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

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U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]

Office: VERMONT SERVICE CENTER

Date: JUN 10 2009

EAC 07 238 50100

IN RE:

Petitioner:

[REDACTED]

PETITION: Petition for Immigrant Battered 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, 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 on September 15, 2008, determining that the petitioner had not established that he had been battered or subjected to extreme cruelty by his United States citizen spouse and had not established that he is a person of good moral character.

On appeal, counsel submits a brief and a copy of the petitioner's declaration dated December 29, 2007 that had been submitted to the immigration court in support of the petitioner's application for cancellation of removal.

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 explained 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 explained 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.

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(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.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of the Republic of Guinea who entered the United States on August 3, 1989 as a nonimmigrant visitor (B-2). The petitioner admitted, in an undated statement submitted to United States Citizenship and Immigration Services (USCIS), that in order to obtain his B-2 visa he represented that he was married to a Guinea citizen in 1985. The petitioner indicated that the individual who helped him obtain his U.S. visa told him that it would be easier to obtain the visa if he said that he was married. The petitioner married L-B-<sup>1</sup> on July 23, 1991. L-B- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf which was denied on August 5, 1991. In support of the Form I-130, the petitioner submitted a divorce decree showing that his marriage to his Guinean wife had been terminated. The American Embassy in Conakry, Guinea determined that divorce decree was counterfeit and the Form I-130 petition submitted by L-B- on the petitioner's behalf was denied. The record includes a copy of a divorce decree terminating the petitioner's marriage to L-B- on December 8, 1998. The petitioner subsequently married B-G on December 31, 1999. This marriage was terminated on July 2, 2002. On September 25, 2002, the petitioner married T-H-, the claimed abusive spouse in this I-360 petition. On November 4, 2002, T-H- filed a Form I-130 on the petitioner's behalf. In support of the Form I-130, the petitioner submitted a Certificate of Bachelorhood allegedly issued in Guinea on June 20, 2003 but which was notarized in the United States on July 9, 2004. The Form

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<sup>1</sup> Initials are used instead of the complete name to protect each individual's identity.

I-130 was eventually denied on August 17, 2004 for abandonment. T-H- filed a second Form I-130 on February 14, 2005 which was denied on June 20, 2007 as it was determined the marriage between T-H- and the petitioner was fraudulent.

The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on August 6, 2007. The director issued a Notice of Intent to Deny (NOID) the petition on May 30, 2008. Counsel for the petitioner responded on June 30, 2008. Counsel requested an additional 90 days to respond to the NOID as the petitioner was working on a fishing boat in Alaska and could not be reached to discuss the response. On September 15, 2008, the director denied the petition, determining that the petitioner had not offered evidence sufficient to overcome the grounds of denial set out in the NOID. Counsel submits a timely appeal.

*Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim that his spouse subjected him to extreme cruelty<sup>2</sup> during their marriage:

- A letter dated June 7, 2006 signed by the petitioner in support of the Form I-360; The petitioner's statement attached to the Form I-360 dated June 18, 2007; The petitioner's December 29, 2007 statement submitted to the immigration judge in support of his Application for Cancellation of Removal;
- The petitioner's spouse's affidavit dated July 13, 2007 in support of the Form I-130 visa petition, submitted by the petitioner in support of the Form I-360; and
- Affidavits from [REDACTED], dated in August 2005.

In the June 7, 2006 letter, the petitioner stated: his belief that his wife suffers from some psychological disorders and that she has gambling addictions that have affected the marriage; his belief that his wife has used his immigration status to manipulate him and to control him; that she has inflicted severe psychological and emotional abuse on him for the past couple of years; that his wife has changed the locks on the house and then given him a new key to let him back in and has repeated this cycle over and over; and that his wife has threatened to kill him on more than one occasion. The petitioner noted that although his wife has filed an appeal of the denial of the Form I-130 petition and filed a new Form I-130 on his behalf, he believes that he is eligible to apply as a self-petitioner due to the abuse that he has suffered at the hands of his wife over the past few years.

