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FILE: [REDACTED]
EAC 02 265 50136

Office: VERMONT SERVICE CENTER

Date: MAR 17 2005

IN RE: Petitioner: [REDACTED]
Beneficiary: [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.

Mari Johnson

R Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The Acting Center Director, Vermont Service Center, denied the preference visa petition. The petitioner subsequently submitted an untimely appeal, which the director considered as a motion to reopen. The director reaffirmed her decision, and denied the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a 38-year old native and citizen of Ghana who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen.

The director determined that the petitioner failed to establish that he is a person of good moral character.

On appeal, the petitioner submits additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a United States citizen, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

(A) Is the spouse of a citizen or lawful permanent resident of the United States;

(B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;

(C) Is residing in the United States;

(D) Has resided . . . with the citizen or lawful permanent resident spouse;

(E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;

(F) Is a person of good moral character; [and]

* * *

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

According to the evidence on the record, the petitioner wed ██████████ 16 years senior to the petitioner in age, on April 27, 2001 in Syracuse, New York. The petitioner resided with his citizen wife for approximately three months. According to the evidence on the record, the petitioner and his wife separated on June 27, 2001. The petitioner's citizen spouse initiated divorce proceedings and their marriage was terminated on April 22, 2003. On August 15, 2002, the petitioner filed a Form I-360 self-petition claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage. The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

Because the petitioner furnished insufficient evidence to establish that he was battered or subjected to extreme cruelty by his citizen spouse, that his wife was a citizen, that his wife had terminated her prior marriages before marrying the petitioner, that he entered into the marriage in good faith and is a person of good moral character, on April 4, 2003, the director requested additional evidence. The director specifically listed the types of evidence that would establish that the petitioner is a person of good moral character, that he had been battered or subjected to extreme cruelty by his citizen spouse, that his wife is a U.S. citizen, that his wife had terminated her prior marriages and that he had entered into the marriage in good faith.

Through counsel, the petitioner responded to the request for additional evidence and submitted further evidence.

The director, in her decision, reviewed and discussed the evidence furnished by the petitioner, including evidence furnished in response to her request for additional evidence. The discussion will not be repeated here. The director determined that the petitioner failed to establish that he is a person of good moral character because he failed to submit a police clearance from locations where he had resided prior to October 2000 and failed to explain why the requested police clearance(s) were not available. The director denied the petition on October 20, 2003. The petitioner filed a Form I-290B Notice of Appeal on February 19, 2004. The director treated the late appeal as a motion to reopen and reaffirmed its prior decision. The petitioner filed a second Form I-290B Notice of Appeal. The latter appeal was timely. On appeal, the petitioner submits a police clearance from Holland and an explanation of his prior residences.

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of*

Soriano, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The evidence before the director relating to the petitioner's good moral character is as follows:

- The petitioner's affidavit dated February 17, 2004 stating that before his arrival in the United States in October 2000, he lived with his parents in Accra, Ghana for most of his life.
- The petitioner's explanation dated November 29, 2004 stating that he had lived with his parents in Ghana until he started missionary work with Mercy Ships in March 1995. He further stated that he worked with Mercy Ships until September 1998 at which time he began working for a Dutch merchant ship and resided in Holland until February 18, 2000.
- Police clearance February 6, 2004 from the Accra, Ghana police department.
- Favorable letter written by the Reverend [REDACTED] Bethany Baptist Church, Syracuse, New York.
- Letter dated September 19, 1997, from the chief engineer of the petitioner's former employer, Mercy Ships, attesting to the petitioner's good moral character.
- Police clearance dated April 30, 2003, from the Syracuse, New York police department.
- Affidavit of a friend, [REDACTED] attesting to the petitioner's good moral character.
- Affidavit of [REDACTED] program supervisor for the Syracuse City School District, attesting to the petitioner's dedication to Gospel studies.
- Letter of Minister [REDACTED] Cornerstone Christian Church, attesting to the petitioner's good moral character.
- Undated letter from [REDACTED] Sunday School Superintendent, Bethany Baptist Church, attesting to the petitioner's good moral character.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires that the petitioner establish that he is a person of good moral character. In a request for additional evidence, the director specifically requested that the petitioner submit police clearances or records from each place he had resided for at least six months during the 3-year period before filing the Form I-360 petition. The petitioner failed to provide clearances from the Netherlands until the instant appeal. The petitioner failed to overcome the director's objections to approving the petition.

In a July 24, 2002 letter, [REDACTED] a social worker with the Refugee Resettlement Program in Syracuse, refers to the petitioner's "recent work in North Carolina at a Men's Evangelism Training." The letter does not provide further explanation of the nature or length of his work. Accordingly, it is unclear whether the petitioner's work in North Carolina was for six months or less, and whether additional police clearances covering his stay in North Carolina during the requisite three-year period are required.

In review, the evidence is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by his citizen spouse. According to the evidence on the record, the petitioner's chief complaint about his wife was that she was sexually demanding. The petitioner submitted a medical report that states that the petitioner is suffering from depression due to his inability to work and immigration problems. Accordingly, the evidence is insufficient to establish that the petitioner was battered by, or subjected to extreme cruelty by his citizen spouse.

The evidence is insufficient to establish that that the petitioner entered into the marriage in good faith. According to the evidence on the record, the petitioner is sixteen years younger than his citizen spouse. The petitioner provided no evidence that he and his wife commingled assets or shared financial responsibilities. The petitioner and his wife lived together for only three months. Accordingly, the evidence is insufficient to establish that the petitioner married his citizen spouse in good faith.

Beyond the director's decision, the AAO finds that the petitioner has not established that he was the spouse of a citizen in accordance with 8 C.F.R. § 204.2(c)(1)(i)(A), or that he is eligible for immigrant classification based on that relationship in accordance with 8 C.F.R. § 204.2(c)(1)(i)(B). In the April 4, 2004 RFE, the director requested that the petitioner:

Submit proof of the legal termination of all prior marriage(s) of [the petitioner] and [the petitioner's citizen wife]. Such proof would normally be a divorce decree, death certificate, annulment, etc. In order for the legal termination of marriage to be considered valid for immigration purposes, it must have been registered with a civil authority. If the requested documents are not available to you, submit an explanation as to why they are not available. In that instance, also provide a statement describing your knowledge of your spouse's marital history up to the time you married her. If possible, also provide corroborating statements from knowledgeable and responsible third parties to support your claim.

The petitioner did not provide any of these requested documents. Instead, he provided the divorce decree for his marriage to his citizen wife, the April 27, 2001 affidavit, license and certificate of marriage for his marriage to his citizen spouse, and a copy of a June 12, 2001 Form G-325A relating to his wife. According to the April 27, 2001 marriage certificate, the petitioner's citizen wife had one prior marriage that ended in divorce on October 15, 1991, in Syracuse, NY. According to the June 12, 2001 G-325A, the petitioner's citizen spouse had an additional two marriages: one that lasted from August 21, 1965, through March 5, 1979, and one that lasted from an unspecified date until December 29, 1997. Accordingly, it appears that the petitioner's spouse may have had as many as three prior marriages. The petitioner has not submitted any of the requested proof of legal termination for any of these marriages. Accordingly, the record does not establish that he was the spouse of a citizen and is otherwise eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship. For this additional reason, the petition may not be approved.

For these additional reasons, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.