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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 2 9 2009
EAC 06 220 50485

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 relevant facts and procedural history. The petitioner is a native and citizen of Pakistan who entered the United States without inspection on May 15, 2000. On January 1, 2005, the petitioner married M-E-[1], a U.S. citizen, in Effingham, South Carolina. M-E- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which she withdrew on December 1, 2005.

On July 21, 2006, the petitioner filed this Form I-360. On March 21, 2007, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish that the petitioner resided with and married M-E- in good faith, the requisite battery or extreme cruelty, and good moral character. The petitioner timely responded to the NOID with further evidence. On February 29, 2008, the director denied the petition on the ground that the petitioner failed to establish his good moral character and the petitioner, through counsel, 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 M-E-'s allegations were "fabricated." Counsel's claims fail to overcome the ground for denial.

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 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 submitted this evidence.

The record of proceeding contains one statement from the petitioner. In his June 28, 2006 statement the petitioner asserted,

> I am an honest, hard-working person who has never been arrested or convicted of any crime, either here in the United States or in Pakistan. I am seeking protection and relief from the physical, emotional, psychological abuse I have suffered living with my wife, and because she used my immigration status to try to control me.

Apart from this brief declaration, the petitioner did not discuss his moral character any further.

In addition, as noted by the director, the record contains copies of a restraining order for "domestic violence order of protection" issued against the petitioner for the protection of his wife. The order was

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[1] Name withheld to protect individual's identity.

issued on December 15, 2005 where both the petitioner and his wife were present. The order was granted for one year, until December 14, 2006, and was issued after the petitioner's wife received an *ex parte* order on November 7, 2005 that was granted until November 15, 2005 . In his brief, counsel states that M-E-'s allegations in the complaint were fabrications and that the complaint was a "retaliatory gesture." In his response to the director's NOID, counsel stated that M-E-'s attorney during the December 14, 2005 hearing "notified the judge that [the applicant] was a Muslim from Pakistan and that [the applicant] had entered the country without inspection. Counsel claims that after M-E-'s attorney made this statement, the judge "failed to give due consideration to [the applicant's] case. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

The petitioner, through counsel, also claims that M-E- lied to the court. There is no evidence in the record of proceeding to support the claim that M-E- lied to the court. The AAO listened to the audio cassette tape in the record of proceeding and found that none of the recordings included the year when the recordings were made. Therefore, the recordings have no probative value.

The petitioner has not submitted documentation or testimony sufficient to overcome the restraining orders issued against him to prevent domestic violence. 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.

The petitioner has not demonstrated that he is a person of good moral character. 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 reason. 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.