

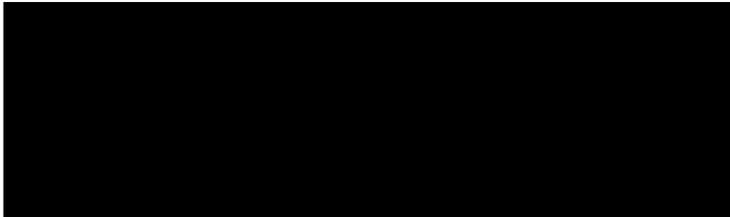
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 06 089 52724

Office: VERMONT SERVICE CENTER

Date: **APR 19 2007**

IN RE: Petitioner: [REDACTED]

PETITION: Petition for 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:



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.

fr *Maura 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 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 because the petitioner did not establish that he had a qualifying relationship with his U.S. citizen wife, that he entered into their marriage in good faith, that his wife battered or subjected him to extreme cruelty during their marriage, that he resided with his wife and that he was a person of good moral character.

On appeal, counsel submits a letter, additional evidence and copies of documents previously submitted.

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:

(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 . . . , 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.

* * *

(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. . . . 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 facts and procedural history. The petitioner is a native and citizen of Morocco who entered the United States on April 3, 1999 as a nonimmigrant visitor (B-2). On October 10, 2002, the petitioner married L-B-¹, a U.S. citizen, in New Jersey. On February 7, 2003, the petitioner was served with Notice to Appear for removal proceedings, which charged him as deportable from the United States pursuant to section 237(a)(1)(B) of the Act for remaining in the United States beyond the period of his authorized stay. The petitioner's wife subsequently filed a Form I-130, petition for alien relative, on the petitioner's behalf. On April 29, 2003 the immigration judge terminated the removal proceedings against the petitioner to allow for the adjudication of the Form I-130 and the petitioner's concurrently filed Form I-485, application to adjust status.

¹ Name withheld to protect individual's identity.

The petitioner filed this Form I-360 on February 1, 2006. The director subsequently issued a Request for Evidence (RFE) of the legal termination of the petitioner's marriage to [REDACTED] the petitioner's good-faith entry into marriage with his wife, his wife's battery or extreme cruelty, his residence with his wife and his good moral character. The petitioner, through counsel, requested additional time to respond. The director then issued a Notice of Intent to Deny (NOID) the petition on the same grounds cited in the RFE. The petitioner, through counsel, responded to the RFE with additional evidence. The director denied the petition on September 11, 2006 on the grounds cited in the RFE and NOID and counsel timely appealed.

On appeal, counsel claims that the evidence submitted below and on appeal establishes the petitioner's eligibility. We concur with the director's determination. Beyond the director's decision, the record also fails to demonstrate that the petitioner was eligible for immediate relative classification based on a qualifying relationship with his wife.

Qualifying Relationship

The record contains a Form I-485 filed by the petitioner on March 30, 2001. The petitioner signed the Form I-485 on March 22, 2001. On Part 3-B of the Form I-485, the petitioner states that [REDACTED] is his wife. In the RFE and NOID, the director requested the petitioner to submit evidence of the legal termination of his marriage to [REDACTED]. In response, the petitioner submitted a letter dated April 15, 2003, in which he states that in December 2000 a friend introduced him to a "Lawyer" whom he paid \$3,500 to obtain a "green card." The petitioner states that he signed some "INS forms," received his work authorization and never saw the "Lawyer" again. The petitioner maintains that he does not know and was never married to [REDACTED].

On appeal, counsel states that the immigration judge accepted the petitioner's explanation and terminated the removal proceedings to allow the petitioner to seek adjustment of status based on his marriage to L-B-. Counsel assumes that the petitioner's explanation, as accepted by the immigration judge, "will satisfy this issue." However, by signing Part Four of the Form I-485, the petitioner certified, under penalty of perjury, that the application was "true and correct." Although he now claims that he never knew or married [REDACTED] the petitioner did not (as noted by the director) submit any evidence to corroborate his statements, such as documentation from the State of New York certifying that no record exists of a marriage between the petitioner and [REDACTED]. Simply going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Without evidence of the legal termination or nonexistence of the petitioner's marriage to [REDACTED] we cannot determine that his marriage to L-B- was valid. Accordingly, the petitioner has not established that he had a qualifying relationship with his wife, as required by section 204(a)(1)(A)(iii)(II)(aa) of the Act.

Eligibility for Immediate Relative Classification

Beyond the director's decision, the record also fails to establish that the petitioner was eligible for immediate relative classification based on his relationship with his former wife, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her qualifying relationship to the abusive spouse. Because the petitioner has not established a qualifying relationship with his wife, he has also failed to demonstrate his eligibility for immediate relative classification based on such a relationship.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

Good Faith Entry into Marriage

The petitioner submitted the following evidence relevant to his allegedly good-faith entry into marriage with his wife:

- The petitioner's August 8, 2003 letter;
- Copies of immigration forms and documents filed by the petitioner or his wife on his behalf; and
- Unsigned copies of the former couple's 2002 joint federal and New Jersey income tax returns.