In the petitioner's June 18, 2007 statement, the petitioner stated: that he currently shares an apartment with some friends; that his wife threw all his belongings outside and said that if he ever showed up at the premises she would call the police on him or kill him; that she never told him that she was a welfare

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<sup>2</sup> The petitioner does not claim that he was subjected to physical abuse, but only that his spouse subjected him to extreme cruelty.

recipient despite the fact that he paid the bills; that she called the Seattle police on him for no reason and the police did not even file a report; that he “dutifully paid rents, bills and all necessary obligations that a husband will shoulder from the date of [their] marriage (2005);” that he sent funds from Alaska to pay her kids’ tuition; that during the marriage, she fraudulently used and cashed his checks; and that they had a joint account and she would steal his checkbook and proceed to cash the checks.

In the petitioner’s December 29, 2007 statement, the petitioner declared: that his spouse did not let him put his name on any bank accounts, property leases, service rentals, or anything that they had; that his spouse told him to turn over all his income to her; that she was dependent on his income because she would lose money gambling and would skip work to go to the casino; that after they attended the USCIS interview, she became adversarial and announced that because she was a citizen, she had to do everything for him; she suddenly refused to sign any more papers or cooperate with their attorney; that she began to ridicule him and call him names; that she questioned him about his friends and complained about his friends calling the house; that one time she threatened to throw away his personal belongings; that another time she changed the locks on the doors so he had to stay with a friend; that when he returned from his job in Alaska after being away for 90 days, his spouse started cooperating in the petitioning process for him and then abruptly stopped cooperating for a second time; that she sent a letter to USCIS saying that he had married her for the green card; and that when he went to Alaska to work she threatened to kill him or put him in jail if he came back to the house so he moved from the house in November 2005.

In the petitioner’s spouse’s affidavit dated July 13, 2007, apparently submitted in an appeal of the May 22, 2007 denial of the Form I-130, the petitioner’s spouse stated: that the petitioner’s work in Alaska on fish processing boats, kept them separated from January to April, from the middle of May to the middle or end of June, and from October to the end of November and sometimes into December; that the separation was very hard on her and she doubted their relationship; that when the petitioner would return from Alaska she would let him stay with her for awhile and then make him leave; that she would change the locks and then later give him a copy of the key; that she wrote to USCIS withdrawing her Form I-130 petition saying that the petitioner misled her because she was so fed up with dealing with the pressures of their personal situation; that she regrets using those words; that she decided to file a second Form I-130 on the petitioner’s behalf on February 14, 2005; and that she did not put the petitioner on the lease where she lived because he was away so much and she lived in section 8 housing and adding an individual may have affected the housing.

The form affidavit of \_\_\_\_\_ dated August 3, 2005 indicated that the affiant knows the couple, had visited their house a couple of times, and had not noticed any misconduct. In the form affidavit of \_\_\_\_\_, dated August 13, 2005, \_\_\_\_\_ declared that he and the petitioner were roommates from 1999 to 2002, that he knew that the petitioner met T-H- at a casino and that he attended their wedding, and that T-H- was aggressive, liked to use big and embarrassing words, and one time she changed the door lock and the petitioner stayed with him for a few months and then went back. In the affidavit of \_\_\_\_\_, dated August 16, 2005, \_\_\_\_\_ declared he knew T-H- through the petitioner, that after the marriage of the petitioner and T-H- they started having

problems, and that T-H- called the petitioner names.

On appeal, counsel asserts that the petitioner's spouse's changing of the locks requiring the petitioner to stay with friends until she gave him a key were emotionally abusive and humiliating. Counsel contends that the petitioner's spouse's behavior such as throwing the petitioner's clothes outside the house, calling him names, and trying to isolate him from his friends demonstrates a further pattern of emotional abuse, humiliation, degradation, and isolation. Counsel claims that T-H- manifested economic coercion or control by taking the petitioner's checkbook and paychecks and cashing them and by using the immigration petitioning process itself to control the petitioner by failing to prosecute two consecutive Form I-130 petitions. Counsel asserts that this behavior constitutes extreme cruelty. The AAO disagrees.

