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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]
EAC 04 125 51572

Office: VERMONT SERVICE CENTER

Date: **MAR 11 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:

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
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the immigrant visa petition. Upon further review, the director determined that the petition had been approved in error. The director properly served the petitioner with a notice of intent to revoke, and subsequently revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

On May 12, 2005, the director approved the petition for classification as an immigrant 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), for an alien subjected to battery or extreme cruelty by his United States citizen spouse.

On July 21, 2006, the director issued a Notice of Intent to Revoke (NOIR) the approval of the petition because further review indicated that the petitioner did not enter into marriage with his wife in good faith, reside with her, that she subjected him to battery or extreme cruelty during their marriage and that he was a person of good moral character. The petitioner timely responded with additional evidence. The director determined that the new evidence established the petitioner’s good moral character, but did not demonstrate his eligibility under the remaining three criteria cited in the NOIR. On October 13, 2006, the director revoked approval of the petition on those three grounds.

On appeal, counsel submits a brief.

Section 205 of the Act, 8 U.S.C. § 1155, provides that “[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.” A director may revoke the approval of a petition on notice “when the necessity for the revocation comes to the attention of [Citizenship and Immigration Services].” 8 C.F.R. § 205.2(a). Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and un rebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the issuance of a notice of intent to revoke an immigrant petition. *Matter of Ho*, 19 I&N Dec. at 590.

For the reasons discussed below, we find that the visa petition was initially approved in error and we uphold the director's revocation of that approval.

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:

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

* * *

(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.

* * *

(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.

* * *

(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 Ghana who states in these proceedings that he entered the United States on

June 7, 1995 without inspection. On September 22, 1997, the petitioner married V-J-¹, a U.S. citizen, in Baltimore, Maryland. V-J- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf which was denied. The petitioner filed the instant Form I-360 self-petition on March 15, 2004. The petitioner and V-J- were divorced on April 14, 2004. The director initially approved the petition on May 12, 2005.

Upon further review, the director issued a NOIR to which the petitioner timely responded with additional evidence. On October 13, 2006, the director issued a notice of revocation, explaining that the petitioner had failed to establish that he entered into marriage with his former spouse in good faith, that he resided with her and that she subjected him to battery or extreme cruelty during their marriage.

On appeal, counsel contends that the director did not consider certain relevant evidence and based his decision, in part, on an unsupported speculation. We concur with the director's determinations. Counsel's claims on appeal fail to overcome the grounds for revocation.

Good-Faith Entry into the Marriage

The record contains the following evidence relevant to the petitioner's allegedly good-faith entry into marriage with his former spouse:

- The petitioner's undated, 11-page statement submitted with the Form I-360 and his subsequent affidavit notarized on September 18, 2006;
- Undated letter of the petitioner's friend [REDACTED] and
- Notices of cancellation of a Geico insurance policy jointly addressed to the petitioner and his former wife and dated October 18 and December 20, 1999.

In his initial statement, the petitioner says that he met his wife in October 1996 at a gathering hosted by his landlord. The petitioner states that the former couple became friends and after 11 months, he knew he wanted "to be with" her and they "both wanted families and so [they] decided to get married." After their marriage, the petitioner reports that he moved in with his former wife. The petitioner does not further describe the former couple's courtship, wedding or any of their shared experiences, apart from the alleged abuse.

The petitioner states that he moved out of his former wife's home in September 1998 and that prior to his departure, his former wife destroyed all of the former couple's documents reflecting their married life. In his affidavit, the petitioner further explains that he attempted to get evidence of their joint residence from their former landlord, but the rental office stated that they could only provide such documentation if his former wife was present because she was the only tenant listed on the

¹ Name withheld to protect individual's identity.

lease. The petitioner further explains that he visited his wife's home in August 2006 to ask for her assistance, but her boyfriend told him she was not home and told him never to return.

