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U.S. Citizenship
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Services

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FILE:

EAC 06 139 50047

Office: VERMONT SERVICE CENTER

Date:

DEC 08 2008

IN RE:

Petitioner:

[Redacted]

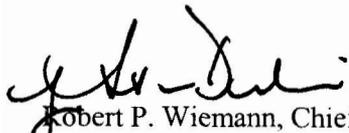
PETITION: Petition for Immigrant Battered Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.


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 on December 20, 2006, determining that the petitioner had not provided a response to the director's August 21, 2006 Notice of Intent to Deny (NOID) the petition. In the NOID, the director notified the petitioner that the record did not contain evidence to establish: that he had been battered or subjected to extreme cruelty by his spouse; that he had resided with his wife in accordance with the applicable regulations; or that he is a person of good moral character.

On appeal, counsel submits a brief and additional documentation.

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 explained 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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explained 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Venezuela who entered the United States on February 10, 1991 as a nonimmigrant visitor (B-1).

On March 17, 2001, the petitioner married C-S-¹, a U.S. citizen, in Fort Lauderdale, Florida. C-S- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was denied on March 14, 2006. The petitioner filed this Form I-360 on April 3, 2006. The marriage of the petitioner and C-S- was dissolved July 20, 2006. As noted above, the director issued a NOID on August 21, 2006 informing the petitioner that the record did not contain evidence of the requisite battery or extreme cruelty, evidence of shared residence, and evidence of good moral character. The petitioner did not provide a response and on December 2006, the director denied the petition on the grounds cited in the August 21, 2006 NOID. Counsel for the petitioner timely appealed.

On appeal, counsel asserts that the petitioner has demonstrated his eligibility for the requested relief and that he merits favorable consideration. Counsel also submits additional documentation. As discussed below, counsel's claims on appeal fail to overcome the grounds for denial.

¹ Name withheld to protect individual's identity.

Preliminarily, the AAO finds that the petitioner has established that he resided with C-S- from the date of their marriage to sometime in September 2002 when C-S- took the child of the marriage to reside in West Virginia. The AAO also finds that the petitioner has established that he and C-S- resumed living together in March 2004 until November 2005 when C-S- abandoned the petitioner and their child to live in Hawaii and then to live in California. The AAO finds the affidavits submitted and the birth of a child sufficient to establish residence for the purpose of this benefit. The AAO withdraws the director's decision on this issue.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that his wife subjected him to battery or extreme cruelty during their marriage:

- The petitioner's January 18, 2007 declaration;
- A notarized letter signed by the petitioner's mother-in-law, R-S-, dated March 22, 2006; a second notarized letter signed by the petitioner's mother-in-law dated January 19, 2007;
- A notarized letter signed by the petitioner's sister, M-G-, dated March 29, 2006; and
- A letter signed and notarized on January 30, 2007 from the petitioner's former wife.

In his January 18, 2007 statement, the petitioner reports that he met his wife in Ft. Lauderdale, Florida when they were neighbors and that they dated for about a year and then married on March 17, 2001. He states that his wife told him she had emotional and mental problems but that he did not begin to see any problems until she became pregnant with their daughter. The couple's daughter was born June 10, 2002. The petitioner states that his wife would not let him touch or hold the baby and three months after the baby was born, his wife took the baby to her mother's home in West Virginia. The petitioner reports that his mother-in-law called several times complaining that his wife would leave the baby for days at a time but his wife told him that if he tried to bring the baby back to Florida she would have him deported. The petitioner indicates that he retained an attorney to file for divorce and to gain custody of his daughter and when he told his wife that he had a right to see the child, his wife returned to Florida to try to live together as a family.

The petitioner states that his wife returned to Florida in March 2004 and initially everything was fine but after a time, his wife "again became abusive, threatening [him] with deportation, telling [him] that she would kill [him] in [his] sleep, threatening [him] with a knife and scissors." The petitioner notes that his wife would no longer have sexual relations as she viewed sex as only for procreation. The petitioner reports that his wife began working in June 2005 but her condition began to deteriorate, that she moved into the second bedroom, threw out all of their furniture, including the child's bed, and that she put his and their daughter's clothes in a garbage bag. The petitioner indicates that he and his wife sent their daughter to visit her grandmother (his mother-in-law) but when it was time to pick the child up, his wife threatened to report him to immigration. The petitioner indicates that he and his wife argued repeatedly and that his wife said she would leave if he brought the child back to Florida. In November 2005, the petitioner reports he brought his daughter back to Florida and his wife followed through with her threat to leave him and left him to go to Hawaii for a Krishna conference.

The petitioner indicates further that his wife became more paranoid and hostile and when she is in a "negative

phase” she would either lock herself in a room, or rage and threaten him with death and deportation. The petitioner claims that his wife used his immigration status to try to control him, noting that she submitted an I-130 application on his behalf twice and then refused to attend the interviews at the last minute.

