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U.S. Citizenship  
and Immigration  
Services

B9

FILE:

Office: VERMONT SERVICE CENTER

Date: APR 06 2009

EAC 03 149 51857

IN RE:

Petitioner:

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.

John F. Grissom  
Acting 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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

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 February 4, 2008, determining: that the petitioner had not established that he had been subjected to battery or extreme cruelty by his spouse; that the petitioner had not established that he is a person of good moral character; and that the petitioner had not established that he entered into the qualifying relationship in good faith.

On appeal, counsel submits a brief and additional documentation.

The AAO concurs with the director's determination that the petitioner has not established: that he was subjected to battery or extreme cruelty perpetrated by his spouse, J-P-<sup>1</sup> and that the petitioner has not established that he entered into the qualifying relationship in good faith. Nonetheless, this matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director must issue a NOID on the issues of abuse and good faith entry into the marriage. The petitioner has submitted the requested police clearance that coupled with the evidence already in the record is sufficient to establish that he is a person of good moral character. The director's decision on this issue is withdrawn and need not be further addressed.

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].

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<sup>1</sup> Name withheld to protect individual's identity

The eligibility requirements are also explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(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 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.

\* \* \*

(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.

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(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 matter provides the following pertinent facts and procedural history. The petitioner was born in Brazil and is a citizen of Finland. He married J-P-, a United States citizen on January 28, 2002, in the State of Ohio. The petitioner indicated on the Form I-360, that he resided with J-P- from July 2001 to February 2003, when she moved out. The record also includes a copy of the divorce decree terminating the marriage in January 2005. The director in this matter issued a request for further evidence (RFE) on March 30, 2004 to obtain evidence on the issues of abuse, the petitioner's good moral character, and the petitioner's entry into the marriage in good faith. The director issued a second RFE on October 10, 2007 requesting evidence on these same issues. The petitioner provided a response. Upon review of the evidence submitted, the director denied the petition on February 4, 2008 and counsel for the petitioner timely appealed.

On appeal, counsel for the petitioner asserts: that the petitioner was subjected to extreme cruelty including constant threats of deportation if he disobeyed his wife, social isolation, humiliation, and degradation; that the petitioner is a person of good moral character; and that the petitioner entered into the marriage in good faith.

#### *Battery or Extreme Cruelty*

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

- The petitioner's initial personal statement appended to the petition;
- The petitioner's personal statement in response to the director's October 10, 2007 RFE;
- The petitioner's personal statement on appeal;
- A letter signed by [REDACTED] and a letter signed by [REDACTED] submitted

in response to the director's October 10, 2007 RFE; and  
An affidavit signed by [REDACTED] and an affidavit signed by [REDACTED]  
submitted on appeal.

In his initial personal statement appended to the petition, the petitioner reported: that once married, (January 28, 2002) his spouse started getting gloomier and gloomier; that a few weeks after J-P-'s birthday in March 2002 he and his spouse traveled to New York where his spouse met a friend of a friend with whom she had an affair in the summer of 2002; and that in subsequent months she had another affair; and that his spouse moved out in February 2003. In the petitioner's personal statement in response to the director's RFE of October 10, 2007, the petitioner stated: that everything went well the first few months of their marriage except for minor marital arguments until later in the year when the couple traveled to New York; that his spouse met an individual there who she became friends with and later had an affair; that as a result of an argument over his spouse's affairs, his spouse brought up the fact that she had not filed his residency papers yet and she could have him deported if she wanted; that he decided to try to work things out with her and she did end the affair; that things started getting worse over the next few months and she would go out with random friends; that any time they had an argument she would bring up that she had to sign the papers if he had any hope of becoming a legal resident; and that he felt trapped as J-P- had complete control over his immigration status as his approved stay had expired and he had nothing to go back to in Finland. The petitioner also noted that as J-P- was entirely in control of his immigration case he could not file for a divorce. The petitioner noted further that the individual who they shared the apartment with made clear to J-P- that she was no longer welcome to stay at her residence<sup>2</sup> and J-P- moved out to stay with friends. The petitioner indicated that he had limited contact with J-P- once she moved out until late 2004 when she asked him to sign a no-contest divorce which he did.