The petitioner does not, however, explain why he was able to provide cancellation notices of the former couple's joint insurance policy postdating their separation, but was unable to provide documentation of the policy dated during their marriage. Finally, the petitioner's friend, [REDACTED] states that the petitioner and his former wife "lived together for a few months" and that he went to their home on two occasions. But [REDACTED] only discusses the alleged abuse and does not provide any detailed, probative information about the petitioner's intentions in marrying his former wife.

The petitioner has failed to demonstrate by a preponderance of the evidence that he entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Joint Residence

The record contains the following evidence relevant to the petitioner's claimed residence with his wife:

- The petitioner's undated, 11-page statement submitted with the Form I-360 and his subsequent affidavit notarized on September 18, 2006;
- Undated letter of the petitioner's friend [REDACTED];
- Notices of cancellation of Geico insurance policy jointly addressed to the petitioner and his former wife and dated October 18 and December 20, 1999;
- Printouts of electronic records of the District Court of Maryland pertaining to criminal charges against the petitioner and his former wife that lists their address as [REDACTED] in Baltimore;
- The former couple's marriage certificate, which lists the petitioner's address as [REDACTED] and his former wife's address as [REDACTED]

On the Form I-360, the petitioner stated that he lived with his former wife from October 1, 1997 until June 1998 and that their last shared residence was at [REDACTED] in Baltimore, Maryland. In his initial statement, the petitioner states that he moved into his former wife's home on an unspecified date after their marriage on September 22, 1997. The petitioner does not state the address of their residence. In addition, the petitioner states that he moved out of his wife's home on or about September 8, 1998, not in June 1998, as he stated on the Form I-360. The petitioner does not explain this discrepancy.

As previously discussed, the petitioner explains in his affidavit that he could not obtain documentation of the former couple's joint residence because only his former wife was listed on the lease and the leasing office would not provide him with such documentation without his former wife's presence and that he unsuccessfully tried to obtain his former wife's assistance. The petitioner further states, "We lived together at [REDACTED] Baltimore, MD. . . . The [REDACTED]"

address was my address prior to marrying [V-J-]. Although [redacted] et and [redacted] are adjoining streets, [V-J-] and I never lived at the [redacted] address together.” The petitioner does not explain why he listed the [redacted] address as the former couple’s last joint residence on his Form I-360, except to state, “I believe that there has been a miscommunication in relaying that information to your office.” Moreover, if the [redacted] address was his former wife’s home prior to their marriage, the petitioner does not explain why the former couple’s marriage certificate lists his former wife’s address as [redacted] rather than [redacted].

The District Court of Maryland records show that on March 23, 1998, the petitioner’s address was at [redacted], the same address listed for the petitioner’s former wife on records of criminal charges dated in 1986, 1990, 1994, 1997, 2002, 2004 and 2005. However, none of the court records for the petitioner’s former wife correspond to the date of the petitioner’s own court record. Hence, contrary to counsel’s assertion, the court records do not establish the former couple’s joint residence.

The remaining, relevant evidence also fails to establish the petitioner’s claim. [redacted] states that the former couple lived together for a few months after their marriage and he describes one occasion where he visited their home and another occasion on which he picked the petitioner up from their home. Yet [redacted]’s description of these two events focuses on the alleged abuse and he does not state the former couple’s address or provide any further, probative information regarding their allegedly joint residence. The Geico cancellation notices are dated after the former couple’s reported separation and are addressed to the former couple at [redacted] in Halethorpe, Maryland, an address that the petitioner never mentions as sharing with his former wife. The petitioner also fails to explain why he was unable to obtain documentation of the insurance policy dated during the former couple’s marriage that lists the former couple’s purportedly joint address.

