

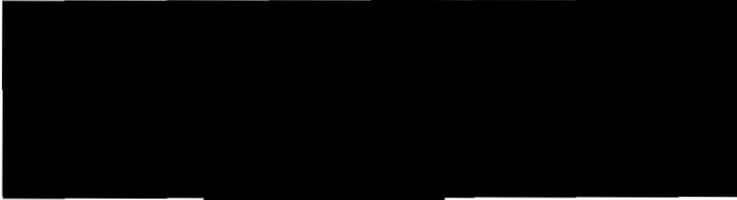
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**B9**



FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 14 2008

EAC 06 195 51926

IN RE:

Petitioner:



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

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 preference visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification under section 204(a)(1)(B)(ii) of the Act (the Act), 8 U.S.C. § 1154(a)(1)(B)(ii), as an alien battered or subjected to extreme cruelty by a lawful permanent resident of the United States.

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 their marriage and that he entered into his marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

Section 204(a)(1)(B)(ii) of the Act provides that an alien who is the spouse of a lawful permanent resident of the United States may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the 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 a preference immigrant under section 203(a)(2)(A) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(B)(ii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(B)(ii)(II).

Section 204(a)(1)(J) of the Act, 8 U.S.C. § 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:

(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.

\* \* \*

(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 Mexico who entered the United States on December 1, 1998 as an H-2B nonimmigrant. The petitioner married J-P-,<sup>1</sup> a lawful permanent resident of the United States, in Florida on January 16, 2003. On August 16, 2005, Citizenship and Immigration Services issued a Notice to Appear to the petitioner charging him as removable under section 237(a)(1)(B) of the Act for having remained in the United States beyond his period of authorized stay. He remains in proceedings and his next hearing is scheduled for February 24, 2009.

The petitioner filed this Form I-360 on June 15, 2006. On February 8, 2007, the director issued a Notice of Intent to Deny (NOID) the petition, which notified the petitioner of deficiencies in the record and afforded him the opportunity to submit further evidence to establish his claim of battery or extreme cruelty and his good faith marriage. The petitioner responded to the NOID on April 6, 2007. The director denied the petition on May 14, 2007. The petitioner, through counsel, submitted a timely appeal.

On appeal, the petitioner states that the evidence submitted by the petitioner is sufficient to establish that he “suffered” extreme cruelty and that he entered into his marriage in good faith. The petitioner also submits additional affidavits from friends on appeal. As will be discussed, we concur with the findings of the director that the petitioner has failed to meet his burden of proof and to establish his eligibility for classification pursuant to section 204(a)(1)(B)(ii) of the Act. Further, beyond the decision of the director, we find two additional issues that preclude approval of the petition.

*Battery or Extreme Cruelty*

At the time of filing, the petitioner submitted a letter, with translation, in which he claimed that after their marriage, he “started noticing changes in [his] wife” until the day she confessed to being pregnant with another man’s child. The petitioner does not elaborate on the “changes” he references or provide any other details about her behavior or treatment of the petitioner other than to state that he felt anxious and depressed because of [REDACTED] betrayal. The petitioner also provided a psychiatric evaluation completed by [REDACTED] based upon a single visit with the petitioner on June 10, 2006. The evaluation reiterates the claims contained in the petitioner’s letter but offers no further probative details in support of the petitioner’s claim of battery or extreme cruelty. Similarly, although the petitioner submits several letters from friends, the letters generally reference the petitioner’s “difficult moments,” his “failed marriage,” and [REDACTED] infidelity, “lack of loyalty,” and “problems.” The letters do not, however, provide any specific information regarding the petitioner’s claim of battery or extreme cruelty.