The letter signed by [REDACTED] does not provide any information regarding abuse of any kind. In the letter signed by [REDACTED] indicated: "[d]uring the separation [the petitioner] handled himself like [a] gentleman would and tried to cope and make the best of an obviously bad situation."

On appeal, the petitioner states: that his marriage initially went well and the couple socialized with people on a daily basis; that over the course of a few months he and J-P- started having issues in the relationship and J-P- "became verbally and emotionally abusive, controlling and ensured that [he] was socially isolated." The petitioner reiterates J-P-'s actions regarding affairs and adds: that J-P- would lash out at him with verbal assaults; that when friends came over she would tell him that she did not want him to have contact with her friends; that she ignored him; and that she would tell him "I can do better than you" and the "only reason you are allowed to stay in this country is because of me." The

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<sup>2</sup> The petitioner indicated in his personal statements that he initially stayed with a friend while in the United States, [REDACTED], and that he met J-P- through [REDACTED]. The petitioner also noted that J-P- also stayed with [REDACTED] in her apartment and that the couple continued to stay in the apartment with [REDACTED] after they were married.

petitioner further adds that J-P- mocked his accent, made him feel useless, told her friends that he was a homosexual, and stayed out all night, and would often tell him that she was allowing him to stay in the United States. The petitioner brings up for the first time that J-P- on a few occasions slapped, punched, and bit him when she was upset about something. The petitioner indicates: “[a]s her extreme treatment of me escalated, I started feeling more and more depressed and trapped. I felt like I was completely isolated from everyone and trapped in the apartment, rarely leaving the house for anything.” The petitioner indicates that because he could not drive he could rarely leave the house. The petitioner states that in the spring of 2003, J-P- moved out of the apartment and that after that they had limited contact.

In the affidavit of [REDACTED] provided on appeal, [REDACTED] declares that over time he noticed that the petitioner became more isolated from his previous friends and socialized less with people he knew; that the petitioner confided in him that the couple was having issues in their relationship and that J-P- had not turned in the petitioner’s immigration papers; that the petitioner told him that J-P- would make threats about his immigration status; and that over time the petitioner appeared depressed and it seemed that his main social interaction would occur during the gaming sessions they held once a week. In the affidavit of [REDACTED], Mr. [REDACTED] states: that the petitioner appeared worried about upsetting his wife and getting yelled at; that the petitioner appeared to get more isolated over the course of several months and that his social interactions seemed limited to the weekly gaming night their group of friends held every week; and that it appeared that the petitioner’s spouse emotionally manipulated and used the petitioner to get her way.

The petitioner initially and in response to the director’s October 10, 2007 RFE does not claim that he was subjected to battery perpetrated by J-P-. He initially complains only of J-P-’s affairs. In the response to the director’s October 10, 2007 RFE, the petitioner adds that he felt trapped as J-P- had control over his immigration status. Only on appeal does the petitioner add that he was sometimes subjected to physical abuse of slapping, punching, and biting by J-P-. The statements provided by the petitioner’s friends do not contain any information that they personally witnessed any type of physical abuse. The petitioner’s failure to initially include information regarding physical abuse substantiated by evidence diminishes his claim on appeal that he was slapped, punched, or bit by his spouse. The AAO finds that the petitioner has not substantiated that he was subjected to battery or any physical abuse.

The AAO has reviewed the petitioner’s statements regarding the alleged mental cruelty perpetrated by J-P-, but does not find any evidence that demonstrates J-P-’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), which includes forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. The AAO acknowledges that the petitioner’s marriage involved turmoil and emotional upset, and that the petitioner’s spouse was unfaithful. However, the petitioner has not established that J-P-’s behavior, including infidelity and abandonment, rose to the level of extreme cruelty, as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

