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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

EAC 06-102-50893

Office: VERMONT SERVICE CENTER

Date: **APR 24 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:

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.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(a)(1)(A)(iii), as having been battered or subjected to extreme cruelty by his U.S. citizen spouse.

The director denied the petition finding that the petitioner failed to establish that he is a person of good moral character. The petitioner, through counsel, submits a timely appeal.

We concur with the director's determination that the petitioner has not established that he is a person of good moral character. Counsel's claims on appeal do not overcome this ground for denial. Beyond the director's decision, we also find that the petitioner did not establish that he was battered or subjected to extreme cruelty by his U.S. citizen spouse.

Eligibility for Immigrant Classification Under Section 204(a)(1)(A)(iii) of the Act

Section 204(a)(1)(A)(iii) of the Act provides that the spouse of a U.S. citizen may self-petition for immigrant classification if the petitioner demonstrates that he or she entered into the marriage with the U.S. citizen spouse in good faith and that, during the marriage, the petitioner or a child of the petitioner was battered or subjected to extreme cruelty perpetrated by the petitioner's spouse. In addition, the petitioner 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 . . . 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, provided the person has not been convicted for the commission of the offense or offenses in a court of law. 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.

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.

Procedural History and Pertinent Facts

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Iran. He was last admitted to the United States on September 4, 2001 on a B-2 nonimmigrant visitor visa. On August 19, 2002 the petitioner married S-S-¹ a U.S. citizen, in California. On April 3, 2003, S-S- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, and the petitioner filed a Form I-485, Application to Adjust Status, on the same date. On September 9, 2003, S-S- requested that the I-130 Petition be withdrawn; accordingly, on October 24, 2003, the I-130 Petition was withdrawn and the I-485 Application denied. The couple was divorced on August 16, 2006. The petitioner was placed in removal proceedings on August 10, 2005; he remains in proceedings.

The petitioner filed the instant I-360 Petition on February 17, 2006. On June 11, 2006 the director issued a Request for Evidence (RFE) of his divorce from S-S-, joint residence with S-S- and that he is a person of good moral character. In response the petitioner submitted a copy of a his final divorce decree; letters from the California Department of Justice and the Illinois Bureau of Identification confirming no criminal history; and the petitioner's own statement that he is a person of good moral

¹ Name withheld to protect individual's identity.

character; affidavits from six acquaintances and three family members attesting to the petitioner's good moral character and/or to his love for and caring treatment of his wife and confirming that he and his wife resided together during their marriage; and documents showing that the petitioner resided with his spouse, including receipts for the joint purchase of a 2003 Toyota; automobile insurance in both their names and a Citibank letter and credit card statement addressed to the petitioner at their joint residence. On October 3, 2007, the director issued a Notice of Intent to Deny the petition, finding that the petitioner had failed to establish that he is a person of good moral character. The director specifically noted that the petitioner's final divorce decree raised questions concerning the petitioner's credibility in regard to his character based on the divorce court's final grant of his wife's divorce petition on the grounds of mental and physical cruelty. In response, the petitioner, through counsel, submitted his own statement and a declaration from the petitioner's divorce attorney, Reza Baniassadi, providing details of the divorce proceeding and a copy of a Motion to Reconsider and Modify the Judgment for Dissolution of Marriage. The director, noting that no amended Judgment for Dissolution of Marriage had been submitted, found this evidence insufficient and denied the petition on January 2, 2008 on the ground that the petitioner failed to establish that he is a person of good moral character; the director found that the petitioner had met the remaining eligibility requirements.

On appeal, counsel for the petitioner reiterates the petitioner's and Mr. Baniassadi's account of the divorce proceedings and asserts that there is no evidence supporting the divorce court's finding of mental and physical cruelty by the petitioner; he argues that the director abused his discretion in failing to consider all of the positive factors supporting the petitioner's claim of good moral character, citing to *Torres-Guzman v. INS*, 804 F.2d 531 (9th Cir. 1986). He submits no additional evidence.

Good Moral Character

We concur with the decision of the director that the petitioner failed to submit sufficient evidence of good moral character. The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks 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. The petitioner submitted the required state-issued criminal background checks as well as his own declaration and affidavits of friends and relatives attesting to his good moral character. The regulation at 8 C.F.R. § 204.2(c)(1)(vii) states that the 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. While the petitioner is not precluded from being found to be a person of good moral character under section 101(f) of the Act, his actions as set forth in the Judgment for Dissolution of Marriage are material to this determination. The applicant's general conduct may be a factor in determining lack of good moral character. *Matter of Carbajal*, 17 I&N Dec. 272 (Comm. 1978) (four illegal entries, without more, was insufficient to bar finding of good moral character). Whether the petitioner is a person of good moral character is a

discretionary determination to be made by the adjudicating officer

In this case, the director addressed and evaluated all of the positive factors supporting the applicant's claim of good moral character, as required under *Torres-Guzman*, 804 F.2d 531, 533-34; he noted the petitioner's declaration, the affidavits submitted on the petitioner's behalf and the required criminal clearances, all indicating that that the petitioner was a person of good moral character. However, after considering other evidence in the record, specifically a court judgment finding that the petitioner had subjected his spouse to extreme mental and physical cruelty, the director determined that the petitioner had not established his good moral character.