As discussed above, the record contains three unresolved discrepancies between the petitioner’s testimony and other evidence regarding the duration and location of the former couple’s allegedly shared residence. The petitioner has not demonstrated by a preponderance of the evidence that he resided with his former wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner’s claim that his former wife battered or subjected him to extreme cruelty during their marriage:

- The petitioner’s undated, 11-page statement submitted with the Form I-360 and his subsequent affidavit notarized on September 18, 2006;
- Undated letter of the petitioner’s friend, [redacted];
- October 14, 2003 letter from the petitioner’s former landlord, [redacted];
- Photographs and copies of photographs of the petitioner’s neck, hand, elbow and shoulder;
- An undated, handwritten letter purportedly signed by the petitioner’s former wife with the attached business card of [redacted], an addictions counselor;

- October 20, 2003 letter of [REDACTED] and [REDACTED] Medical records from Saint Agnes Health Care regarding the petitioner's medical treatment on September 27 and October 1, 2003.

In his initial statement, the petitioner describes his former wife's abuse of alcohol and controlled substances and her corresponding mistreatment of him. The petitioner discusses seven incidents in detail where his wife physically assaulted him. The letters of [REDACTED] and [REDACTED] the medical records and the photographs corroborate four of these incidents.

However, the petitioner describes an incident in June 1998 where his former wife cut his left hand with a kitchen knife. The petitioner states that he went to his former landlord's home where her husband cleaned and bandaged his wound and that he went to the Saint Agnes hospital and received stitches on his neck and hand. The petitioner states that [REDACTED] also took him to the hospital on another occasion in 1998 when his former wife cut him on his hand and elbow. Although he provided hospital records corresponding to his treatment for other injuries in September and October 1998, the petitioner does not provide medical records or testimony from the husband of his former landlord relating to these other two incidents. The petitioner also discusses an occasion in August 1998 when his wife hit him with a baseball bat and he went to stay with a coworker for two days who then helped him rent his own apartment. The petitioner provides no supporting statement from his coworker. While he is not required to do so, the petitioner does not explain why supporting evidence of these three incidents (apart from the undated photographs) does not exist or is unobtainable. *See* 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i).

[REDACTED] letter is of little probative value. [REDACTED] simply reports his observations from a physical examination of the petitioner on October 20, 2003. [REDACTED] notes scars on the petitioner's neck, elbow and knee and a lump on his shoulder and he describes the petitioner's account of how his former wife inflicted these injuries. [REDACTED] does not indicate, however, that he treated the petitioner on any occasion immediately following any of the observed injuries. In addition, the letter is not printed on letterhead stationary and contains no contact information for Dr. [REDACTED]

The letter attributed to the petitioner's wife states that she was addicted to controlled substances when she met the petitioner, that she now remembers some of the injuries she inflicted upon him and that she is sorry. The business card of addictions counselor [REDACTED], is stapled to the letter and the back of the card contains a handwritten notation, "request for admin treatment and client remains in treatment." As noted by the director, the purported signature of the petitioner's former wife on this letter differs significantly from her signature on the Form I-134, Affidavit of Support, and Form G-325A, Biographic Information, in the record. In the NOIR, the director informed the petitioner that the discrepancy in the signatures of his former wife prevented a determination that the letter was actually signed by his former spouse. In his response to the NOIR, the petitioner did not address the discrepancy. In the notice of revocation, the director again noted that the petitioner did not explain the significant difference between his former wife's signature on the letter submitted

with the Form I-360 and the other forms in the record. On appeal, the petitioner again fails to address this discrepancy. The inconsistent signature seriously detracts from the credibility of his former wife's letter and the petitioner's repeated failure to address this issue imparts a measure of disingenuousness to his testimony.

Although the petitioner describes incidents of abuse that are supported by other testimony or documentation, the petitioner describes other incidents that lack supporting evidence that the petitioner's testimony indicates would be available to him. The petitioner has also provided a letter attributed to his former wife, but has repeatedly failed to address the significant difference in her signature on the letter as compared to her signature on two other documents in the record. The petitioner has thus failed to demonstrate by a preponderance of the evidence that his former wife battered or subjected him to extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner has not demonstrated that he entered into marriage with his former wife in good faith, that he resided with her and that she battered or subjected him to extreme cruelty during their marriage. He is thus ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above reasons, with each considered as an independent and alternative basis for denial. The burden of proof in visa petition proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.