

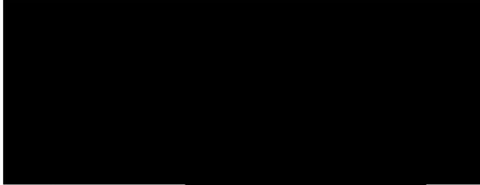
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE:

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Office: VERMONT SERVICE CENTER

Date: **MAR 19 2007**

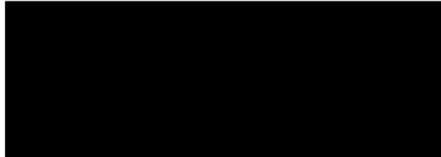
IN RE:

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.

Mari Plusson

3 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 case for the issuance of a Notice of Intent to Deny (NOID). 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 petitioner seeks immigrant classification 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 establish that he was battered or subjected to extreme cruelty by his wife. On remand, the AAO concurred with the director's finding and noted that the petitioner had the burden to establish eligibility for the bona fide marriage exemption pursuant to the regulation at 8 C.F.R. § 245.1(c)(9)(v). The director issued a NOID. The petitioner responded to the NOID. On December 19, 2006, the director denied the petition, again finding that the petitioner had not established that he was battered or subjected to extreme cruelty by his wife, and certified her decision to the AAO.

The petitioner submitted nothing further in response to the notice of certification.

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 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.

Upon review of the record, including the petitioner's appellate submission, we find that the evidence contained in the record is not sufficient to establish eligibility.

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of Ghana. He indicated on his Form I-360 petition that he entered the United States without inspection on or about April 5, 1994. The petitioner filed a Form I-589 asylum application April 20, 1994. The Newark Asylum Office denied the asylum application and placed the petitioner in removal proceedings on November 16, 1995. On July 24, 1999, the petitioner married I-N¹, a United States citizen.² The petitioner filed the instant petition on October 27, 2004. The petitioner has a master

¹ Name withheld to protect individual's identity.

² On February 29, 2000, the petitioner's wife filed a Form I-130 on the petitioner's behalf on

calendar hearing before an Immigration Judge on March 27, 2007.

The issue to be addressed is whether the petitioner established that he was battered by, or subjected to extreme cruelty perpetrated by, his spouse.

The evidence relating to abuse consists of the following:

- The petitioner's affidavits dated October 12, 2004, December 2, 2004, and October 9, 2006.
- Police report showing that the petitioner and his stepchildren were arrested on July 9, 2005 and charged with violating the Controlled Substance Act of 1972.³
- Police incident report dated July 29, 2004.
- Police incident report dated August 11, 2005.
- Seven casino cards imprinted with the petitioner's wife's name.

In his affidavit, the petitioner complained that his wife would not have sex with him for more than one month and that she never helped to pay bills. He stated that she abandoned her three children, ages 15, 19 and 20 with him. He added that she refused to attend immigration interviews with him. The conduct described does not rise to the level of battery or extreme mental cruelty. The petitioner further stated that he told his wife to withdraw \$2,000 from an account to post bail after his drug-related arrest but she used the money for something else. On appeal, counsel for the petitioner asserts that the petitioner's wife's failure to post bond is another example of her cruelty towards the petitioner. In response to the NOID, the petitioner submitted another affidavit, dated October 9, 2006, which states that his wife "fraudulently filed [a] spousal support⁴ petition against [him] and obtained a Court Order in absentia." The record does not persuasively establish that the financial and marital problems caused by the wife were part of an overall pattern of physical violence or amounted to psychological or sexual abuse.

The petitioner stated that his wife yelled, slapped and insulted him in front of her children. Although not required to, the petitioner failed to submit any corroborating evidence such as statements from the children.

In his affidavit, the petitioner stated that on September 29, 2004, his wife grabbed a knife to stab him, so he ran outside and called the police. He further stated that he told the police what happened and that they wrote up a report. The police incident report is dated July 29, 2004, and not September 29, 2004. The report does not mention a knife. It is incumbent upon the petitioner to resolve any

February 29, 2000. The district director denied the Form I-130 petition on June 18, 2002.

³ Counsel for the petitioner submitted evidence that the charges against the petitioner were *nolle prosequied*.

⁴ According to the evidence in the record, the petitioner's wife obtained a child support order requiring the petitioner to pay monthly child support in the amount of \$55.

inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The August 11, 2005 police report states that the petitioner complained that his wife used a hammer to break open a second floor bedroom door. There is no indication that the petitioner's wife was arrested or charged for the incident.

In response to the NOID, counsel for the petitioner submitted seven casino cards imprinted with the petitioner's wife's name. Counsel alleges that the petitioner's wife used these cards to liquidate their joint account. There is no evidence in the record linking the casino cards to any account. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record is also devoid of any documentation in the form of reports from court officials, medical personnel, school officials, clergy, social workers, and other social agency personnel. The petitioner did not claim to have sought assistance in a shelter or seek an order for protection. There is no requirement that an applicant produce such documentary evidence, but the petitioner failed to explain why he did not take legal steps to end his wife's alleged abuse. The record does not indicate that the petitioner ever sought medical or mental health treatment for the effects of his wife's treatment or that he sought assistance from religious figures or social service agencies. The petitioner has not established that he was battered or subjected to extreme cruelty by his United States citizen spouse. Based on the current record, the petitioner is thus ineligible for classification under section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii).

Based upon the above discussion, we find the director properly considered the evidence submitted by the petitioner and that such evidence was afforded the proper weight. It should be noted that CIS has the sole discretion in determining what evidence is credible and the weight to be given the evidence.⁵ Accordingly, we concur with the director's findings that the petitioner failed to establish that he has been battered by, or the subject of extreme cruelty perpetrated by, his citizen spouse. The petitioner has submitted nothing on certification to challenge the director's findings.

ORDER: The director's decision dated December 19, 2006 is affirmed. The petition is denied.

⁵ See 8 C.F.R. § 204.2(2)(c)(i) which states that the determination of what evidence is credible and the weight to be given that evidence "shall be *within the sole discretion* of the Service." [Emphasis added.]