Upon a review of all the evidence, we concur. The petitioner's spouse, S-S-, filed for divorce, alleging extreme and repeated mental and physical cruelty by the petitioner as grounds for the dissolution of their marriage. The judge issued his final judgment on August 15, 2006, finding that, after hearing the testimony of each party and reviewing the evidence presented, including 33 exhibits introduced into evidence by S-S-, "[n]otwithstanding the Respondent's [the petitioner in this case] denial of said allegations, the Court finds that [S-S-] has proven grounds by a preponderance of the evidence, including dates, times, places, names of witnesses and physicians with whom she sought medical treatment."

In response to the director's NOID, counsel submitted a copy of a Motion to Reconsider and Modify the Judgment for Dissolution of Marriage by the petitioner's divorce lawyer, Mr. Baniassadi, alleging (1) that the final Judgment erroneously included the finding of mental and physical cruelty; (2) that, at the end of the trial and when S-S- had failed to prove her allegation of abuse, the court had granted S-S-'s motion to amend her petition to add the ground of irreconcilable differences, and (3) that two exhibits, not 33, had been submitted, an error recognized by the court on August 15, 2006. Mr. Baniassadi, therefore, requested in his Motion that the court "reconsider and modify its Judgment of August 15, 2006, to reflect its finding that the parties ground [sic] for their Dissolution of marriage was irreconcilable differences, the 33 exhibits were not introduced . . . and grant him other relief as . . . reasonable." The date the Motion was filed is not legible; no response to the Motion or Modified Judgment has been submitted.

The record includes detailed statements by the petitioner and his prior divorce counsel regarding the alleged mistakes that occurred during the divorce proceedings; on appeal current counsel submits similar allegations. However, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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). There is no evidence establishing that S-S- agreed to any modifications of the judge's findings; and there is no evidence that the judge's findings were made erroneously. Therefore, the evidence in the record,

as set forth in the Judgment for Dissolution of Marriage, demonstrates that the petitioner engaged in extreme mental and physical cruelty against his spouse. Such acts are sufficient in this case to preclude a finding that the petitioner is a person of good moral character.

Accordingly, the petitioner has failed to establish by a preponderance of the evidence that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Evidence of Battery or Extreme Cruelty

The evidence of battery or extreme cruelty in this case is comprised solely of the petitioner's statements, the statements of his friends and relatives and a Psychological Evaluation based on the petitioner's statements. At the time of filing, the petitioner submitted his own detailed declaration, dated February 6, 2006. He claimed that he and S-S-, who are distantly related, met in California when S-S- found out that he was in the United States and called him at his uncle's home in Los Angeles; he proposed to her in July 2002, and they made a sudden decision to have a civil marriage ceremony on August 19, 2002; they had a traditional Persian ceremony, the *Aghd* Ceremony where vows are exchanged, on October 5, 2002; and he moved in with S-S- at her home in Monterey, California, on November 3, 2002. He claims he moved to Monterey at his wife's urging, although to do so meant he had to give up his job, lose his H-1B sponsor and jeopardize his status in the United States; he added that his wife convinced him that the move would allow him to devote his time to studying for the U.S. Medical Licensing Examination (USMLE), an exam he needed to pass to enter the medical field in the United States.

He then described the problems in his marriage. He stated that shortly after he moved to Monterey, S-S- changed because she had problems at work; she became impatient and wouldn't let him express his ideas; she told him that he couldn't understand because he was from a third-world country; she would become upset and would scream at him if he tried to offer his opinion; she would become upset when she couldn't find an outfit for work; she would complain about gaining weight; she began using "foul language" to him when she was upset, even in front of family or friends, which was embarrassing. The petitioner stated that they moved to Chicago when S-S- got a job offer there; he saw the move as an opportunity for her to calm down and become more emotionally stable, and even though the move meant that he had to reschedule his USMLE exam, setting his medical career back six months, he was willing to make the sacrifice to make her happy. He then described problems that arose around S-S-'s family and their plans for a second traditional Persian ceremony, the *Aroosi* Ceremony or wedding reception, claiming that his wife's parents had a grand wedding reception for them on May 24, 2003 with no care to the couple's limited finances and that they were unhappy with him for not paying for it. He said they had a short three-day honeymoon on Lake Michigan because they had limited funds and he was studying for the USMLE; he passed Step-1 of the exam on June 30, 2003, but claimed that his wife then started to warn him against passing his exams, telling him that he should stop trying to pass the exam if it meant they would have to move for his medical residency because she would not move from Chicago; he said she was warning him not to pursue his dream. He claimed that when he and S-S- would visit her parents on weekends, she

and her father would try to make him feel guilty for his efforts to pass the USMLE; that S-S- would come home angry and try to prevent him from studying, ridiculing him and making negative comments about his abilities.

