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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
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U.S. Citizenship
and Immigration
Services

B9

FILE: [REDACTED]
EAC 05 151 52259

Office: VERMONT SERVICE CENTER

Date: APR 06 2009

IN RE: Petitioner: [REDACTED]

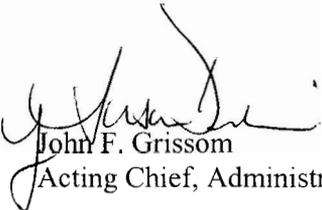
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

ON BEHALF OF PETITIONER:
[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting 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 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 a person of good moral character.

On appeal, counsel submits a brief and additional evidence.

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, 8 U.S.C. § 1154(a)(1)(J) 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 or the self-petitioner's child, 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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

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. . . . 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who states on the Form I-360 that he arrived in the United States on November 23, 1995. On August 21, 2004, the petitioner married M-C¹, a U.S. citizen, in California. M-C- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which she withdrew on July 25, 2005.

On May 2, 2005, the petitioner filed this Form I-360. On May 11, 2005, the director issued a Request for Evidence (RFE) of the petitioner's residence with his wife. The petitioner timely responded with further evidence. On August 26, 2005, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish the requisite battery or extreme cruelty and good moral character. The petitioner timely responded to the NOID with further evidence. On April 6, 2006, the director denied the petition on the grounds cited in the NOID. On August 8, 2006, the petitioner filed a Form I-290B, Notice of Appeal, with additional evidence. The director treated the untimely appeal as a motion to reopen and reconsider, determined that the new evidence established battery or extreme cruelty, but that it did not demonstrate the petitioner's good moral character. The director affirmed the prior denial on the latter ground on September 17, 2007. The petitioner timely appealed.

On appeal, counsel claims that the restraining order issued against the petitioner for the protection of his wife does not show that he lacks good moral character because he was the victim of his wife's abuse and could not defend himself against the order. Counsel's claims and the evidence submitted on appeal fails to overcome the ground for denial. In addition, beyond the decision of the director, the petitioner has not demonstrated that his wife subjected him or his son to battery or extreme cruelty during their marriage.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *See Maka v. INS*, 904 F.2d 1351, 1356 (9th Cir. 1990); *Mester Manufacturing Co. v. INS*, 900 F.2d 201, 203-04 (9th Cir. 1990).

Good Moral Character

The regulation at 8 C.F.R. § 204.2(c)(2)(v) prescribes that "primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit." A self-petitioner's affidavit should be supported by a "local police clearance or a state-issued criminal background check from each locality or state in

¹ Name withheld to protect individual's identity.

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.” 8 C.F.R. § 204.2(c)(2)(v). The petitioner failed to submit this evidence.

The petitioner submitted four statements below and on appeal. In his October 14, 2005 letter submitted in response to the NOID, the petitioner asserted, “I am a good person, I don’t drink, I don’t smoke and I am not planning to live in this country from any public assistance benefit.” Apart from this brief declaration, the petitioner did not discuss his moral character in any of his statements. The petitioner also did not submit any police clearances or state-issued criminal background checks. The record indicates that the petitioner resided in Las Vegas, Nevada and La Puente, California for more than six months at each location during the three years preceding the filing of this petition. The petitioner submitted no police clearance letters from Las Vegas or La Puente or criminal background checks from Nevada or California.

In addition, as noted by the director, the record contains copies of a restraining order for “domestic violence prevention” issued against the petitioner for the protection of his wife.² The order was issued after a hearing on April 15, 2005 where both the petitioner and his wife were present. The order was granted for one year, until April 15, 2006. In his October 14, 2005 letter, the petitioner stated that the restraining order was one of the steps his wife took to ruin his life. He asserted that at the hearing, the judge questioned his wife and stated, “since nothing is clear and there are not charges, I’m just approved [sic] for one year.” In his October 16, 2007 declaration submitted on appeal, the petitioner claims the judge “told off [M-C-] that he did not see anything clear on what she wrote.”

