



U.S. Citizenship  
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Services

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MAR 07 2007

FILE:

[REDACTED]  
EAC 04 197 53763

Office: VERMONT SERVICE CENTER

Date:

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:

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. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

The director denied the petition for lack of the requisite battery or extreme cruelty, joint residence and good moral character.

On certification, counsel requests an additional 30 days to submit a brief and additional evidence. The request is denied. Although the regulation at 8 C.F.R. § 103.3(a)(2)(vii) provides the AAO with the discretion to allow an affected party additional time to submit a brief for good cause shown on appeal, the regulation at 8 C.F.R. § 103.4 does not allow additional time for the submission of materials upon certification. The thirty-day filing period prescribed under 8 C.F.R. § 103.4(a)(2) has expired and we consequently consider the record to be complete.

Moreover, as noted by the director, Citizenship and Immigration Services (CIS) has already granted the petitioner ample time to respond to the grounds for denial. Counsel has been on notice of the deficiencies in the petitioner's case for over two years. Counsel filed the Form I-360 on June 17, 2004. On February 9, 2005, the director issued a Request for Evidence (RFE) of the legal termination of the petitioner's prior marriage; evidence that he had resided with his wife; evidence that the petitioner or his child had been subjected to battery or extreme cruelty by his wife; and evidence of his good moral character. The RFE informed counsel that he had 60 days to respond and that an additional 60 days could be granted upon request. Counsel failed to respond to the RFE with either the requisite evidence or a request for additional time to respond. The director's initial notice of denial on June 8, 2005 informed counsel that the petition was denied for lack of evidence of the eligibility criteria cited in the RFE.

On appeal, counsel submitted additional evidence including documentation of the legal termination of his prior marriage. On the Form I-290B filed on July 11, 2005, counsel indicated that he would send a brief or additional evidence to the AAO within 30 days. Over six months later, on January 19, 2006, the AAO notified counsel that it had not received any further materials. On February 3, 2006, counsel submitted a letter, but no additional evidence. On April 14, 2006, the AAO put counsel on notice of the deficiencies in the case for a third time by issuing its decision concurring with the director's determination, but remanding the case for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

On August 11, 2006, the director issued a NOID informing counsel for a fourth time of the deficiencies in the case and granting him 60 days to respond. On the sixtieth day, October 13, 2006, counsel filed a letter requesting an additional 30 days to respond. On November 30, 2006, counsel filed a second letter requesting additional time to respond to the NOID. On January 17, 2007, the director denied counsel's request for additional time and issued the instant decision denying the petition, which is now before the AAO on certification. In the January 17, 2007 notice, the director informed counsel that he had 30 days

to submit a brief. The director's decision also informed counsel of the deficiencies in the petitioner's case for a fifth time. On February 20, 2007, the last day on which he could have submitted a brief upon certification, counsel requested an additional 30 days to submit a brief. In summary, CIS informed counsel of the deficiencies in the petitioner's case on five separate occasions and counsel has had over two years to gather evidence and prepare his responses to the grounds for denial. In light of this protracted procedural record, additional time for counsel to prepare a brief and gather evidence on certification is neither necessary nor permitted by regulation.

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 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 . . . , must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The evidentiary 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.

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(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 born in the United States, 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. . . . 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.

In this case, the record shows that the petitioner married M-B-<sup>1</sup>, a U.S. citizen, on January 26, 2003 in Arizona. M-B- filed a Form I-130 petition for alien relative on the petitioner's behalf on February 25, 2003. On November 4, 2003, she informed CIS that she wished to withdraw the Form I-130 and on November 25, 2003, she filed a petition for dissolution of marriage against the petitioner with the Maricopa County Superior Court of Arizona. On January 21, 2004, CIS denied the petitioner's Form I-

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

485 application to adjust status due to the withdrawal of his wife's Form I-130 petition. On June 17, 2004, the petitioner filed this Form I-360.

