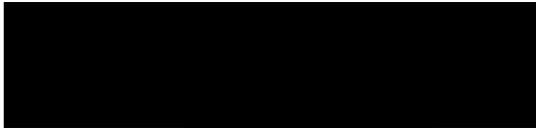


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**U.S. Citizenship
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FILE: [REDACTED]
EAC 05 077 52870

Office: VERMONT SERVICE CENTER

Date:

FEB 26 2008

IN RE: Petitioner: [REDACTED]

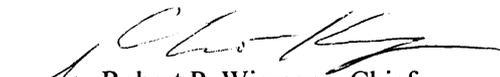
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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. 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 petitioner seeks immigrant classification pursuant to 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 United States citizen.

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 clause (ii) or (iii) of subparagraph (B), 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].

In this case, the director initially denied the petition on December 22, 2005, for failure to establish the requisite battery or extreme cruelty and good moral character. In our July 24, 2006 decision on appeal, we concurred with the director's determinations but remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on October 3, 2006, which notified the petitioner of the deficiencies in the record and afforded the petitioner the opportunity to establish his claim of abuse and good moral character. The petitioner, through counsel, responded to the NOID with a brief statement which indicated that there was "no further evidence to submit" and referred to a "number of documents . . . supplied previously." The director denied the petition on April 9, 2007 finding that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage and that he was a person of good moral character.

On certification, the petitioner reasserts claims previously made regarding the alleged economic abuse and mental abuse perpetrated against him by his spouse. These claims were previously addressed by the director and the AAO and found to be lacking. No further evidence or arguments were submitted on appeal to establish the petitioner's claim of extreme cruelty. As it relates to his claim of battery, the petitioner argues that it was "unreasonable and unfair" for Citizenship and Immigration Services (CIS)

to have expected his friend, [REDACTED] to be a witness to the purported abuse, as was implied in our prior decision. We agree with the petitioner that the regulation does not require that there be a witness of the purported abuse. Additionally, we note our erroneous finding that [REDACTED] failed to indicate that the petitioner had been pushed out of the bed on more than one occasion. As such, we withdraw our prior discussion regarding [REDACTED]'s affidavit and will revisit the petitioner's physical abuse claims.

In his affidavit, the petitioner claimed that his spouse pushed him out of the bed on June 30, 2004 and again on July 18, 2004. We acknowledge that in his affidavit, [REDACTED] references these two incidents. However, the statements provided by [REDACTED] offer no probative details regarding the incident or what the petitioner told [REDACTED]. Rather, [REDACTED] generally states:

When [the petitioner] returned to work on July 5, 2004 he told me that his wife . . . had intentionally pushed him off his bed while he slept injuring his lower back. From July 19 to 21, 2004 we were out of town . . . on business when I observed that [the petitioner] seem disturbed. On asking him what the problem was, he explained that they were having difficulties in their marriage to the point where his wife had threatened his life twice in the past three weeks and he did not feel safe in his house any more especially after his wife had pushed him off their bed twice injuring his back.

[REDACTED] does not describe in any detail the alleged threats made against the petitioner or the incidents where the petitioner was pushed out of his bed while sleeping. Similarly, although the petitioner submitted a letter from his chiropractor, [REDACTED] the letter does not offer any details to establish a claim of physical abuse. Rather, he states only that the petitioner was treated for "injuries sustained in an incident that took place in June, 2004." We note that although the petitioner submitted a police report dated July 18, 2004, the date of the claimed second incident, the police report does not contain any claim from the petitioner regarding being pushed out of bed. Instead, the report indicates that the petitioner claimed that while he was shaving, his wife attempted to provoke him by saying she was going to "bust [him] up . . . and break [his] back." The police report did not document either of the claimed incidents where the petitioner was pushed out of his bed. We also note that although the petitioner indicated that after the June 2004 incident he went to the emergency room at Emory University Hospital, the petitioner does not provide any medical documentation for this visit describing the alleged incident and his injuries and treatment. 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).

As discussed above, the petitioner's claims regarding extreme cruelty do not show that his spouse's actions rose to the level of those acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) which include forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution. No additional evidence was submitted in response to the director's NOID or on certification. As it relates to the petitioner's claim of physical abuse, the record contains no documentary evidence to establish the petitioner's claim. The testimonial evidence of Mr. David and

the letters from [REDACTED] lack probative details regarding to the claimed incidents. In fact, [REDACTED] does not even mention that a second incident occurred. We find the remaining evidence, which consists of the petitioner's affidavits, does not carry sufficient weight to establish the petitioner's claim of battery.

As it relates to the petitioner's claim of good moral character, although the record does not indicate that the petitioner has been charged or convicted of any crime, he has admitted to obtaining false social security cards, a false Alien Registration Card (ARC), and making a false claim to U.S. citizenship. While these acts do not require an automatic finding of lack of good moral character under section 101(f) of the Act, in order to make an affirmative finding regarding the petitioner's good moral character, he must establish extenuating circumstances. *See* 8 C.F.R. § 204.2(c)(1)(vii).

On certification, the petitioner states that he is "remorseful for using fraudulent documents and claiming to be a US citizen," but attributes his lapse in character to the "intense pressure" to make money and "the mental torture and economic coercion" of his spouse. We do not find the petitioner's statements to be persuasive. The fact that he needed to make money because he "exhausted the funds that [he] brought with [him] from Kenya" is not convincing given that the reason the petitioner lacked funds was because he remained in the United States beyond his period of authorized stay. While the petitioner also attributes his actions to the abuse perpetrated against him by his spouse, we note that the petitioner attempted to obtain his first false social security card in 1999 and his second in April 2000. The petitioner was not married until August 31, 2001. Similarly, the petitioner made his false claim to citizenship in order to obtain employment at Mellon Financial Services. On his Form G-325A, Biographic Information, the petitioner indicated that he began his employment at this company in June 2000, more than one year prior to his marriage. Finally, the petitioner indicated that he obtained his fake ARC in July 2004 the same month he claimed to have stopped residing with his spouse. Accordingly, the petitioner's claim of extenuating circumstances based upon his need to make money and his spouse's actions are not persuasive.

As evidence of his present good moral character, the petitioner claims that for the past three years he has been a volunteer at his church and refers to letters from his pastor and church elder that were previously submitted attesting to the petitioner's "upright character" and "good morals." We find this evidence does not overcome the fact that the petitioner has remained in the United States in violation of federal immigration laws since 2000, worked without authorization, obtained fraudulent documents and falsely claimed to be a United States citizen.

The relevant evidence submitted below was fully addressed in our prior decision, incorporated here by reference. No further evidence has been submitted since that decision and the petitioner's new arguments regarding his claim of abuse have been considered and addressed. As discussed above, we concur with the director's determination that the petitioner failed to demonstrate that he was battered or subjected to extreme cruelty by his spouse during their marriage and that he is a person of good moral character. The petitioner is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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 April 9, 2007 is affirmed. The petition is denied.