The restraining order does not support the petitioner’s assertions. The order states that it was issued after a hearing where both the petitioner and his wife were present. The order prohibits the petitioner from harassing, assaulting, threatening or contacting his wife and requires that he stay at least 100 yards away from his wife and her home, job and vehicle. On appeal, counsel asserts that the petitioner “had no way to defend against” the order, but the petitioner himself does not so claim. Rather, the petitioner asserts that the judge found no basis for his wife’s claim. The petitioner does not credibly explain why the judge nonetheless issued the restraining order against him.

While the regulation permits the submission of other evidence of good moral character if police clearances or criminal background checks are unavailable for certain locations, the petitioner has not explained his failure to submit the requisite clearances or checks. The petitioner submitted an affidavit from [REDACTED], who briefly stated that the petitioner “is a good hard working man who wants to stay and contribute to this country.” The petitioner also submitted an affidavit signed by five of his neighbors, which asserted that he is a nice, fine and polite person who held a full-time job and had a good relationship with everyone. Even if the petitioner had explained the unavailability of police clearances or state-issued criminal background checks, the brief statements of [REDACTED] and the petitioner’s neighbors are insufficient to demonstrate his good moral character.

² *Restraining Order After Hearing (CLETS)*, Los Angeles, California Superior Court, Case Number [REDACTED] April 15, 2005).

The petitioner has not submitted the requisite evidence to establish his good moral character and has not explained the unavailability of such evidence. The petitioner has also not submitted documentation or testimony sufficient to overcome the restraining order issued against him to prevent domestic violence. Accordingly, the petitioner has failed to establish that she is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Battery or Extreme Cruelty

Beyond the decision of the director, the petitioner has also not demonstrated that his wife subjected him or his son to battery or extreme cruelty during their marriage. The record contains the following evidence relevant to this issue:

- The petitioner's March 27, 2005 affidavit; June 18 and October 14, 2005 letters submitted below and his October 16, 2007 declaration submitted on appeal;
- Affidavits of [REDACTED] and five of the petitioner's neighbors;
- Letter of the petitioner's son submitted on appeal;
- Undated letter of [REDACTED] the petitioner's therapist;
- Student data printout of the petitioner's son with un-attributed handwritten notes;
- Psychological evaluation of the petitioner and his son by [REDACTED] submitted with the petitioner's first, untimely appeal; and
- The aforementioned Retraining Order After Hearing (Domestic Violence Prevention) issued against the petitioner for the protection of his wife and effective from April 15, 2005 to April 15, 2006.

In his first affidavit, the petitioner stated that his wife mentally and verbally abused him. He reported that his wife would check his wallet, cellular telephone and once followed him to the supermarket disguised as a cowboy to check on him. He stated that his wife hid his U.S. Citizenship and Immigration Services (USCIS) appointment letter from him and threw him out once he had used all of his savings to repair her house. The petitioner did not describe any particular incident of abuse in detail. In his June 18, 2005 letter, the petitioner briefly stated that his wife filed a false restraining order against him and that she closed their joint bank account by withdrawing all of the money without telling him. The petitioner submitted copies of personal identification number notices from the bank where he states they had a shared account, but he submitted no statements or other documentation from the bank regarding the closure of their account. In his October 14, 2005 letter, the petitioner reiterated that his wife had no basis for the restraining order she obtained against him and that she abused him and his son. Again, the petitioner did not describe any incident of abuse in detail.

On appeal, the petitioner adds that his wife made his son sweep the garage and clean the bathroom with liquids that hurt him. The petitioner states that his son told him that his wife broke his toys and shouted at him. The petitioner further reports that his son would cry when he saw his wife and had trouble sleeping. The petitioner also claims that his wife threatened that she would not go to his

USCIS appointment if he did not give her money to buy a new car and kicked him out of the house two weeks before his appointment when he refused to give her the money. The petitioner does not explain why he did not discuss these additional claims in his prior statements. The brief assertions of the petitioner do not describe any particular incident of abuse in probative detail and are insufficient to demonstrate the requisite battery or extreme cruelty.

