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U.S. Citizenship
and Immigration
Services

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[REDACTED]

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FILE: [REDACTED]
EAC 04 197 53763

Office: VERMONT SERVICE CENTER

Date: **APR 14 2006**

IN RE: Petitioner: [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:

[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

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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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner is a native and citizen of Ghana who last entered the United States on November 22, 2003 as a parolee under section 212(d)(5) of the Act and now seeks 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 an alien subjected to battery or extreme cruelty by his United States citizen spouse. The petitioner filed his Form I-360 on June 17, 2004. On February 9, 2005, the director issued a notice informing the petitioner that the evidence submitted with his Form I-360 was insufficient to establish his eligibility and requested documentation of the legal termination of the petitioner's prior marriage; evidence that he had resided with his wife; evidence that the petitioner or his child had been subjected to battery or extreme cruelty by his wife; and evidence of his good moral character. The petitioner did not respond to the director's request and on June 8, 2005, the director denied the petition pursuant to the regulation at 8 C.F.R. § 204.1(h). On appeal, counsel submits a brief and additional evidence, including evidence of the legal termination of his prior marriage. For the reasons discussed below, we concur with the director's determination that the petitioner did not establish the requisite battery or extreme cruelty, joint residence, or his good moral character and find that counsel's claims and the evidence submitted on appeal do not overcome these reasons for denial. However, the case will be remanded for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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 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).

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

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 . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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 born in the United States, 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. . . . 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.

In this case, the record shows that the petitioner married [REDACTED] a U.S. citizen, on January 26, 2003 in Arizona. Ms. [REDACTED] filed a Form I-130 petition for alien relative on the petitioner's behalf on February 25, 2003. On November 4, 2003, Ms. [REDACTED] informed CIS that

she wished to withdraw the Form I-130. On November 25, 2003, Ms. [REDACTED] filed a petition for dissolution of marriage against the petitioner with the Maricopa County Superior Court of Arizona. On January 21, 2004, CIS denied the petitioner's Form I-485 application to adjust status due to the withdrawal of Ms. [REDACTED] Form I-130 petition. On June 17, 2004, the petitioner filed his Form I-360.

Joint Residence

On appeal, counsel claims that several documents submitted with the petition establish the petitioner's "joint residence with his wife (the *bona fides* of their marriage)." Counsel mischaracterizes the residence criterion as equivalent to a bona fide marriage requirement and the evidence cited by counsel does not establish that the petitioner resided with his wife pursuant to section 204(a)(1)(A)(iii)(II)(dd) and the regulation at 8 C.F.R. § 204.2(c)(2)(iii). The couple's marriage license does not list the address of either the petitioner or his wife. The birth certificate of the couple's daughter, [REDACTED] lists only the address of Ms. [REDACTED] and not the petitioner. The health insurance cards of the petitioner and his daughter do not list an address or otherwise show that the petitioner resided with his wife. The deposit ticket for the couple's joint bank account lists a joint residential address [REDACTED] (Chandler, Arizona), however the only account statement submitted is dated after the petitioner's wife filed for divorce and the three remaining documents related to this account are addressed to the petitioner alone. Ms. [REDACTED] Petition for Order of Protection against the petitioner lists separate residential addresses for her and the petitioner.

A police report dated December 20, 2003, states that the police stood by while the petitioner removed his belongings from the [REDACTED] address. A letter from the lawyer representing the petitioner in his divorce case claims that Ms. [REDACTED] changed the locks on the "community residence." The Forms I-130 and I-864 filed by Ms. [REDACTED] on the petitioner's behalf also list the [REDACTED] address as the couple's joint residence. Yet these documents alone are insufficient to establish that the petitioner actually resided with his wife. The petitioner did not submit documentation of the types specified in the regulation at 8 C.F.R. § 204.2(c)(2)(iii), such as employment records, utility receipts, deeds, mortgages, rental records, or joint insurance policies evidencing his joint residence with his wife. The birth certificate of the child's daughter does not list the petitioner's address and the submitted health insurance cards also fail to show a joint residential address for the petitioner and his wife. The school record of the petitioner's stepdaughter and the medical treatment agreement signed by the petitioner for his daughter do not state the address of the petitioner or his wife. The petitioner also failed to submit an affidavit explaining why further evidence of his marital residence does not exist or is unobtainable. Accordingly, the present record does not establish that the petitioner resided with his wife.

