

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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



U.S. Citizenship  
and Immigration  
Services

B9

**PUBLIC COPY**



FILE: [Redacted]  
EAC 05 077 52870

Office: VERMONT SERVICE CENTER

Date: JUL 24 2006

IN RE: Petitioner: [Redacted]

PETITION: Petition for Special 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:

SELF-REPRESENTED

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 preference visa petition was denied by the Acting Director (Director), Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the case will be remanded to the director for further consideration and entry of a new decision.

The petitioner is a native and citizen of Kenya who is seeking classification as a special immigrant pursuant to section 204(a)(1)(A)(iii), 8 U.S.C. § 1154(a)(1)(A)(iii), as the battered spouse of a United States citizen. The petition was denied by the director on December 22, 2005.

The petitioner submits a timely appeal.

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, that an alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his or her spouse, may self-petition for immigrant classification if the alien demonstrates to the [Secretary of Homeland Security] that—

- (aa) the marriage or the intent to marry the citizen was entered into in good faith by the alien; and
- (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended-spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:

- (A) Is the spouse of a citizen or lawful permanent resident of the United States;
- (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
- (C) Is residing in the United States;
- (D) Has resided . . . with the citizen or lawful permanent resident spouse;
- (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
- (F) Is a person of good moral character; [and]

\* \* \*

(H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The regulation at 8 C.F.R. § 204.2(c)(2)(iv) states:

*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 abused 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.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

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

According to the evidence in the record, the petitioner wed United States citizen [REDACTED] on August 31, 2001 in Cobb County, Georgia. The petitioner's spouse filed a Form I-130 petition in the petitioner's behalf on October 15, 2001. The petitioner's spouse withdrew the petition on May 1, 2002. The petitioner's spouse filed a second Form I-130 in the petitioner's behalf on February 3, 2003. The petition was withdrawn on July 19, 2004.

The petitioner filed the instant petition on January 20, 2005. As evidence to establish his claim of abuse, the petitioner submitted a doctor's letter, medical documentation, three police reports, a personal statement, and two affidavits from friends. The petitioner did not submit any evidence related to his good moral character. As the director found this evidence insufficient to establish the petitioner's eligibility, on May 19, 2005, the director requested the petitioner to submit further evidence to establish, inter alia, that he was battered by or subjected to extreme cruelty by his spouse and that he is a person of good moral character.

The petitioner responded to the director's request on July 18, 2005 by submitting a second statement, his divorce decree for his marriage to his citizen spouse, a bank statement, a letter from the petitioner's credit union, and letters from the petitioner's pastor and church elder. The petitioner also requested additional time in which to

submit evidence related to his good moral character. The director granted the petitioner's request for additional time on July 26, 2005.

On September 23, 2005, the petitioner submitted a police clearance from the State of Minnesota district court, second judicial district and resubmitted copies of documents previously submitted.

On November 14, 2005, the petitioner submitted a letter from the petitioner's chiropractor and a police clearance from the Georgia Bureau of Investigation.

The director denied the petition on December 22, 2005 finding that the petitioner failed to establish that he was battered by or subjected to extreme cruelty by his spouse and that he is a person of good moral character.

On appeal, the petitioner claims that he has established that he was subjected to extreme cruelty based upon "control through psychological attacks and economic coercion, emotional abuse and humiliation . . ." The petitioner also indicated that he would be sending a brief and/or additional evidence to the AAO within 30 days. Thirty days after filing the appeal, the petitioner requested an additional 60 days in which to provide a brief. As of this date, the petitioner has not submitted a brief or any additional evidence. Accordingly, the record is considered to be complete as it now stands.

