavit from Reverend [REDACTED] states that he invited the petitioner and his family to attend one of his church services and that the petitioner came with his wife and the petitioner introduced his wife to him. Again, there are no details from the Reverend about the behavior or interactions of the petitioner and his wife during the time they spent with him or at any other time. The statement from [REDACTED] does not include information regarding the marital relationship of the petitioner and his wife other than as it relates to the alleged abuse of the petitioner by his wife.

Counsel asserts that it is “unreasonable to expect the petitioner to provide any evidence concerning shared financial responsibility or other obligations” because the petitioner’s spouse was “an alcohol and drug addict and without employment[,] . . . bank account or credit accounts.” The petitioner himself did not provide such an explanation as to why he failed to submit evidence of joint financial or other responsibilities. Without documentary evidence to support counsel’s claim, assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

As discussed above, the record fails to establish the petitioner’s good-faith entry into his marriage by a preponderance of the evidence under 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.