Battery or Extreme Cruelty

Counsel claims that evidence submitted with the Form I-360 show that Ms. [REDACTED] subjected the petitioner to extreme cruelty. The documents cited by counsel do not support his claim. Copies of

electronic mail messages indicate that Ms. [REDACTED] was in love with another man who lived in London, that she corresponded with him in July 2003, during her marriage to the petitioner, but that she did not see the other man during this time and that he soon reconciled with his own wife and asked Ms. [REDACTED] to stop contacting him. The messages establish Ms. [REDACTED] unfaithful feelings at one point during her marriage to the petitioner, but they do not amount to psychological abuse and the record does not indicate that the messages were part of an overall pattern of abuse against the petitioner.

The December 20, 2003 police report describes the incident as “a domestic that was not a domestic, but instead a civil standby gone awry. . . . Incident was never a physical fight as originally reported.” The report shows that the petitioner and his wife had an argument when the petitioner went to retrieve his belongings. The report does not indicate that Ms. [REDACTED] used or threatened to use force against the petitioner. The submitted petition for an order of protection was filed by Ms. [REDACTED] against the petitioner and the record is devoid of any evidence that this petition was dismissed by the court.

The record indicates that Ms. [REDACTED] withdrew her Form I-130 filed on the petitioner’s behalf on November 4, 2003 and that she filed a petition for divorce while the petitioner was in Jamaica on a business trip in late November 2003. The record contains no copy of the divorce petition or other evidence of the exact date on which it was filed. A letter from the petitioner’s divorce attorney claims that Ms. [REDACTED] changed the locks on the couple’s purported marital residence and prevented the petitioner from retrieving his belongings. Counsel also claims that Ms. [REDACTED] took all of the money out of the couple’s joint bank account, removed her name from the account and caused an overdraft in order to hurt the petitioner’s credit. The record shows that the account was overdrawn in November 2003, but the petitioner submitted no documentation of his wife’s purported withdrawal of funds and removal of her name from the account.

Counsel claims that other documents establish Ms. [REDACTED] pattern of abuse with regards to her elder daughter, [REDACTED] and her ex-husband, [REDACTED] father. Counsel suggests that this allegedly abusive pattern continued in Ms. [REDACTED]’s allegedly abusive treatment of the petitioner during the course of their divorce. Whatever the documents relating to Ms. [REDACTED], [REDACTED] and her ex-husband may indicate, they do not establish a pattern of extreme cruelty that extended to the petitioner. The preliminary injunction issued in connection with the divorce case of Ms. [REDACTED] and the petitioner is a standard form enjoining both the petitioner and his wife from, *inter alia*, hiding community property from one another or taking their minor child outside of the court’s jurisdiction without prior consent and permission. The injunction contains no findings of fact or orders made by the court particular to the couple’s case. Several letters from the petitioner’s divorce attorney claim that Ms. [REDACTED] denied the petitioner access to their daughter, [REDACTED]. On appeal, the petitioner submits a copy of a court order dated April 7, 2005 issued in conjunction with the petitioner’s divorce case. The order finds Ms. [REDACTED] in contempt of court for repeatedly delaying and denying the petitioner’s visits with [REDACTED]. These documents alone do not establish that Ms. [REDACTED] interference with the petitioner’s visitation with their daughter amounted to psychological abuse or was part of an overall pattern of violence or threatened violence against the petitioner.