In a March 21, 2006 notarized letter, the petitioner’s mother-in-law states that her daughter has put the petitioner “under great stress in promising to [go to] his immigration interview on two different occasions.” The petitioner’s mother-in-law further states: “[m]y daughter C-S- has been very hurtful to [the petitioner] by not keeping her word and helping him at the interviews.” In a second notarized letter, the petitioner’s mother-in-law declares from her personal knowledge that her daughter has treated the petitioner deceitfully. She also notes in this letter that on one occasion her daughter screamed at her and hit her with her fist.

In a January 24, 2007 letter signed by the applicant’s former wife on January 31, 2007, the petitioner’s former wife states that she began having emotional difficulty when she became pregnant. She notes that in 2004 when she and the petitioner began to live together again she would say things that were very harmful and threatening and that some times she had such anger that the way she acted toward her husband (the petitioner) was not any way to treat a human being.

In a letter notarized March 29, 2006, the petitioner’s sister states that she observed the petitioner’s wife’s “verbal and physiological abuse, constantly making remarks about his legal status in this country, saying ‘I may not go to the interview’.” The petitioner’s sister also reports that C-S- would threaten the petitioner by saying she would do something to him while he slept. The petitioner’s sister indicates that she advised her brother to call the police if his wife did anything to him, but that there were only threats.

The AAO affirms the director’s determination that the petitioner did not establish the requisite battery or extreme cruelty. The petitioner does not explicitly state or otherwise indicate that his wife subjected him to battery. Accordingly, the AAO will only discuss the petitioner’s claim of extreme cruelty. The AAO acknowledges that the petitioner’s marriage involved turmoil and emotional upset, however, his testimony does not indicate that his wife’s behavior rose to the level of extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner does not describe in probative detail any particular incidents where his wife threatened him with physical or mental injury. The AAO acknowledges the petitioner’s statements regarding his wife’s threats with deportation and threats that she would kill him in his sleep, threatening him with a knife and scissors, refusing to have intimate relations, and her eventual abandonment. The AAO has also reviewed the affidavits of the petitioner’s mother-in-law, sister, and former wife. However, neither the petitioner’s statement nor the affidavits submitted establish that the petitioner’s wife subjected the petitioner to battery or extreme cruelty during their marriage. The actions of the petitioner’s wife are not sufficiently detailed to indicate whether the threats were constant, intermittent, or occasional. The petitioner does not indicate whether he felt fear or resignation in relation to the actions of C-S-. The record does not include specific details regarding the time of the threats, the number of threats, where the threats took place, or that the petitioner perceived the threats as serious enough to involve the actions of the police. The record does not provide sufficient probative detail of the acts of C-S- so that these acts can be examined and the AAO can ascertain that C-S-’s actions subjected the petitioner to psychological, sexual abuse or exploitation or were part of an overall pattern of violence.

As discussed above, the testimony regarding the petitioner's former spouse's non-physical behavior does not indicate that her actions were coercive, threatened actual harm, or were aimed at ensuring dominance or control over the petitioner. As such, the petitioner's claims, including the claims that his former spouse had mental problems, do not rise to the level of extreme cruelty as those acts are 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 in this matter failed to describe in probative detail any specific threatening or controlling behavior of his wife. The record includes only general information regarding threats and no probative evidence that the applicant feared for his life or physical injury. The record does not evidence that the threats resulted in the petitioner's psychological trauma any more than that of any broken marriage between two different individuals with different beliefs. Nor did the petitioner demonstrate that C-S's nonviolent actions and rejection of his intimacy constituted psychological or sexual abuse or were otherwise part of an overall pattern of violence.

The petitioner does not claim and the record does not indicate that the petitioner's wife subjected him to battery. The relevant evidence also fails to demonstrate that the petitioner's wife subjected him to extreme cruelty during their marriage. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

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 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. The petitioner submitted no affidavit regarding his good moral character and no police clearance or state-issued criminal background check at the time of filing or in response to the director's NOID. The record includes an arrest statement for an arrest for trespass and resisting arrest without violence on July 19, 1999. The record does not include a disposition of this matter. As the petitioner failed to submit the requested clearances, the AAO is precluded from finding that the petitioner has established good moral character. Accordingly, the petitioner has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Conclusion

The record does not demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. 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 record also does not demonstrate that the petitioner has established good moral character pursuant to section 204(a)(1)(A)(iii)(II)(bb) of the Act. The AAO does not reach the issue of *extreme hardship* as defined at 8 C.F.R. § 204.2(c)(1)(viii) as this element is no longer a requirement to establish eligibility for this benefit.

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.