

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

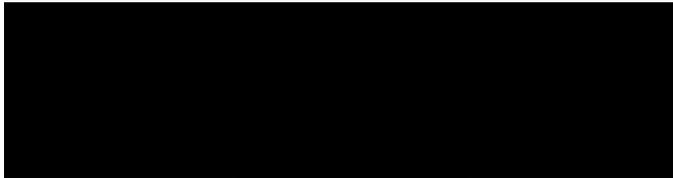
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

Bq

PUBLIC COPY



FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: **JUL 23 2008**
EAC 06 127 50730

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:

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.

Naura Deadnick
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 his spouse during their marriage, that he entered into his marriage in good faith, and that he is a person of good moral character.

The petitioner timely appealed.

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, § 1154(a)(1)(J) 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 them, 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 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.

* * *

(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.

(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.

* * *

(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 Bosnia who entered the United States on June 5, 2002 as a J-1 non-immigrant. On April 23, 2004, the petitioner married T-C-¹, a U.S. citizen, in Los Angeles, California. On May 3, 2004, T-C- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and on the same date, the petitioner filed a Form I-485, Application to Adjust Status. On September 16, 2004, the district director denied the Form I-130 petition and the Form I-485 application on the grounds that the petitioner and his spouse failed to appear for their scheduled interview. On September 24, 2004, the petitioner filed a motion to reopen the Form I-485. The motion was granted and the district director requested evidence from the petitioner as to why his wife could not appear for the interview. The petitioner failed to submit the requested evidence and on March 22, 2006, the district director affirmed his denial of the Form I-130 and Form I-485.

The petitioner filed the instant Form I-360 on March 22, 2006. On July 26, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish that he resided with his spouse, that he was battered or abused by his spouse during their marriage, that he is a person of good moral character and that he entered into the marriage in good faith. The petitioner submitted a timely response to the NOID. On November 3, 2006, the director denied the petition. The petitioner submitted a timely appeal with additional evidence. As will be discussed, we concur with the determinations of the director. The petitioner has failed to overcome the director's finding on appeal.

Battery or Extreme Cruelty

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

- An undated statement from the petitioner's friend, [REDACTED]
- An undated statement from petitioner's friend, [REDACTED]
- A copy of Los Angeles police Preliminary Investigative report, dated February 20, 2006;
- Letters from [REDACTED] dated March 21, 2006 and August 29, 2006;
- A Letter from [REDACTED]
- His own undated personal statement and a brief submitted on appeal.

¹ Name withheld to protect individual's identity.

In his personal statement, the petitioner claims that around December 2004, he noticed some drastic changes from his spouse. He states that she refused to attend a Christmas dinner with him and instead went out with her friends. The petitioner states that when he was out of town, his spouse would bring her friends to the house and they would leave dirty dishes and empty bottles of alcohol in the house. The petitioner states that his spouse began to leave home for two to three days without letting him know her whereabouts. The petitioner claims that he noticed that items, like jewelry, electronics equipment, money, and fine china were missing from his home. The petitioner states that, in order to save their marriage, he proposed that they both go for counseling, but his spouse refused to attend. The petitioner states that around May of 2005, he started to receive anonymous telephone threats, which caused him to suffer mentally and emotionally, and that he had to see a psychologist. The petitioner states that on May 23, 2005, his spouse moved out, taking electronic equipment with her. The petitioner claims that the anonymous phone threats continued after his spouse moved out of the house and that his friends advised him to report the calls to the police. On February 20, 2006, the petitioner called and reported the telephone calls to the Los Angeles police department. The petitioner claims that the incident with his wife caused him to have mental and emotional trauma. He states that he shut out his friends, stopped socializing and began to see a psychologist to help him deal with the mental and emotional trauma. However, the petitioner failed to describe in any detail, specific incidents of battery or extreme cruelty perpetrated against him by his spouse. His generalized statement does not provide any probative information to establish that he was battered and or subjected to extreme cruelty by his spouse.

The Los Angeles police Preliminary Investigation report describes two phone calls made to the petitioner by an unknown suspect. The report does not indicate that the petitioner's spouse made the alleged phone calls or provide any connection between the calls and his spouse.

The statement from the petitioner's friend, [REDACTED], which was based solely upon what the petitioner told him, indicates that the petitioner's spouse brought friends over to their home for parties and left the apartment filled with smoke. Mr. [REDACTED] claims that the petitioner told him that his spouse refused to attend counseling sessions with him and would leave home for days without informing the petitioner of her whereabouts. Mr. [REDACTED] states that the struggle in the petitioner's marriage "began to take a toll on him," that he would not eat regularly, felt "used and distraught," and that he began to lose weight. Mr. [REDACTED] claims that sometime in May of 2005, the petitioner told him "with fear in his voice," that he was receiving some threatening phone calls from unknown individuals, and that he advised the petitioner to report the threatening phone calls to the police. Mr. [REDACTED] generalized statement fails to describe any specific incident of battery or extreme cruelty he witnessed against the petitioner.