On appeal, the petitioner also submits a letter dated July 8, 2005 and addressed to counsel from [REDACTED] a licensed and certified clinical social worker, regarding her assessment of the petitioner. Ms. [REDACTED] letter primarily summarizes the petitioner's relationship with Ms. [REDACTED] as related to her by the petitioner himself. Ms. [REDACTED] states that she believes the petitioner was severely emotionally abused by Ms. [REDACTED] during their marriage. Yet Ms. [REDACTED] assessment is based on one meeting with the petitioner on June 21, 2005 of unspecified length and unspecified documents provided to Ms. [REDACTED] by counsel. Ms. [REDACTED] states that during the interview, the petitioner's "speech was logical and goal-directed" and that he showed "no indication of a thought disorder." Ms. [REDACTED] provides no other professional assessment or diagnosis of the petitioner and notes no physical or psychological effects of Ms. [REDACTED]'s alleged abuse on the petitioner, as directly observed by her during the interview. In addition, Ms. [REDACTED] resume does not indicate that she has any specific training or experience in diagnosing and treating survivors of domestic violence. For these reasons, her assessment is of little probative value.

The documents submitted with the petition and on appeal do not establish that Ms. [REDACTED] subjected the petitioner to battery or extreme cruelty pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi), 204.2(c)(2)(iv). The evidence does not indicate that Ms. [REDACTED] ever used or threatened to use force against the petitioner. As documented in the record, Ms. [REDACTED] behavior was not part of an overall pattern of violence and did not amount to psychological abuse. In addition, the petitioner submitted no evidence that he ever sought assistance from the police, religious figures, social workers or other social service agency personnel to help him deal with his wife's alleged extreme cruelty. Ms. [REDACTED] letter is an assessment provided to counsel in support of this petition and does not indicate that the petitioner sought or received any mental health treatment from Ms. [REDACTED]. The petitioner submitted no statement below or on appeal to explain why he did not seek assistance, or that he did seek help, but that evidence of such help (or his attempts to get help) does not exist or is unobtainable. Accordingly, the present record does not demonstrate that the petitioner was subjected to battery or extreme cruelty by his U.S. citizen spouse as required by section 204(a)(1)(A)(iii) of the Act.

Good Moral Character

In his February 9, 2005 notice, the director asked the petitioner to submit evidence of his good moral character, specifically, his own affidavit supported by police clearances or records from each place he had resided for at least six months during the three-year period before his petition was filed. The director's request was made pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). The petitioner submitted no evidence in response to the director's request. On appeal, the petitioner also fails to submit police clearances, state criminal background checks, or an explanation of why such records are unavailable or unobtainable.

On appeal, counsel claims that the petitioner's good moral character is evidenced by his college degree; Arizona license to operate an assisted living home and his certification as an assisted living facility manager; his care for his daughter including providing her with health insurance coverage and financial

support, and his request for visitation after his separation from his wife; his attempt to reconcile with his wife; and his Form G-325A listing his continuous employment. In addition, counsel claims that the search of the petitioner's fingerprints, given in connection with his Form I-485, will show that the petitioner has no criminal record. None of these documents comply with the director's request and the regulation at 8 C.F.R. § 204.2(c)(2)(v) and counsel offers no explanation of why the petitioner is unable to submit the requested police clearances or state criminal background checks. Consequently, the present record does not establish that the petitioner is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v).

On appeal, the petitioner submitted evidence of the legal termination of his prior marriage and the record indicates that he had a qualifying relationship with Ms. [REDACTED] a U.S. citizen, when he filed this petition. Accordingly the petitioner has overcome this reason for the director's denial of his petition. The current record does not establish, however, that the petitioner resided with Ms. [REDACTED] that she battered or subjected him to extreme cruelty during their marriage, or that he is a person of good moral character pursuant to the regulations at 8 C.F.R. §§ 204.2(c)(1), 204.2(c)(2). The petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

However, the case will be remanded because the director failed to issue a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which states, in pertinent part:

Notice of intent to deny. If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

The case must be remanded for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii), which will give the petitioner a final opportunity to overcome the deficiencies of his case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.