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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 06 023 50283

Office: VERMONT SERVICE CENTER

Date: DEC 31 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:

[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.

for 
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 finding that the petitioner did not establish that he resided with his spouse, 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 submits a timely appeal.

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

* * *

(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.

* * *

(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 Pakistan who claims to have entered the United States on May 13, 1999 as a nonimmigrant visitor. On April 3, 2001, the petitioner married D-A-¹, a U.S. citizen, in Philadelphia, Pennsylvania. The petitioner filed this Form I-360 on October 21, 2005. The director issued a Request for Evidence (RFE) on January 23, 2006 and a Notice of Intent to Deny (NOID) on May 23, 2006. The director denied the petition on October 30, 2006, finding that the petitioner failed to establish that he resided with his spouse, that he was battered by or subjected to extreme cruelty by his spouse during their marriage, and that he entered into his marriage in good faith. The petitioner submitted a timely appeal with additional evidence. As will be discussed, we concur with the director and find the petitioner has failed to establish his eligibility.

Residence

On the Form I-360, the petitioner indicated that he resided with his spouse from December 1999 until May 2005 and that they last resided together at [REDACTED] Street, in Philadelphia, Pennsylvania. In his "Statement of Facts," the petitioner claims to have resided with his spouse at the S. [REDACTED] Street address "before and after the marriage . . . ," but provides no further details regarding their residence together. Although the petitioner also submitted his own handwritten statement and statements from two of his friends, the statements provide no further probative details about the claimed residence. The testimonial evidence does not describe the petitioner's residence, any shared possessions, activities at their home, or provide any other descriptions to support the petitioner's claim. As documentary evidence of his residence with his spouse, the petitioner submitted documents dated *after* the date he claims he no longer resided with his spouse. The evidence consists of a Verizon bill addressed to the petitioner and his spouse dated September 2005 and a bank statement addressed only to the petitioner covering the period from July to August 2005.

The evidence submitted on appeal, which consists of additional statements from the petitioner and his two friends, does not provide any additional probative details about the petitioner's claimed residence with his spouse.

Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

¹ Name withheld to protect individual's identity.

Battery or Extreme Cruelty

In the Statement of Facts submitted at the time of filing the petitioner claimed that his wife wanted to "hang out with friends, smoke marijuana, and date other men." The petitioner further claimed that his complaints were "met with violence and dangerous threats" and that his spouse used his immigration status to "harass and intimidate" him. The petitioner does not describe any specific threat or act of violence committed against him and does not provide details about how his spouse would "harass and intimidate" him. The petitioner reiterates these claims in his handwritten statement but provides no further probative details regarding the claimed abuse. Similarly, while the petitioner also submitted two statements from friends, the statements provide only general claims regarding the petitioner's spouse's behavior, such as that she was "rude," "violent," drank, smoked, and stayed out all night.

The incidents described by the petitioner and the claims contained in the statements submitted on his behalf do not rise 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. The petitioner's spouse's actions do not appear to have been part of an overall pattern of violence against the petitioner.

On appeal, the petitioner submits a new personal statement and a new statement from [REDACTED] who reasserts claims previously made. While the statements generally refer to the petitioner's spouse's threats to call the police, they do not elaborate on the threat or describe any specific instance in detail. While the petitioner also submitted a new statement from "[REDACTED]"² who describes an incident where he claims to have witnessed the petitioner's spouse "grab" the petitioner and describes the petitioner's face the next day as "all busted up," [REDACTED] does not provide an explanation for his failure to describe this incident in his previous statement. More importantly, the petitioner himself does not describe this incident in any of his previous statements or in the statement made on appeal. Accordingly, we do not find this single allegation sufficient to establish the petitioner's claim and to overcome the finding of the director. The petitioner has 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

In the Statement of Facts, the petitioner claimed that he met his spouse in December 1999 at the Crown Fried Chicken and that they started dating. The petitioner claimed that his spouse proposed to him in October 2001 but he does not provide any further testimonial evidence regarding their courtship, wedding, or married life together other than as it relates to the claimed abuse. The petitioner's handwritten statement and the statements from his friends offer no additional probative details about the petitioner's relationship with his spouse and intent in marrying her.

² The name is illegible.

The sole documentary evidence of the petitioner's good faith entry into marriage consists of a single Verizon bill dated four months after the petitioner claims to have stopped residing with his spouse. The petitioner submits no further joint financial accounts, tax documents, car, health or life insurance, or even photographs to document their nearly six-year long marriage. Although the petitioner did submit a copy of a portion of a bank statement from Citizens Bank, the statement is in the petitioner's name only. As such, it is not evidence of a joint account with his spouse.

The statements submitted on appeal offer no further probative details regarding the petitioner's relationship with his spouse and intent in marrying her. Accordingly, we concur with the finding of the director that the petitioner has not demonstrated that he entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

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.