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U.S. Citizenship
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FILE: EAC 07 014 50291 Office: VERMONT SERVICE CENTER Date: **APR 14 2008**

IN RE: Petitioner: 

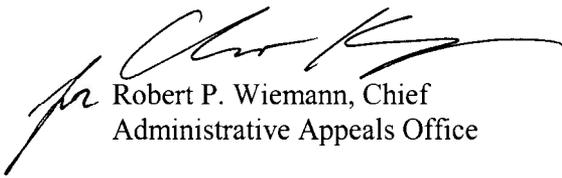
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:

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.


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 appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(A)(iii), as an alien battered or subjected to extreme cruelty by a citizen of the United States.

The director denied the petition finding that the petitioner failed to establish 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 his marriage in good faith.

The petitioner submits a timely appeal.

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 . . . 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 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 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Senegal. The date of the petitioner's entry into the United States is unclear. On March 2, 2004, the petitioner married S-R-¹, a United States citizen in New York. On April 15, 2004, the petitioner's spouse filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. The

¹ Name withheld to protect individual's identity.

petitioner concurrently filed a Form I-485, Application to Adjust Status, on that same date. The Form I-130 petition and the Form I-485 application were denied on January 28, 2006. The petitioner filed the instant Form I-360 on October 16, 2006. The director issued a Notice of Intent to Deny (NOID) the petition on November 30, 2006 that notified the petitioner of the deficiencies in the record and afforded him the opportunity to submit further evidence to establish his claims of battery or extreme cruelty, good moral character, and good faith entry into the marriage. The petitioner failed to respond to the NOID and the director denied the petition on April 17, 2007 on the three grounds enumerated in the NOID.

The petitioner submits a timely appeal with additional evidence and argues that he has established the requisite abuse and good faith marriage. He does not, however, address the lack of evidence regarding his good moral character. As will be discussed, we concur with the findings of the director that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse, that he is a person of good moral character, and that he entered into his marriage in good faith. As it relates to the additional evidence submitted on appeal, the petitioner provides no explanation or documentation of why the evidence submitted on appeal was not available for submission below. As the record demonstrates that the petitioner was properly notified of the deficiencies in the record and afford the opportunity to respond, we will not accept the evidence submitted by the petitioner on appeal. In instances such as this one, where a petitioner has been put on notice of deficiencies in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). Accordingly, the AAO need not and will not consider the evidence submitted on appeal.

Battery or Extreme Cruelty

To support his claim of abuse, the petitioner submitted a statement dated October 9, 2006 in which he provides an excuse for his spouse's failure to attend interviews with Citizenship and Immigration Services (CIS) in regard to the Form I-130 petition. The petitioner then states that his spouse was "into drugs, alcohol and so many other things that [he] couldn't have control on her." The petitioner does not further describe the abuse or provide any probative details or descriptions of any specific incidents of battery or extreme cruelty. The record does not contain any documentary evidence relevant to his claim of abuse. Moreover, despite being notified of the deficiencies in the record in the director's NOID regarding his claim of abuse, the petitioner submitted no further evidence prior to establish his claim of a good faith marriage. Although the petitioner has submitted an additional statement with a few details regarding his claim of abuse on appeal, as previously discussed, we will not consider this additional testimony on appeal. In addition, we note that even if considered, the brief and general statements made on appeal would not be sufficient to establish the requisite battery or extreme cruelty.

Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section

204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

At the time of filing, the petitioner submitted no evidence regarding his good moral character. In his NOID, the director notified the petitioner that primary evidence of his good moral character is an affidavit from the petitioner accompanied by a police clearance 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. 8 C.F.R. § 204.2(c)(2)(v). As previously noted, the petitioner failed to respond to the director's NOID and the petition was denied, in part, based upon the petitioner's failure to establish that he is a person of good moral character. The petitioner does not address his moral character on appeal. 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

As documentary evidence of his good-faith entry into his marriage, the petitioner submitted tax documents, paychecks, a letter from his employer indicating that the petitioner was married and that his wife should be contacted in case of an emergency, and three statements from Chase bank from March through June 2006. Although the petitioner's paychecks and employer letter indicate that he is married, none of the documents list his spouse's name or provide any probative details regarding the petitioner's relationship with his spouse. The statements from Chase bank are all dated *after* the petitioner indicates he and his spouse were separated. Finally, although the petitioner submitted copies of joint tax documents for the 2004 and 2005 tax years, all four of the documents are not dated by the petitioner or his spouse and three of the forms are both undated and unsigned by the petitioner and his spouse. The petitioner also has not submitted any evidence to establish that these documents were actually filed. Despite a claimed relationship of nearly two years, the petitioner provided no documentary evidence of joint assets and liabilities such as shared bank accounts, utilities, or life, car or health insurance during this time.

Although the lack of documentary evidence of a good faith marriage is not automatically disqualifying, the testimonial evidence submitted by the petitioner does not provide any probative description of his relationship with his spouse to establish his claim of a good faith marriage. For instance, the petitioner failed to describe how he met his spouse, how long they dated prior to their marriage, or to provide any other details about their courtship which describe his feelings for his spouse and his intent in marrying her. While the petitioner was afforded the opportunity to submit further evidence of his good faith marriage in response to the director's NOID, he failed to do so.

Accordingly, we concur with the finding of the director that the petitioner failed to demonstrate that he entered into marriage with his spouse in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the

Act.²

The petition will be denied for the reasons stated above, 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 appeal will be dismissed.

ORDER: The appeal is dismissed.

² It is noted that even if considered on appeal, the petitioner's general claim that he entered into his marriage in good faith is not sufficient to establish his eligibility on this issue. Similarly, the lease agreement submitted on the appeal covers a one-year period beginning on June 20, 2006, four months after the petitioner indicated on the Form I-360 that he stopped residing with his wife.