The statement from the petitioner's friend, [REDACTED], indicates that she was at a party at the petitioner's home and noticed that the petitioner's spouse became angry and started to yell at the petitioner, pushed him and then left the house. Ms. [REDACTED] claims that on another occasion at the petitioner's house, she noticed that the petitioner's spouse "was either drunk or on drugs." Ms. [REDACTED] claims that the petitioner's spouse became very violent towards the petitioner, started breaking things throughout the house, and threatened the petitioner stating that if he called the police, she would tell them that the petitioner hit her, and that the police would believe her, and that the petitioner would be taken to jail and sent back to his country. Ms. [REDACTED]s claim that the petitioner was pushed and threatened with deportation by his spouse was not reported by the petitioner in his statement, thereby casting serious doubt to the veracity of Ms. [REDACTED]s statement.

The letters from [REDACTED] dated February 24, 2006 and August 29, 2006 state that he counseled the petitioner on his marriage problems but that his wife was not present. Although [REDACTED] referenced "marriage problems," his letters do not describe in any detail the nature of the marital problem, the nature of the

counseling given to the petitioner, or details regarding why the petitioner sought counseling. Reverend ██████'s letters failed to provide any probative information that the petitioner was battered or subjected to extreme cruelty by his spouse.

On appeal, the petitioner submitted a brief, which reiterates the same information contained in his prior statement, and provides no additional description of the alleged battery and extreme cruelty. Additionally, the petitioner submitted a letter from ██████, dated November 29, 2006, who indicates that the petitioner is his patient and that he is suffering from "Adjustment Disorder with Mixed Depressive symptoms and Anxiety symptoms" which he considers "attributable to chronic marital discord troublesome enough to be regarded as psychological abuse." Dr. ██████ states that the petitioner is being treated with "supportive psychotherapy and psychoactive medicines," and that counseling has previously provided some benefit, although marked symptoms persist. While ██████'s qualifications are not at issue, his letter fails to describe any acts of battery or extreme cruelty. Additionally, although ██████ claims that the petitioner is his patient, he did not provide any information regarding when or how many times he has seen the petitioner, what type of sessions they had, the type of tests administered, or how he arrived at the diagnoses of the petitioner.

As described above, we find the testimonial evidence submitted by the petitioner and on his behalf insufficient to establish that he was battered by his spouse during their marriage. Further, the incidents described by the petitioner and the claims contained in the statements submitted on his behalf do not demonstrate that the petitioner's spouse's behavior, rose to the level of other acts described in the regulations at 8 C.F.R. § 204.2(c)(1)(vi) which includes forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution.

In this case, the behavior of the petitioner's spouse, including the petitioner's claims that his spouse would leave their house for days without calling or letting him know of her whereabouts, that she spent time with her friends, refused to attend counseling sessions with him, brought friends over to the house for parties when he was not there, left the house smelling of smoke, with dirty dishes and empty cans of alcohol, and that she finally abandoned him, do not demonstrate that the petitioner's spouses non-physical behavior was accompanied by any coercive actions of threats of harm or that her actions were aimed at ensuring dominance or control over the petitioner. Although ██████ claimed that she witnessed the petitioner's spouse threaten the petitioner with jail and deportation, as discussed previously, the petitioner himself failed to describe to this alleged incident. Further, although ██████ determined that the "chronic marital discord" between the petitioner and his spouse was "troublesome enough to be regarded as psychological abuse," he fails to provide any examples of the alleged psychological abuse or to otherwise document that the petitioner's spouse's actions were aimed at maintaining dominance and control over the petitioner and which manifested into an overall pattern of violence against him. Accordingly, 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 of good-faith marriage, the petitioner submitted the following documents:

- A Personal statement; ██████
- Statement from his friend ██████

- Statement from his friend [REDACTED];
- Four photographs of the petitioner and his spouse;
- Partial copies of Wells Fargo bank statements dated October 2004, December 2004, and January 2005;
- Copies of June 2005 and July 2005 gas bills;
- A copy of Mervyn credit cards in the names of the petitioner and his spouse;
- Letters from [REDACTED]
A copy of Wells Fargo Streamline consumer account application;
- A copy of blank check from Wells Fargo Bank;
- A copy of Keystone lease agreement.