The AAO finds that the petitioner’s statements on appeal that his spouse: “became verbally and

emotionally abusive, controlling and ensured that [he] was socially isolated;” made threats regarding his immigration status, and called him names has not been substantiated in the record. The AAO observes that the petitioner first brings up his social isolation, the name calling by his spouse, and his feelings of inadequacy allegedly caused by J-P-’s actions on appeal. Again, providing this information for the first time on appeal diminishes the probative value of these statements. Moreover, the petitioner’s two friends in their affidavits on appeal indicate generally that the petitioner appeared to be depressed and it seemed that the petitioner’s main social interaction occurred during their weekly gaming night. The affiants do not state that they witnessed any aberrant behavior by the petitioner’s spouse and do not provide independent information regarding the petitioner’s “isolation.” The lack of personal knowledge regarding any claimed abuse diminishes the evidentiary value of their statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting 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)). Moreover, the petitioner’s ability to continue to interact with his friends and his living arrangements in the apartment of another individual, [REDACTED], do not indicate that the petitioner was socially isolated. The petitioner does not include specific information regarding threats, physical abuse, or any details regarding the claimed threatening or controlling behavior of his spouse. While the AAO acknowledges the petitioner’s claim that J-P- threatened the petitioner regarding his immigration status, the threats as described while maybe unkind and inconsiderate, do not rise to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The record does not provide sufficient probative detail of the alleged acts of J-P- to allow the AAO to ascertain that J-P-’s actions subjected the petitioner to psychological, sexual abuse or exploitation, or were part of an overall pattern of violence. The record does not include specific details regarding the time of any threats or coercive actions, the number or content of threats of coercive actions, or that the petitioner perceived any of the threats or other actions against him as serious enough to involve the actions of the police.

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. The record does not include probative evidence that the applicant feared for his life or physical injury. The record does not evidence that the actions of the petitioner’s wife resulted in the petitioner’s psychological trauma any more than that of any broken marriage between two different individuals with different personalities and beliefs. The relevant evidence fails to demonstrate that the petitioner’s wife subjected him to battery or substantiate that his spouse constantly threatened him with deportation if he disobeyed her, socially isolated him or subjected him to humiliation, and degradation that should be characterized as extreme cruelty. 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 Faith Marriage*

The petitioner has not established that he entered into the marriage in good faith. In the petitioner’s initial personal statement, the petitioner indicated that he first entered the United States in April 2001

and stayed with [REDACTED] at her apartment in Columbus, Ohio. While staying with [REDACTED] the petitioner met one of her friends, J-P-, who also came to Columbus, Ohio to visit. The petitioner reported that on J-P-'s second visit to Columbus, Ohio he began a relationship with her and learned that she was still married to an individual she had not been involved with for some time. The petitioner indicated that once his 90-day visa was up, he returned to Finland, but after a week he started missing J-P- and his other friends so returned to the United States on August 6, 2001. The petitioner explained that on his return he helped J-P- find funds to have an abortion of a pregnancy that had occurred from one of J-P-'s prior relationships. The petitioner stated that once J-P- had the abortion, he and J-P- turned their attention to obtaining J-P-'s divorce from her husband. The petitioner indicated that once his 90-day visa ran out he flew to Caracas to visit his father who was stationed in Brazil as a diplomat. The petitioner also indicated that after staying there for three weeks he applied for a visa and returned to the United States in November 2001. The petitioner noted that J-P-'s divorce became final in January and that he and J-P- married on January 28, 2002 and continued to reside at the apartment of their friend [REDACTED].

In the petitioner's second personal statement, the petitioner reiterated that upon his second meeting with J-P- in July 2001, he and J-P- got better acquainted and realized they were attracted to each other and that J-P- moved in to the residence he was sharing with [REDACTED] and her fiancé. The petitioner noted that over the course of July, he and J-P- had serious talks about their future together and although they discussed the possibility of J-P- moving back to Finland, as J-P- did not speak Finnish they decided it would be better to remain in the United States. The petitioner stated that he flew back to Finland when his visa was up but that he continued to stay in touch with J-P- and "it was suggested that [he] fly back to the United States to help her cope with the pending [abortion]." The petitioner noted that after the termination of J-P-' pregnancy in mid September, he and J-P- grew very close and decided to get married once her marriage had been terminated. The petitioner noted that once he returned to the United States in November 2001, after his visit with his father, nothing of great importance happened over the next few months until January 2002, when J-P- obtained her divorce and they married on January 28, 2002. The petitioner explains that he did not own property with J-P-, that as he did not have a social security number he was not included on any joint bank accounts, and that the best witnesses to show his good faith in marrying J-P- are friends that knew the both of them, but that he has lost touch with many of them.

