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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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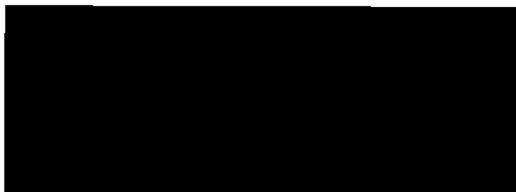
Office: VERMONT SERVICE CENTER

Date: **AUG 03 2010**

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on motion to reconsider. The motion will be granted. The previous decision of the AAO, dated July 9, 2009, will be affirmed and the petition will be denied.

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.

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, 8 U.S.C. § 1154(a)(1)(J) 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:

(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.

* * *

(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 filed 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.

* * *

(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.

* * *

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.

As the facts and procedural history have been adequately documented in the previous decision of the AAO, dated July 9, 2009, only certain facts will be repeated as necessary here. In this case, the petitioner is a native and citizen of Syria who entered the United States on March 1, 2007, on a K-1 fiancé visa. On March 30, 2007, the petitioner married R-S¹, a naturalized U.S. citizen, in California. R-S- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner concurrently filed Form I-485, Application to Adjust Status, both of which remain pending. The petitioner filed the instant form I-360 on August 9, 2007. The director denied the petition on February 23, 2009, finding that the petitioner failed to establish that his wife subjected him to battery or extreme cruelty during their marriage, and that he married her in good faith. In its July 9, 2009 decision on appeal, the AAO concurred with the director's determination and found beyond the decision of the director that the petitioner had not established that he is a person of good moral

¹ Name withheld to protect individual's identity.

character.

On motion, counsel states: "This motion for reconsideration is based on the flawed conclusions as to [the] petitioner's failure to enter into the marriage in good faith and the finding of insufficient evidence to establish good moral character." Counsel submits a declaration from the petitioner to address the issue regarding his good faith entry into the marriage. Regarding the issue of good moral character, counsel states: "The Petitioner did not submit California police clearances or state-issued criminal background checks from California because [the] Petitioner had only been in this country for less than six months prior to the filing of the self-petition." It is noted that, on motion, neither counsel nor the petitioner addresses the issue regarding abuse. As supporting documentation, counsel submits a declaration from the petitioner and evidence that the petitioner has filed a request for a police clearance from the State of California.

Battery or Extreme Cruelty

In its July 9, 2009 decision, the AAO found the evidence submitted by the petitioner and on the petitioner's behalf insufficient to establish that the petitioner's wife subjected him to battery or extreme cruelty during their marriage. The AAO found that the record contains only general information regarding the claimed threats and no probative evidence that the petitioner actually feared for his life or physical injury. The AAO concluded that the relevant evidence failed to demonstrate that R-S-subjected him to battery or extreme cruelty during their marriage.

As discussed above, neither counsel nor the petitioner addresses this issue on motion. 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. In this matter, the petitioner entered the United States on March 1, 2007, and filed the instant form I-360 less than six months later, on August 9, 2007. The record contains a Police Clearance Certificate dated August 20, 2006, from the [REDACTED] for submission to the U.S. Embassy as a requirement for the issuance of the petitioner's K-1 visa. This police clearance was valid for three months only, from August 20, 2006 through November 20, 2006. Thus, at the time of the instant petition's filing, it had already expired.

A review of the petitioner's Form G-325, Biographic Information, signed by him on April 14, 2007, finds that, from June 2001 to March 2007, the petitioner resided at: [REDACTED] [REDACTED] On motion, the petitioner submits a declaration that he has no criminal record in [REDACTED] [REDACTED] or the United States. The record, however, contains no evidence that the petitioner has

submitted valid, local police clearances or state-issued criminal background checks from each place he had lived for at least six months during the three-year period immediately preceding the filing of the self-petition, in this case, [REDACTED]. 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.

Good Faith Entry into Marriage

In its July 9, 2009 decision, the AAO found that the record contains insufficient evidence to support a finding that the petitioner married R-S- in good faith. The AAO found that the record contains no documentary evidence to establish a good-faith finding, and that the petitioner's testimony and the testimony and documents submitted on his behalf also fail to support a finding that he entered into his marriage in good faith. On motion, counsel states that the petitioner's declaration on motion "explains that his lack of detail does not mean that he lacked a bonafide intent to marry R-S-."

In his August 10, 2009 declaration submitted on motion, the petitioner states, in part, that he is "very short for words" and that "it does not seem right to share [his] intimate feelings." The petitioner explains that he was looking for a companion and that he "wanted someone who came from a good family and a person that [he] would enjoy long, intellectual conversations." The petitioner states that he "was truly in love with [R-S-] and that he "had invested about two years in developing a relationship with her." The petitioner states:

At my age, you don't have time to just continue considering whether she is the one. You either know that it will work out or it won't. I knew even before we met face to face that I wanted to be with her.

The AAO acknowledges the petitioner's declaration on motion. The petitioner's explanation, including that he does not like to express his feelings and that he was truly in love with R-S-, does not assist in establishing that he entered into the marriage in good faith. As stated by the AAO in its July 9, 2009 decision, the record contains insufficient evidence to establish that the petitioner entered into his marriage in good faith. Accordingly, the petitioner has not established that he entered into his marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Upon review of totality of the evidence, the petitioner has not demonstrated that he was battered or subjected to extreme cruelty by his spouse during their marriage, that he is a person of good moral character, and that he entered into their marriage in good faith. He 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. Accordingly, the previous decision of the AAO, dated July 9, 2009, will be

Page 7

affirmed and the petition will be denied.

ORDER: The decision of the AAO, dated July 9, 2009, is affirmed. The petition is denied.