*The petitioner's claim of battery and/or extreme cruelty*

In his personal statements, the petitioner claims that he "suffered mental torture and humiliation" and describes one incident where he and his spouse were at a party where he was embarrassed because his spouse was "continually interrogating the other guests who were not amused by her innuendos and harassment." The petitioner also claims that although he opened a joint savings account with his spouse, she has failed to contribute any money into the account and also fails to take a regular job. Such claims do not establish that the petitioner was subjected to extreme cruelty as described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). First, the petitioner fails to provide any specific description to support his claim that he was "mentally tortured and humiliated." Further, the petitioner's claim that guests at a party were "harassed" by the petitioner's spouse is not evidence that the petitioner was subjected to extreme cruelty. The petitioner's claim that his spouse failed to contribute money into their account and to take a regular job is not sufficient to establish that the petitioner was subjected to "economic coercion" as the petitioner makes clear he had access to and control over his financial situation. Finally, although the petitioner also claims that his spouse "fraudulently" took money from his individual account, from the petitioner's own admission, he gave his spouse permission to access his account by completing forms to open a joint account. As noted by the director, the record contains no evidence "from the bank, police, or sheriff's department to indicate an on-going investigation into the alleged fraud scheme."

The petitioner also claims that he injured his back when his spouse pushed him out of bed on two occasions and that after being threatened he filed a report with the sheriff's department. The petitioner claims that he originally hurt his back in a work related injury but that being pushed out of the bed exacerbated the problem. The petitioner submitted two affidavits from acquaintances but only one of the affidavits references the petitioner's claim about being pushed out of the bed. However, although the affiant, [REDACTED] indicates that the petitioner told him that his wife has pushed him out of bed, [REDACTED] does not indicate that he actually witnessed the incident nor does he indicate that he was told that this happened on more than one occasion as claimed by the petitioner.

The police report dated July 18, 2004 indicates that the petitioner told the officer that his wife threatened to "break [his] back." However, despite the officer's notation that the petitioner claimed his spouse knew he "has a

back problem," the officer does not indicate that the petitioner told him his spouse was the cause of the back problems or that she had taken any actual action against the petitioner. In a second police report, dated July 31, 2004, the petitioner's wife claimed that she feared for her own life and wanted the petitioner to leave the home. In a third police report, dated August 1, 2004, the officer documented the fact that the petitioner had the right to pick up his property from the home. As noted by the director, none of the police reports make any reference to the petitioner's claim that his spouse pushed him out of bed. The director also noted the fact that although the petitioner initially claimed that he reported his spouse's threats against his life to the police, the police reports did not evidence such a claim. The petitioner provided no explanation for this except to state that the "omitted certain details," and that his "summary is clearly insufficient." Although the petitioner also submitted two medical letters and hospital records, none of the documents provide any information which establishes that the petitioner's spouse injuries were caused by his spouse.

Based upon the above discussion, we find the evidence in the record is insufficient to establish that the petitioner was battered by or subjected to extreme cruelty by his spouse.

*The petitioner's claim of being a person of good moral character.*

In her decision, the director acknowledged the petitioner's submission of a police clearance from the state of Minnesota. The director then noted, however, that after the petitioner was requested to submit a police clearance from the state of Georgia, the petitioner "allowed 2 ½ months to elapse" prior to responding submitting a police clearance. Despite the fact that the record contained the requested police clearance, the director did not consider the clearance as part of the record, citing the regulation at 8 C.F.R. § 204.1(h). We do not concur with this finding. Because the petitioner did respond to the director's request for evidence prior to the director's denial, the police clearance was a part of the record and should have been considered as such.

Although we withdraw the director's finding in this regard, the record remains insufficient to establish that the petitioner is a person of good moral character. Specifically, as noted by the director, the record reflects that the petitioner fraudulently received two social security cards and made false claims to being a United States citizen in order to obtain employment. The petitioner does not dispute this finding on appeal and submits no further evidence regarding his good moral character. Accordingly, the petitioner has failed to overcome the director's finding regarding the petitioner's lack of good moral character.

Despite our support of the director's findings however, the director's decision cannot stand because of the director's failure to issue a Notice of Intent to Deny to the petitioner prior the issuance of the denial.

The regulation at 8 C.F.R. § 204.2(c)(3)(ii) states, in pertinent part:

*Notice of intent to deny.* If the preliminary decision on a properly filed self-petition is adverse to the self-petitioner, the self-petitioner will be provided with written notice of this fact and offered an opportunity to present additional information or arguments before a final decision is rendered.

Accordingly, the decision of the director must be withdrawn and the case remanded for the purpose of the issuance of a notice of intent to deny as well as a new final decision. The new decision, if adverse to the petitioner, shall be certified to this office for review.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

**ORDER:** The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.