*Joint Residence*

On appeal, counsel claimed that several documents submitted with the petition established the petitioner's "joint residence with his wife (the *bona fides* of their marriage)." Counsel mischaracterized the residence criterion as equivalent to a bona fide marriage requirement and the evidence cited by counsel does not establish that the petitioner resided with his wife pursuant to section 204(a)(1)(A)(iii)(II)(dd) and the regulation at 8 C.F.R. § 204.2(c)(2)(iii). The couple's marriage license does not list the address of either the petitioner or his wife. The birth certificate of the couple's daughter lists only the address of the petitioner's wife and not the petitioner. The health insurance cards of the petitioner and his daughter do not list an address or otherwise show that the petitioner resided with his wife. The deposit ticket for the couple's joint bank account lists a joint residential address in Chandler, Arizona, but the only account statement submitted is dated after the petitioner's wife filed for divorce and the three remaining documents related to this account are addressed to the petitioner alone. The Petition for Order of Protection of the petitioner's wife against him lists separate residential addresses for the former couple.

A police report dated December 20, 2003, states that the police stood by while the petitioner removed his belongings from the residence in Chandler, Arizona. A letter from the lawyer representing the petitioner in his divorce case claims that the petitioner's wife changed the locks on the "community residence." The Forms I-130 and I-864 filed by the petitioner's wife on his behalf also list the address in Chandler, Arizona as the couple's joint residence. Yet these documents alone are insufficient to establish that the petitioner actually resided with his wife. The petitioner did not submit documentation of the types specified in the regulation at 8 C.F.R. § 204.2(c)(2)(iii), such as employment records, utility receipts, deeds, mortgages, rental records, or joint insurance policies evidencing his joint residence with his wife. The birth certificate of the former couple's daughter does not list the petitioner's address and the submitted health insurance cards also fail to show a joint residential address for the petitioner and his wife. The school record of the petitioner's stepdaughter and the medical treatment agreement signed by the petitioner for his daughter do not state the address of the petitioner or his wife. The petitioner also failed to submit an affidavit explaining why further evidence of his marital residence does not exist or is unobtainable. In his November 29, 2006 letter, counsel states that the petitioner has found "the additional evidentiary support identified by the AAO," but counsel has failed to submit any further evidence. Accordingly, the record does not establish that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

On appeal, counsel claimed that evidence submitted with the Form I-360 showed that the petitioner's wife subjected him to extreme cruelty. The documents cited by counsel do not support his claim. Copies of electronic mail messages indicate that the petitioner's wife was in love with another man

who lived in London, that she corresponded with him in July 2003, during her marriage to the petitioner, but that she did not see the other man during this time and that he soon reconciled with his own wife and asked the petitioner's wife to stop contacting him. The messages establish the unfaithful feelings of the petitioner's wife at one point during their marriage, but they do not amount to psychological abuse and the record does not indicate that the messages were part of an overall pattern of abuse against the petitioner.

The December 20, 2003 police report describes the incident as "a domestic that was not a domestic, but instead a civil standby gone awry. . . . Incident was never a physical fight as originally reported." The report shows that the petitioner and his wife had an argument when the petitioner went to retrieve his belongings. The report does not indicate that the petitioner's wife used or threatened to use force against the petitioner. The submitted petition for an order of protection was filed by the petitioner's wife against him and the record is devoid of any evidence that this petition was dismissed by the court.

The record indicates that the petitioner's wife withdrew her Form I-130 filed on the petitioner's behalf on November 4, 2003 and that she filed a petition for divorce while the petitioner was in Jamaica on a business trip in late November 2003. The record contains no copy of the divorce petition or other evidence of the exact date on which it was filed. A letter from the petitioner's divorce attorney claims that the petitioner's wife changed the locks on the couple's purported marital residence and prevented the petitioner from retrieving his belongings. Counsel also claims that the petitioner's wife took all of the money out of the couple's joint bank account, removed her name from the account and caused an overdraft in order to hurt the petitioner's credit. The record shows that the account was overdrawn in November 2003, but the petitioner submitted no documentation of his wife's purported withdrawal of funds and removal of her name from the account.