In his August 8, 2003 letter, the petitioner states that he met his wife on an unspecified date, they "felt in love," and started seeing each other. The petitioner explains that his wife made him feel "free and comfortable" and that he felt like a father to her two children. The petitioner states that at some unspecified time, he and his wife decided to get married and that since then, he has worked to support their family. The petitioner does not describe in probative detail how he met his wife, their courtship, wedding, joint residence or any of their shared experiences.

The remaining relevant evidence fails to support the petitioner's claim. The immigration documents show that the petitioner's wife filed an immigrant visa petition and affidavit of support for him, as well as posted bond for his release from immigration custody. While those documents may reflect upon her intentions in entering their marriage, the evidence does not establish the petitioner's own good-faith in marrying his wife. The petitioner and his wife did not sign the 2002 tax returns and the record contains no evidence that the returns were actually filed.

On appeal, the petitioner submits letters from his friends, [REDACTED] and [REDACTED]. Neither counsel nor the petitioner explains why these letters were not submitted below. In the RFE and

NOID, the petitioner was put on notice of the deficiency in the record, the type of evidence required to establish his good-faith entry into the marriage and was given a reasonable opportunity to provide such evidence before the petition was adjudicated. The petitioner failed to timely submit the requested evidence in response to the RFE or NOID and now submits it on appeal. 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 petitioner submitted no other documentary or testimonial evidence of his allegedly good-faith entry into marriage with his wife of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and the RFE. 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. §§ 204.1(f)(1), 204.2(c)(2)(i).

In his August 8, 2006 letter, counsel states that the petitioner told him that his wife “took every document they had to prove that they lived together and that they had a common life in good faith.” The record contains no statement by the petitioner himself regarding his wife’s procurement of the former couple’s joint documents. 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).

Accordingly, the record does not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The same evidence listed above in the preceding section is also relevant to the petitioner’s claim that he resided with his wife. On the Form I-360, the petitioner states that he resided with his wife from April 2002 to June 2005 and that they last lived together at a residence in West New York, New Jersey. In his August 8, 2003 letter, the petitioner states that he and his wife “have been able to have a good apartment,” but he does not specify their address or provide any other probative details.

The 2002 tax returns list the West New York residence as the former couple’s address, but as previously stated, the returns are not signed and the record contains no evidence that they were actually filed. The immigration forms and documents filed by the petitioner or his wife on his behalf also list the West New York residence as the address of the petitioner and his wife, but these documents alone are insufficient to establish the requisite joint residence.

On appeal, the petitioner submits letters from his friends and former neighbors, [REDACTED] and [REDACTED]. As discussed in the preceding section, this evidence cannot be considered.

The petitioner submitted no other documentary or testimonial evidence of his alleged residence with his wife of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and the RFE. 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. §§ 204.1(f)(1), 204.2(c)(2)(i).

In his August 8, 2006 letter, counsel states that the petitioner told him that his wife “took every document they had to prove that they lived together[.]” Yet, the record contains no statement by the petitioner himself regarding his wife’s procurement of documents that might establish their joint residence. Again, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Accordingly, the record fails to establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The petitioner submitted no evidence to support his claim that his wife subjected him to battery or extreme cruelty. In addition, the record contains a copy of a criminal complaint and warrant for the arrest of the petitioner for assaulting his wife that was issued by the West New York, New Jersey Police Department on February 13, 2004. Although the record shows that the case against the petitioner was dismissed, the petitioner has submitted no explanation of the underlying events that led to his arrest.

The petitioner submitted no personal statement regarding his wife’s alleged abuse or any other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv) and the RFE. 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. §§ 204.1(f)(1), 204.2(c)(2)(i). On appeal, the petitioner submits letters from his friends and former neighbors, [REDACTED] but as previously stated, this evidence cannot be considered.

The petitioner has not demonstrated that his wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

As evidence of his good moral character, the petitioner submitted a letter dated July 29, 2004 from the West New York, New Jersey Police Department. In the RFE, the director informed the petitioner that because the letter was issued over a year before he filed the Form I-360, the letter was insufficient to establish his good moral character. In the NOID, the director reiterated that the petitioner had not established his good moral character. Accordingly, the petitioner was put on notice of the deficiency in the record, the type of evidence required to establish his good moral character and was given a reasonable opportunity to provide such evidence before the petition was adjudicated. The petitioner failed to timely submit the requested evidence in response to the RFE or NOID and now submits a

September 21, 2006 letter from the West New York, New Jersey Police Department on appeal. The AAO will not consider this evidence for any purpose. *See Soriano*, 19 I&N Dec. 764; *Obaigbena*, 19 I&N Dec. 533. The appeal will be adjudicated based on the record of proceeding before the director.

The petitioner has not established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The record fails to establish that the petitioner had a qualifying relationship with his wife, was eligible for immediate relative classification based on such a relationship, resided with his wife, entered into their marriage in good faith, was battered or subjected to extreme cruelty by his wife during their marriage and that he is a person of good moral character. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.

ORDER: The appeal is dismissed.