In response to the director’s NOID, the petitioner submitted a second letter which is purportedly also

---

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

signed [REDACTED] to confirm that she has made herself responsible “for the psychological damage” that she may have caused the petitioner. Although the letter was purportedly signed [REDACTED] the signature was allegedly witnessed by a notary in Fulton County, Georgia. However, by the petitioner’s own admission during his evaluation with [REDACTED] lives in Miami, Florida and has yet to sign the divorce papers that the petitioner sent to her there. Without further explanation from the petitioner regarding this seeming implausibility, doubt is cast on the authenticity of [REDACTED] signature and the probative value of the letter itself in regard to the petitioner’s claim. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Regardless, even if the authenticity of [REDACTED]’s signature were not at issue, the petitioner’s second letter contains claims that were not mentioned in his initial letter, in his psychological evaluation, or by any of his friends. Specifically, in his second letter the petitioner claims that [REDACTED] verbally insulted him in front of his friends and that on one occasion [REDACTED] hit and slapped him. The petitioner provided no explanation for his failure to make these claims in his first letter or during his psychological evaluation. Moreover, although the petitioner claims that his friends witnessed [REDACTED] actions, none of the letters submitted on the petitioner’s behalf describe any incident of battery or verbal abuse.

On appeal, the petitioner submits three additional letters from friends, [REDACTED], [REDACTED], and [REDACTED]. In his letter, [REDACTED] indicates that he began to notice changes in [REDACTED] attitude and states:

Sometimes during family or friend reunions she said thing [sic] about him or the relationship that at first were pretty funny but after awhile became rude and uncomfortable not only to him but the people around also.

[REDACTED] states that [REDACTED] “usually humiliated” the petitioner with “indirect personal comments.” [REDACTED] states that he saw [REDACTED] and the petitioner “fight and laugh,” and claims that their relationship “became unstable due to [REDACTED] uneasy behavior.” We note again, that none of the letters indicate that the petitioner was battered as he claimed in his second letter. Further, while the letters indicate that [REDACTED] said things to the petitioner that were “rude,” the letters do not provide any specific examples of [REDACTED] comments or her behavior.

As discussed above, we find that the claims made by the petitioner and the letters submitted on his behalf do not establish that he was battered or that [REDACTED]’s actions rose 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. While the petitioner may have felt humiliated or betrayed by [REDACTED] behavior, the description of her non-physical behavior does not demonstrate that her actions were accompanied by coercive acts or threats of harm, or that her actions were aimed at ensuring dominance or control over the petitioner. Further, the petitioner provided no explanation for the escalation of claims of abuse from his first statement to his second statement.

Accordingly, we concur with the determination of the director that the petitioner has failed to establish that he was battered or subjected to extreme cruelty by █████ during their marriage, as required by section 204(a)(1)(B)(ii)(I)(bb) of the Act.

*Good Faith Entry into Marriage*

In his statement submitted at the time of filing, the petitioner indicated that he met █████ in 2002 and thought that she was “the woman that [he] wanted to start a family with.” The petitioner states that they got to know each other and after weighing the “pros and cons,” decided to get married. The petitioner does not provide any further details regarding his courtship with █████, his feelings for her, his reasons for marrying her, or any other information to support his claim that he married her in good faith. Similarly, the petitioner’s second letter, the psychological evaluation, and the letters submitted on the petitioner’s behalf contain no further description of the petitioner’s relationship with █████ other than as it relates to his claim of abuse.

The documentary evidence submitted by the petitioner consists of photographs and the petitioner’s 2004 tax returns. The majority of the petitioner’s photographs appear to have been taken at his wedding ceremony. The remaining photographs are undated and uncaptioned and contain no description of the event depicted or other details to establish the relevance of the photographs to the petitioner’s claim of a good faith marriage. Therefore, although the petitioner’s photographs document that the petitioner and █████ were together at a particular place and time, they are of little probative value regarding the petitioner’s intent in marrying █████. Similarly, the petitioner’s 2007 state and federal tax returns are not signed by the petitioner or █████ and the record contains no evidence to demonstrate that the returns were actually filed.

