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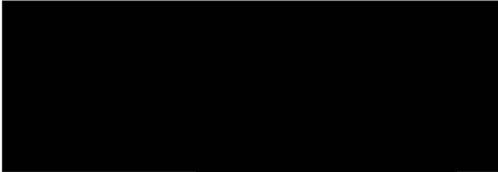
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*Boj*

**PUBLIC COPY**



FILE: [Redacted]  
EAC 04 250 52726

Office: VERMONT SERVICE CENTER

Date: **SEP 21 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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks classification as a special immigrant pursuant to 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 because the petitioner did not respond to a request for further evidence and the evidence submitted did not establish the petitioner's eligibility.

On appeal, the petitioner states that he submitted all requested evidence. On his Form I-290B, the petitioner stated that he needed 60 days to submit a brief and/or evidence to the AAO. The Form I-290B was filed on February 8, 2006. To date, over seven months later, the AAO has received nothing further from the petitioner.

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 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).

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 . . ., 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 standard and guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are contained 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

(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.

\* \* \*

(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 petitioner in this case is a native and citizen of the Dominican Republic who states on the Form I-360 that he entered the United States on August 2, 2001 as a nonimmigrant visitor (B-2). The petitioner filed his Form I-360 on September 2, 2004 based on his alleged marital relationship with E-H-M<sup>1</sup>, whom the petitioner stated was a U.S. citizen. On September 10, 2004, the director issued a Request for Evidence (RFE) of the petitioner's good moral character and his good faith marriage to his wife. The petitioner timely responded with further documentation on November 5, 2004. On March 17, 2005, the director issued a second RFE for evidence of the U.S. citizenship of the petitioner's wife, their marriage certificate issued by an appropriate civil authority, the petitioner's residence with his wife, his wife's battery or infliction of extreme cruelty upon the petitioner, the petitioner's good moral character, and his good faith entry into marriage with his wife. The director granted the petitioner an additional 90 days to respond to the second RFE. However, the petitioner did not respond and the director denied the petition pursuant to the regulation at 8 C.F.R. § 204.1(h) because the evidence previously submitted did not establish the petitioner's eligibility.

On appeal, the petitioner simply asserts that he has submitted all the requested evidence. We concur with the director's conclusion. Nonetheless, the petition will be remanded because the director denied the case without first issuing a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

*Qualifying Relationship and Eligibility for Immediate Relative Classification*

On the Form I-360, the petitioner states that he married his wife on December 26, 2003 in Springfield, Massachusetts and that his wife is a U.S. citizen who was born in the United States. The petitioner submitted a copy of one page of the former couple's Separation Agreement that appears to have been filed with his wife's motion for divorce. This document states that the petitioner and his wife were married on December 26, 2003 in Springfield, Massachusetts. However, the petitioner did not submit a copy of his marriage certificate, registered with the appropriate civil authority in Massachusetts, as specifically requested by the director in the March 17, 2005 RFE.

The petitioner also failed to submit any evidence of his wife's U.S. citizenship. The petitioner states that he met his wife in Holyoke, Massachusetts, but he does not indicate how he knew that she was born in the United States. In the March 17, 2005 RFE, the director informed the petitioner that Citizenship and Immigration Services (CIS) was unable to verify the U.S. citizenship of his wife and asked the petitioner to submit documentary evidence of her citizenship or to provide further pertinent information. The petitioner did not respond. Accordingly, the present record fails to demonstrate that the petitioner had a qualifying relationship with a U.S. citizen, as required by section 204(a)(1)(A)(iii)(II)(aa)(AA) of the Act.

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

Pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(i)(B), a self-petitioner under section 204(a)(1)(A)(iii) of the Act must demonstrate that he or she is eligible for immediate relative classification under section 201(a)(1)(A)(iii) of the Act based on his or her spousal relationship with the abusive U.S. citizen. The present record fails to establish that the petitioner had a qualifying relationship with a U.S. citizen. Consequently, the evidence also does not demonstrate that the petitioner was eligible for immediate relative classification based on such a relationship, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act.