Upon review of the totality of the record, the AAO affirms the director's determination that the petitioner did not establish the requisite battery or extreme cruelty. The petitioner has not provided the details of the circumstances resulting in the petitioner being locked out of T-H-'s home. There is insufficient information in the record to demonstrate that the petitioner's spouse's behavior resulted from an attempt to control the petitioner or was part of a pattern of overall violence. Similarly, the petitioner's spouse's abandonment of and subsequent filing of a second Form I-130 and testimony in support of an appeal of the denial of a Form I-130 does not evidence an attempt to control the petitioner through his immigration status. Rather these general circumstances depict a troubled marriage. The record does not reveal that the petitioner was socially isolated but rather lived on a fishing boat far from his wife for several months out of the year. The record does not include probative evidence that the petitioner's spouse illegally cashed his checks or had unauthorized access to their joint bank account. The AAO notes the petitioner's claim that his wife threatened to kill him on one occasion; however, the AAO observes that the petitioner apparently did not feel he was in any danger as he returned to his wife's house. The record includes only general information regarding threats and no probative evidence that the applicant actually feared for his life or physical injury. Moreover, the petitioner does not provide chronological detail and substantive testimony regarding the circumstances of the claimed cruel events in the marriage. The record is without sufficient detail to determine that the petitioner was subjected to extreme cruelty perpetrated by his spouse."

Although the petitioner's spouse may have called him names and may have locked the petitioner out of the home, these acts do not establish that T-H- subjected the petitioner to psychological, sexual abuse or exploitation, or that her actions were part of an overall pattern of violence. The AAO finds that not all forms of marital discord rise to the level of battery or extreme cruelty as set forth in the regulation. Again, as described, T-H-'s actions, while 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 T-H-'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. The record is simply

insufficient in this regard. The record does not evidence that any threats resulted in the petitioner's psychological trauma. Nor did the petitioner demonstrate that T-H-'s actions constituted psychological or sexual abuse or were otherwise part of an overall pattern of violence. Accordingly, the petitioner has not established battery or extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### *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. Although the petitioner provided police clearances from Washington State, the director found that the petitioner was subject to section 101(f)(6) which the director found related to individuals who have given false testimony and submitted fraudulent documents in order to obtain immigration benefits. The record includes the petitioner's admission that he lied on the B-2 visa application by indicating that he was married to a Guinean citizen as he was told that this would help him obtain a U.S. visa. The record also includes information that the subsequent divorce decree from the Guinean citizen was determined to be counterfeit. Counsel asserts that as the misrepresentations regarding the Guinean marriage occurred many years ago, the misrepresentations should not be considered a factor in determining the petitioner's good moral character today and that for VAWA purposes the 3-year period immediately preceding the filing of the self-petition is the applicable time period. Counsel also asserts that the petitioner has not provided oral testimony that he lied to obtain a U.S. visa and obtained a fraudulent divorce decree and that as section 101(f)(6) relates only to providing false testimony, the petitioner should not be precluded from establishing good moral character.

The AAO agrees that false testimony under section 101(f)(6) of the Act is limited to oral statements made under oath with the subjective intent of obtaining immigration benefits. *Kungys v. United States*, 485 U.S. 759, 780 (1988). The false testimony need not be material and does not include misrepresentations made for reasons other than obtaining immigration benefits, such as statements made out of embarrassment, fear or a desire for privacy. *Id.* Thus, the petitioner's application for a B-2 visa and providing a counterfeit divorce decree are not acts considered oral statements made under oath with the subjective intent of obtaining immigration benefits. The AAO withdraws this portion of the director's decision to the contrary.

The AAO does not agree, however that misrepresentations that occurred more than the three-year period immediately preceding the filing of the self-petition are factors that should not be considered when ascertaining the petitioner's good moral character. The statute proscribes no time period during which the self-petitioner must demonstrate his or her good moral character. See Section 204(a)(1)(A)(iii)(II)(cc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(cc). While the regulation at 8 C.F.R. § 204.2(c)(2)(v) specifies a three-year span for police clearances and criminal background checks, the regulation does not limit the temporal scope of USCIS's inquiry into the petitioner's moral character. The agency may investigate the self-petitioner's character beyond the three-year

period when there is reason to believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996). The petitioner's admission that he was willing to misrepresent his marital status on his B-2 visa application and his subsequent provision of a counterfeit divorce certificate in an effort to cover up or maintain his previous misrepresentation provided the director with reason to believe that the petitioner lacked good moral character at that time. The AAO finds that the past attempts to mislead USCIS impact negatively on the petitioner's good moral character and further raise questions regarding his continued quest for obtaining status in the United States. Upon review of the totality of the record, the AAO does not find that the petitioner has established that he is a person of good moral character.

The record does not demonstrate that the petitioner's wife subjected him to battery or extreme cruelty 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 record also does not demonstrate that the petitioner has established good moral character pursuant to section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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.