He described arguments they had over the video of their wedding reception; her abusive language; her refusal to talk to him and refusal to return home from her parents and finally, her threat to call the police if he did not leave their apartment. He said he had nowhere to go, no money and no support, but did not want S-S- to call the police and be thrown out of their home, so he returned to Los Angeles, to his uncle, on August 5, 2003. He tried to reconcile with her, but when he saw her again in Chicago, she was cold, told him she could not live with a Persian and ridiculed him for not having his medical license yet, an attitude the petitioner claimed was unbelievable since he had postponed his plans to become a doctor for her. He returned to Los Angeles, and passed the next two steps of the USMLE on October 22, 2003; he claimed that he was devastated two days later when he received a notice from the Immigration and Naturalization Service (now U.S. Citizenship and Immigration Services or USCIS) that his wife had withdrawn the I-130 Petition and he no longer had work authorization. He said his financial situation, immigration status and then the destruction of his career made his life nearly unbearable; he was unable to sleep, began losing weight and fell into a deep depression. He claimed that S-S- and her family began to harass him for money, falsely claiming that he owed them money for past loans, including for the *Aghd* and *Aroosi* ceremonies, and that S-S- absurdly claimed he owed her \$46,000 for a car loan and presented his divorce lawyer with fraudulent documents including a prenuptial agreement and promissory notes on which his signature had been forged; the petitioner later hired a forensics expert who concurred with this assessment.

In addition to his personal declaration, the petitioner submitted a Psychological Evaluation, dated January 24, 2006, which was based on two two-hour sessions and included a clinical interview and tests to measure mental status, depression and anxiety. It reports that the petitioner claimed that he was happy at the beginning of his marriage but gradually faced verbal and emotional abuse by his wife and her family; and concluded that this caused him to become depressed, and that occupational and economic problems contributed to his mild depression and anxiety. The petitioner also submitted three declarations: (1) [REDACTED], in a statement dated December 16, 2005, claims that he has known the petitioner for about five years, and that he noticed a change in him after he married S-S-; that he looked depressed, and he witnessed a time when S-S- blamed the petitioner for a problem with their marriage video and another time she interrupted him, and that her attitude was "impolite and provocative"; (2) [REDACTED], in a statement dated November 30, 2005, states that she is the petitioner's aunt and has known him since childhood; she described "some aggressive behavior and attitudes" and "some foul language" from S-S- that she witnessed, claiming that S-S-'s cruelty caused more than psychological and physical suffering, but affected the petitioner's studies, his career and his outlook on life; and (3) [REDACTED] in a statement dated December 6, 2005, states that he is the petitioner's uncle; that the petitioner's marriage ceremony took place at his house in Los Angeles; and that the petitioner did his best for the marriage because he loved his wife; he also said that S-S- showed "aggressive behavior" towards the petitioner, yelled at him, and did not

care about the petitioner's situation and claims that she was emotionally unstable.

The petitioner submitted an additional statement in response to the RFE, but did not provide any details regarding abuse. No further evidence of abuse is included in the record. Neither the petitioner nor others indicate that there was any physical abuse in the marriage, only that the petitioner suffered physically with depression and weight loss as a result of the difficulties he experienced in his marriage. The affidavits described above are based on the same claims discussed by the petitioner in his statement regarding how his wife treated him and the financial and other problems that he had and how he felt he was denied the opportunity to follow his dream of becoming a doctor in the United States.

The evidentiary guidelines for demonstrating the requisite battery or extreme cruelty lists examples of the types of documents that may be submitted and states, "All credible relevant evidence will be considered." 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner's burden of proof. While USCIS must consider all credible evidence relevant to a petitioner's claim of abuse, the agency is not obligated to determine that all such evidence is credible or sufficient to meet the petitioner's burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i).

In this case, while we find the petitioner's description of his wife's behavior to be credible, we do not find it sufficient to meet the petitioner's burden of proof. The petitioner has failed to allege any threat of or actual physical act of abuse perpetrated against him by S-S-. The petitioner's allegation of extreme cruelty is based upon his claims that his spouse argued with him and criticized him, called him names, threatened to call the police and interfered with his career goals. The petitioner does not indicate that he was threatened or forced to do anything against his will, but rather that he was trying to accommodate his wife because he loved her and, therefore, moved twice at her urging. We acknowledge the petitioner's claim that his wife's behavior caused him distress and that he was genuinely disappointed that he could not move forward as he had planned in the medical field in the United States. As described, S-S-'s actions, while maybe unkind and inconsiderate, do not rise to the level of the 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. The claims made by the petitioner and the general statements submitted on his behalf fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that S-S-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner.

Accordingly, the petitioner has failed to establish that he was battered or subjected to extreme cruelty during his marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Conclusion

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 also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

For the reasons noted above, the AAO concurs with the director's decision that the petitioner has failed to establish by a preponderance of the evidence that he is a person of good moral character. Beyond the director's decision, we also find that the petitioner did not establish that he was battered or subjected to extreme cruelty by his U.S. citizen spouse. Consequently, he is 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 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.