In his personal statement, the petitioner claims that he met his wife, and dated her for one year before they got married. He further claims that for about six to nine months, they did things together until he started to notice some negative behavior from his spouse. The petitioner generally states that he entered into his marriage in good faith. In his statement submitted on appeal, the petitioner provides further clarification regarding his courtship. He states that although he met his former spouse in February 2003, they did not start dating until November 2003. The petitioner, however, did not provide any further information about their relationship or any other evidence of how he met his spouse, their courtship, wedding, and shared experiences, other than as it relates to the claimed abuse.

The statement from [REDACTED] the petitioner's friend, indicates that the petitioner married his spouse in good faith. Mr. [REDACTED] claims that they all visited each other's apartment at least three times a week, enjoyed home cooked meals, watched movies together, and describes celebrating the engagement of the petitioner and his spouse. Mr. [REDACTED] states that the petitioner and his spouse were happily married, but that a little time after their marriage, he noticed that the petitioner did not call or come over as much. Mr. [REDACTED] claims that when he inquired with the petitioner, he was told of the problems the petitioner was having with his spouse.

The statement from the petitioner's friend, [REDACTED], does not describe any specific instance where she witnessed the interactions of the petitioner and his spouse, except as it relates to the alleged abuse of the petitioner. The letters from [REDACTED] state that he counseled the petitioner regarding his marriage, but that the petitioner's spouse did not attend the counseling. Reverend [REDACTED] provides no further probative details about the petitioner's relationship with his spouse to establish the petitioner's good faith marriage.

As documentary evidence, the petitioner submitted four photographs of him and his spouse. The petitioner does not describe these photos or provide any other photographs to document other occasions shared throughout their nearly 2-year relationship. The unsigned copy of the Wells Fargo streamline consumer account application, listing the names and address of the petitioner and his spouse, is not evidence of commingled assets. Neither the petitioner nor his spouse signed the application and there is no indication that the account was actually opened. The copy of the blank check and the partial statements from Wells Fargo listing the name of the petitioner and his spouse is not evidence that both the petitioner and his wife used the account. The three statements dated October 8 to November 5, 2004 with an ending balance of \$3,585.29; December 8, 2004 to January 7, 2005 with ending balance of \$811.35 and January 8 to February 7, 2005 with ending balance of \$1,500.77, only show

summary of deposits and withdrawals from the account. There is no indication who made the deposits or the withdrawals.

The remaining, relevant evidence also does not demonstrate the requisite good-faith entry into the marriage. Although the petitioner submitted copies of the Mervyn credit cards, he does not provide any evidence of the joint use of the cards. While we acknowledge that the petitioner and his spouse had a single utility bill in their names, this evidence alone is not sufficient to establish a good faith marriage. It is further noted that the bills were generated after the petitioner and his spouse were no longer residing together. Finally, although the petitioner submitted a lease which listed both his name and his spouse's name, only the petitioner actually signed the lease.

The petitioner provides no detailed description of how he met his wife, their courtship, wedding, joint residence and shared experiences, apart from his wife's alleged abuse. The relevant statements of the petitioner's friends and the relevant documentary evidence also fail to provide probative information sufficient to establish the petitioner's claim. Accordingly, the present record fails to demonstrate that the petitioner entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

The regulations at 8 C.F.R. § 204.2(c)(2)(v) states, that primary evidence of a petitioner's good moral character is the self petitioner's affidavit, accompanied by local police clearances 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. The director specifically notified the petitioner of these regulatory requirements in the NOID. In his brief on appeal, the petitioner states that he has been fingerprinted by the Department of Homeland Security (DHS) more than once, and that "this alone" should serve as evidence of his good moral character. The petitioner does not cite however any statute or regulation that provides for acceptance of these fingerprint results submitted in support of his Form I-485 in lieu of the evidence listed in the regulations at 8 C.F.R. § 204.2(c)(2)(v). The petitioner claims that he contacted the police department in his residential area and was told they would not provide him a good moral character letter. The petitioner further claims that he applied to the State of California, Bureau of Criminal Identification and Information (CBCII) for criminal background check, and that his application was returned without the requisite record. The letter from CBCII indicates that the petitioner failed to complete the necessary requirements to obtain the requested clearance and the petitioner makes no further claim regarding his attempt to fulfill the requirements. The letter from Saint Sava Serbian Orthodox Church dated January 7, 2006 indicating a pledge of forty dollars from the petitioner to the church is not evidence of good moral character as this is not the kind of evidence specified in the Act. Reverend [REDACTED] states that the petitioner is a man with good Christian character and that he believes that the petitioner has good moral character, and has never seen the petitioner intoxicated or involved in any immoral act. As stated, the above evidence submitted by the petitioner is not sufficient to establish that he is a person of good moral character. The petitioner submitted no other evidence of the kind described in the regulation at 8 C.F.R. § 204.2(c)(2)(v), and therefore has failed to establish his claim of good moral character.

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.