#### *Battery or Extreme Cruelty*

In his November 3, 2004 "Certification," the petitioner states that his wife did not allow him to move in with her after the former couple relocated to Salem, Massachusetts. The petitioner states that his wife did not include him in the lease and only let him in the apartment to babysit her children. The petitioner reports that when his wife was pregnant with their child, she left for three months and when she returned she told him that she was no longer pregnant and that she wanted to divorce. The petitioner states that his wife began harassing him over the telephone, but that when he did not react, she got a restraining order against him although she continued to call and threaten that she would notify immigration authorities to get him deported. The petitioner further states that his wife filed for divorce, claimed that he married her to get a green card and accused him of stealing from her and breaking into her house.

The petitioner submitted a copy of an Abuse Prevention Order issued against him for the protection of his wife by the Trial Court of Massachusetts, Essex Division on July 28, 2004. The petitioner also submitted a copy of the August 3, 2004 court order vacating the July 28, 2004 order after a hearing. The petitioner submitted no further documentary or testimonial evidence to support his statements, despite the director's explanation of the insufficiency of the evidence submitted and detailed request for further evidence. The petitioner did not respond to the March 17, 2005 RFE and did not submit any other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iv). Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). The petitioner's own statements and the evidence regarding the Abuse Prevention Order issued against him do not establish that his wife battered or subjected him to extreme cruelty, as specified in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Joint Residence*

On the Form I-360, the petitioner states that he lived with his wife from August 2003 until March 2004 and that they last lived together at a residence on [REDACTED] in Salem, Massachusetts. On the Form I-360, the printed street number of their purported residence is cut-off and illegible. In his "Certification," the petitioner states that he and his wife began living together in August 2003 and that they lived together for about two weeks at his aunt's house in Salem, Massachusetts and for an unspecified amount of time at a friend's house in Chicopee, Massachusetts. The partial copy of the

former couple's Separation Agreement states that they last lived together on February 28, 2004. The petitioner submitted no further evidence of his residence with his wife of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii) and described in the director's March 17, 2005 RFE. Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The present record fails to establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Good Faith Entry into Marriage*

In his "Certification," the petitioner states:

I met [my wife] at the end of May 2003 at the Latin Spot in Holyoke, Massachusetts. We dated for a while and in August 2003 we moved in together. She had 3 children. Everything was going well. In September I was hospitalized because of a hernia and she took care of me. We had a birthday party for the twins. . . . We got married and planned to move to Salem. When the day came to move she was pregnant (my child) and we had no place to move to. We moved to my aunts [sic] house in Salem. There we lived in a room.

The petitioner does not further describe how he met his wife, their courtship, wedding or any of their shared experiences, apart from his wife's alleged abuse. The petitioner submitted no other documentary or testimonial evidence of his allegedly good faith entry into marriage with his wife of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and described in the director's March 17, 2005 RFE. Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The present record does not demonstrate that the petitioner entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Good Moral Character*

The petitioner does not discuss his moral character in his "Certification." The petitioner submitted a letter from the New York State Division of Criminal Justice Services (DCJS) dated October 20, 2004, which states that he has no criminal record with DCJS. The petitioner also submitted a clearance letter from the Massachusetts Criminal History Systems Board. However, this letter states the petitioner's name as "Montan, Yunion." Accordingly, the director asked the petitioner to submit further evidence of his good moral character in his March 17, 2005 RFE and reminded the petitioner to include all aliases that he had ever used in any further evidence of his good moral character. The petitioner did not respond to the March 17, 2005 RFE and did not explain that local police clearances or state-issued criminal background checks were not available to him, as specified in the regulation at 8 C.F.R.

§ 204.2(c)(2)(v). The present record fails to establish the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petitioner has failed to demonstrate his eligibility under any of the statutory criteria at section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of his case.

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 that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for