The statements of the petitioner's friends and neighbors also lack sufficient, probative information to establish his claims. [REDACTED] stated that she took care of the petitioner's son on the weekends because the petitioner's wife did not want his son in their house. [REDACTED] further asserted that she "witnessed some of the threats that [the petitioner's wife] told [the petitioner] about not continuing with the immigration procedure if he didn't finish some of the repairs of her house." [REDACTED] does not describe any such threat or other incident of abuse in detail. [REDACTED] stated that she took care of the petitioner's son during the week, that the petitioner's son told her that the petitioner's wife did not want him and his son around the house, that the petitioner's wife did not give his son candy and that she threatened to "stop the process" and threw the petitioner out of their house. [REDACTED] also does not describe any incident of abuse in detail. In their joint affidavit, the petitioner's neighbors assert that his wife had "mental problems" and "called the police for nothing and created problems in the neighborhood," but they do not indicate witnessing any abuse of the petitioner or his son.

The remaining, relevant evidence also fails to establish the requisite battery or extreme cruelty. The handwritten and un-attributed notes on the student data printout of the petitioner's son state that he had a difficult time adjusting to school at the beginning of the year, had difficulty focusing, but that he got along with friends and did not have major problems with discipline. The notes do not mention the petitioner's wife or his son's familial situation. In his letter submitted on appeal, the petitioner's son states that the petitioner's wife gave him a bath with cold water, made him wash the bathroom and vacuum the house, broke his toys; screamed at him, hit him and pulled his ears. The petitioner, his friends, neighbors and [REDACTED] do not mention any physical abuse of the petitioner's son by his wife. The record also indicates that at the time the petitioner's son wrote this letter, he was eight years old and over two and a half years had elapsed since the petitioner separated from his wife.

While we do not question their expertise, the statements of the petitioner's therapist, [REDACTED] and [REDACTED] do not establish that the petitioner's wife subjected him or his son to battery or extreme cruelty. [REDACTED] stated that the petitioner had attended five therapy sessions during an unspecified time period. [REDACTED] noted that the petitioner suffered "significant emotional trauma" while involved with his wife, that he "becomes very emotional, losing his composure" when discussing his wife and that he "becomes disproportionately angry when talking about the manipulation he experienced in that relationship." [REDACTED] does not discuss any abuse in detail, does not indicate that the petitioner suffered any mental or physical illness and his letter is of little probative value.

[REDACTED] stated that her evaluation was based on one-time interviews with the

petitioner and his son on April 18, 2006, over a year after the petitioner separated from his wife. Dr. [REDACTED] reported that the petitioner's son's scores on the affective problems and anxiety problems scales of the Achenbach System of Emperically Based Assessment (ASEBA) were in the clinical range, which suggested that "the DSM should be consulted to determine whether [the petitioner's son] meets the diagnostic criteria for affective disorders and anxiety disorders," but she provided no such diagnosis. [REDACTED] reported that the petitioner's scores on the anxiety problems and depressive problems scales were in the clinical or borderline clinical range, which suggested that "the DSM should be consulted to determine whether [the petitioner] meets diagnostic criteria for anxiety disorders," but she provided no such diagnosis. She further noted that the petitioner fell within the severe range of anxiety and depression on the relevant Beck inventories.

[REDACTED] quotes the petitioner's description of his wife's mistreatment, which is consistent with his submitted testimony, but which does not describe any incident of abuse in probative detail. [REDACTED] further states that the petitioner "described severe emotional and even physical abuse of his son," but she does not describe such abuse in probative detail. While the statements of [REDACTED] and [REDACTED] indicate that the petitioner and his son suffered during his marriage, their brief references to unspecified abuse do not demonstrate that the petitioner's wife subjected him or his son to battery or extreme cruelty during their marriage.

In addition, the year-long restraining order issued against the petitioner for the protection of his wife further weighs against a finding that his wife abused him. The petitioner has repeatedly stated that at the hearing, the judge found no basis for his wife's petition, yet the petitioner does not explain why the judge nonetheless issued the restraining order against him.

In sum, the relevant evidence fails to establish that the petitioner's wife subjected him or his son to battery or 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 is a person of good moral character and that he or his son was subjected to battery or extreme cruelty by his wife during their marriage. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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