On appeal, although the petitioner submitted no further documentary evidence, he submitted three additional letters from his friends. The letters from █████ contain only general statements about the petitioner’s relationship with █████, such as that they had an “actual marriage” and a “married relationship,” but provide no specific details regarding their relationship prior to their marriage or other information to establish that the petitioner intended to establish a life with █████ when he married her. The remaining letter from █████ provides more details than the previous two letters, but still falls short of providing sufficient probative information of the petitioner’s good faith marriage. █████ indicates that █████ knew the petitioner and █████ prior to their marriage and states that at the beginning, “everything seemed perfect . . . .” Mr. █████ also describes being very surprised when he heard that the petitioner and █████ were getting married “because they didn’t know each other for long . . . .” His letter does not, however, provide specific details regarding the petitioner’s relationship with █████, a description of their interactions with each other (other than as it relates to the claim of abuse), or any other information to support a finding that the petitioner entered into the marriage with █████ in good faith. Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he entered into marriage with █████ in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Beyond the decision of the director, we find additional issues that preclude approval of the petition.

### *Residence*

On the Form I-360, the petitioner indicated that he resided with [REDACTED] from January 16, 2003 until an unspecified date in July 2004 and that they last resided together at [REDACTED] in Alpharetta, Georgia. The petitioner's letters and the letters submitted on his behalf contain no testimony regarding the petitioner's and [REDACTED] residence at this address or any other address during the time claimed by the petitioner. As documentary evidence, the petitioner submitted photographs and copies of tax documents that list the claimed address. However, as we stated previously, the tax documents are not signed and the record contains no evidence which demonstrates that the documents were actually filed. Further, as the photographs are undated and contain no description of the documented moment, they are of no probative value as it relates to the petitioner's claimed residence with [REDACTED].

Further, although the petitioner also submitted a letter which is purported to be from his mother-in-law, [REDACTED], the letter has the same flaw as the alleged letter from [REDACTED]. Specifically, while [REDACTED] reportedly resides in Miami, Florida, her signature has allegedly been witnessed by a notary in Fulton County, Georgia. More significantly, even if the authenticity of [REDACTED] signature were not at issue, the information contained in her letter contradicts other evidence contained in the record. In the letter, [REDACTED] purportedly claims to have rented a room in her home located at [REDACTED] apartment 7, in Miami, Florida to the petitioner and [REDACTED] beginning on January 25, 2003<sup>2</sup> for "a little more than a year." However, the petitioner's Form I-485, Application to Adjust Status and his accompanying Form G-325A, Biographic Information, signed by the petitioner on January 30, 2003, five days *after* Ms. de Pedrero claims the petitioner and [REDACTED] began residing with her, lists the petitioner's address as [REDACTED] in Hollywood, Florida. The petitioner lists his previous residence, from June 2002 until January 2003, as [REDACTED].

As discussed above, the record contains scant documentary evidence of the petitioner's claimed residence with [REDACTED] and the testimonial evidence provided by the petitioner contains no further probative information. Moreover, the record contains discrepancies, which, without further explanation, diminish the evidentiary value of the petitioner's evidence. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* Based upon the above discussion, we find that the petitioner has failed to establish that he resided with his spouse, as required by section 204(a)(1)(B)(ii)(II)(dd) of the Act. We, therefore, withdraw the director's affirmative finding on this issue.

### *Good Moral Character*

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral

---

<sup>2</sup> The translation of the letter erroneously lists the date as "January 25, 2007."

character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. Although the petitioner submitted a brief statement regarding his lack of criminal history and a police clearance from Georgia, this evidence does not sufficiently establish his good moral character.

As discussed in the previous section, the petitioner has provided little information regarding his specific residence during his marriage. Documents contained in the record of proceeding indicate that during the three-year period prior to filing, until as recently as January 2005, the petitioner lived in Florida. Without further evidence which definitely establishes that the petitioner was not residing in Florida during the three-year period prior to filing or, in the alternative, a clearance from the state of Florida, we find that the petitioner has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(B)(ii)(II)(bb) of the Act. We, therefore, withdraw the director's affirmative finding on this issue.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.