Counsel claims that other documents establish a pattern of abuse by the petitioner's wife against her elder daughter and her ex-husband, the girl's father. Counsel suggests that this allegedly abusive pattern continued in the purportedly abusive behavior of the petitioner's wife during the course of their divorce. The documents relating to the petitioner's wife, her elder daughter and her ex-husband do not establish a pattern of extreme cruelty that extended to the petitioner. The preliminary injunction issued in connection with the divorce case of the petitioner and his wife is a standard form enjoining both the petitioner and his wife from, *inter alia*, hiding community property from one another or taking their minor child outside of the court's jurisdiction without prior consent and permission. The injunction contains no findings of fact or orders made by the court particular to the couple's case. Several letters from the petitioner's divorce attorney claim that the petitioner's wife denied the petitioner access to their daughter and the petitioner submitted a copy of a court order dated April 7, 2005 issued in conjunction with the petitioner's divorce case that held the petitioner's wife in contempt of court for repeatedly delaying and denying the petitioner's visits with their daughter. These documents alone do not establish that the interference of the petitioner's wife with his visitation with their daughter amounted to psychological abuse or was part of an overall pattern of violence or threatened violence against the petitioner.

On appeal, the petitioner also submitted a letter dated July 8, 2005 and addressed to counsel from [REDACTED] a licensed and certified clinical social worker, regarding her assessment of the petitioner. [REDACTED] letter primarily summarizes the petitioner's relationship with the petitioner's wife as related to her by the petitioner himself. [REDACTED] states that she believes the petitioner was severely emotionally abused by his wife during their marriage. Yet [REDACTED] assessment is based on one meeting with the petitioner on June 21, 2005 of unspecified length and on her review of unspecified documents provided by counsel. [REDACTED] states that during the interview, the petitioner's "speech was logical and goal-directed" and that he showed "no indication of a thought disorder." [REDACTED] provides no other professional assessment or diagnosis of the petitioner's mental health and she notes no physical or psychological effects of the alleged abuse on the petitioner, as directly observed by her during the interview. For these reasons, [REDACTED] assessment is of little probative value.

In his November 29, 2006 letter, counsel stated that "a draft of an additional psychological report has been prepared by a licensed professional social worker to establish the mental cruelty suffered by petitioner from spousal abuse." Counsel has submitted no such report on certification although he had nearly three months to do so.

The petitioner has not established that his wife subjected him or his child to battery or extreme cruelty pursuant to the regulation at 8 C.F.R. §§ 204.2(c)(1)(vi), 204.2(c)(2)(iv). The evidence does not indicate that the petitioner's wife ever used or threatened to use force against the petitioner. The record also fails to show that the documented behavior of the petitioner's wife's constituted psychological abuse or was part of an overall pattern of violence. Accordingly, the record does not demonstrate that the petitioner or his child was subjected to battery or extreme cruelty by his U.S. citizen spouse, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Moral Character*

In the February 9, 2005 RFE, the director asked the petitioner to submit evidence of his good moral character, specifically, his own affidavit supported by police clearances or records from each place he had resided for at least six months during the three-year period before his petition was filed pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). The petitioner submitted no evidence in response to the RFE. On appeal and certification, the petitioner also failed to submit police clearances, state criminal background checks, or an explanation of why such records are unavailable or unobtainable.

On appeal, counsel claimed that the petitioner's good moral character was evidenced by his college degree; Arizona license to operate an assisted living home and his certification as an assisted living facility manager; his care for his daughter including providing her with health insurance coverage and financial support, and his request for visitation after his separation from his wife; his attempt to reconcile with his wife; and his Form G-325A listing his continuous employment. In addition, counsel claims that the search of the petitioner's fingerprints, given in connection with his Form I-485, would show that the petitioner has no criminal record. None of these documents comply with the director's

request and the regulation at 8 C.F.R. § 204.2(c)(2)(v) and the petitioner provided no explanation that the requested police clearances or state criminal background checks were unavailable or unobtainable. In his November 29, 2006 letter counsel stated that an Arizona state police criminal clearance would be “imminently presented to petitioner.” Counsel has not submitted this document on certification, although he had nearly three months to do so. Consequently, the record does not establish that the petitioner is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act and pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v).

The petitioner failed to establish that he resided with his wife, that she battered or subjected him or his child to extreme cruelty during their marriage, or that he is a person of good moral character. The petitioner is thus ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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 of January 17, 2007 is affirmed. The petition is denied.