On appeal, the petitioner indicates in his personal statement: that by the end of summer in 2001 he and J-P- were in love; he "was taken by [her] desire to become a better person, improve her life, and her beauty;" J-P- brought up marriage in July 2001; that he and J-P- stayed in touch by phone and writing when he was in Finland; that he was concerned about J-P-'s wellbeing and returned to the United States in August 2001; that when he visited his father in Caracas, he and J-P- continued to keep in contact by writing and telephone conversations; and in January 2002, very much in love, the couple applied for a marriage license, were married, and had a small reception at the apartment they were sharing with [REDACTED].

The petitioner's statements while providing information regarding the logistics of his initial meeting

with J-P- and his subsequent travels out of and back into the United States to assist the petitioner in becoming free to marry him, do not provide the detail of their social interactions together. The petitioner does not describe their common interests or what they did to establish their relationship. The petitioner does not provide substantive detail in his statements that demonstrate that his intent upon entering the marriage was to establish a life together. Only on appeal, does the petitioner reference the characteristics of J-P- that he found attractive.

The AAO has also reviewed the affidavits submitted on behalf of the petitioner. [REDACTED] indicates his belief that the couple appeared to genuinely care for each other, want to be together, shared many common values and views, and shared an interest in video games, music, movies, and other entertainment. Similarly, [REDACTED] indicates his belief that the couple did not marry for immigration purposes but appeared to share similar interests and views, and wanted to be together. The petitioner also provided letters written by J-P- to him while he was out of the United States, as well as letters written by friends to him while out of the United States. The record also includes photocopies of greeting cards written by the petitioner's mother to J-P- and to the couple; photographs of the couple on one occasion; J-P-'s earning statement and a utility bill to J-P- at the common address; and a copy of a lease dated June 1, 2002 between a landlord and [REDACTED] for the common address that has J-P-'s name handwritten in, although the lease does not include J-P-'s signature; photocopies of J-P-'s medical bills; and a photocopy of a receipt for a "first love ring."

Upon review of the information submitted, these documents do not reflect the petitioner's intent upon entering the marriage. The affidavits of the petitioner's two friends, although indicating their belief that the marriage was genuine, do not provide the detail necessary to establish the same. Their affidavits do not contain detailed information of the social interactions and experiences of the couple except as it relates to the claimed abuse. It is not just that the affidavits submitted are similar but rather it is the generality and bareness of detail included in the affidavits that fail to establish the actual knowledge of and legitimacy of the marriage. The letters and greeting cards in the record, likewise, do not provide evidence of the petitioner's intent upon entering the marriage. The medical bills, earning statements, and utility bills while demonstrating that J-P- resided at the common address do not demonstrate the petitioner's intent upon entering the marriage. As the director noted, the receipt for a ring does not identify the purchaser or provide further information that would substantiate the petitioner's intent upon entering the marriage for the purpose of establishing a life together.

Self-petitions under section 204(a)(1)(A)(iii) of the Act, require that the alien bears the burden of proof to establish that he entered into the marriage in good faith and the regulation specifically defines the term "good faith marriage" and what types of evidence will suffice to meet that eligibility criterion. 8 C.F.R. §§ 204.2(c)(1)(ix), (c)(2)(vii). The petitioner has not provided any independent evidence establishing that the couple intended to establish a life together. The record does not include tax returns for 2002 and 2003 filed by the couple or any other independent, detailed documentation as listed in the regulation. While the lack of documentary evidence is not necessarily disqualifying, the petitioner's testimonial evidence and the testimony submitted on his behalf, as

noted above, also fails to support a finding that he entered into this marriage in good faith. Accordingly, the AAO concurs with the finding of the director that the petitioner has failed to establish that he entered into her marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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. The petitioner has not sustained that burden.

**ORDER:** The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.