

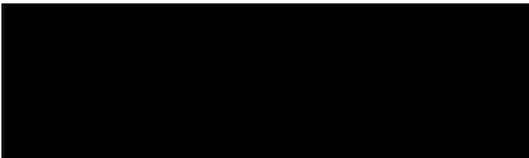
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U.S. Citizenship
and Immigration
Services

B9



FILE: [REDACTED]
EAC 06 260 50260

Office: VERMONT SERVICE CENTER

Date: **MAR 10 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:

SELF-REPRESENTED

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 petition will be denied.

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 an alien battered or subjected to extreme cruelty by a United States citizen.

The director denied the petition for failure to establish: that the petitioner resided with the citizen or lawful permanent resident; that the petitioner had established he was subjected to the requisite battery or extreme cruelty; that the petitioner had entered into the marriage in good faith; and that the petitioner had provided evidence of his good moral character.

On appeal, the petitioner submits a brief that lists the previous evidence submitted and asserts that the director's decision is arbitrary and an abuse of discretion. The petitioner submits one additional statement made on his behalf on appeal.

The AAO concurs with the director's determination that the petitioner: has not established that he resided with the citizen or lawful permanent resident; has not established that he was subjected to the requisite battery or extreme cruelty; has not established that he entered into the marriage in good faith; and that he has provided evidence of his good moral character.

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 explained in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser

when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . 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.

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(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of

circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further 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.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(iv) *Abuse.* Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

(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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Cambodia who was admitted to the United States as a B-1, nonimmigrant visitor on August 30, 2003. In a personal statement dated August 14, 2006, appended to the petition, the petitioner indicated he met L-R-,¹ a United States citizen at a party in Long Beach, California. The petitioner declared: he and L-R- fell in love; he and L-R- began residing together at [REDACTED] in Compton, California in November 2003; and he and L-R- married in Norwalk, California on December 22, 2003. The record shows that L-R- filed a Form I-130, Petition for Alien Relative on March 1, 2004 on behalf of the petitioner. The petitioner indicated in his August 14, 2006 statement that initially the marriage was a close and loving one, but as time went on he became suspicious that his wife was having an affair. The applicant declared that by July 2004 he came to the conclusion that the marriage was not a serious one for L-R- and he threatened to move out and then did move out in July 2004.

The petitioner filed the instant Form I-360 on September 18, 2006. The director issued a Request for Evidence (RFE) on November 20, 2006 and then a Notice of Intent to Deny (NOID) the petition on April 4, 2007 and again on July 19, 2007. In the NOIDs issued, the director found that the documents submitted to establish residence and to show that the marriage was entered into in good faith only included the petitioner's name or were dated subsequent to the date the petitioner declared that he had moved out of the residence, and/or were issued to L-R- at a different address. The director also noted that the four photographs of the petitioner and L-R- were insufficient to establish that the petitioner had resided with or had married L-R- in good faith. The director also considered the declarations submitted

¹ Name withheld to protect individual's identity.

on behalf of the petitioner by his friends and found that the declarations contained the same general language and thus were not credible. The director further considered the petitioner's personal statement and the psychological evaluations submitted and found that the petitioner's personal statement and the evaluations showed that the petitioner had suffered difficulties in his life but did not include sufficient information linking the petitioner's difficulties to extreme cruelty perpetrated by L-R-. The director listed numerous types of documents and evidence that could be submitted to demonstrate that the petitioner had resided with L-R-, had been subjected to battery or extreme cruelty, had entered into the marriage with L-R- in good faith, and that he is a person of good moral character in the NOID.

On October 10, 2007, the director denied the petition, listing the types of evidence submitted and noting that the petitioner, although notified of the deficiencies of the evidence submitted, had not provided additional probative evidence. The director denied the petition for the reasons set out in the NOID. On appeal, the petitioner provides a declaration from his mother-in-law similar in content to that of the four declarations from friends that had been previously submitted.

Residence

As the director observed, the record includes bank statements, an insurance letter, and a letter from the National Credit Audit Corporation. These documents are either addressed only to the petitioner or are dated subsequent to the date the petitioner claimed that he vacated the residence with L-R-. These documents do not establish the petitioner's residence with L-R-. Two letters submitted by the petitioner's friends indicate that they were aware that the petitioner and L-R- "were dating, that they got married, that they resided together continuously under the same roof and in the same bed in the house of L-R-'s mother . . . from November 2003 until the petitioner involuntarily moved out in July 2004." These two affidavits are general and do not provide the necessary detail to establish how the declarants knew that the petitioner and L-R- were living together under the same roof and in the same bed. Letters or declarations that are general and vague do not lend themselves to evaluations regarding credibility and thus are not probative. The AAO finds that neither of these statements provides credible evidence establishing that the petitioner resided with L-R-. As the letter allegedly submitted by the petitioner's mother-in-law on appeal contains this same general information without the necessary detail, the AAO also finds the letter not probative. Similarly, the two letters submitted by the petitioner's friends wherein the declarants indicate that they attended the wedding reception of the petitioner and L-R- and visited the petitioner and L-R-'s home frequently are again general in nature. The declarants do not describe the circumstances of their visits and do not provide a description of the residence or provide any other information that assists in establishing the veracity of their statements. In addition, the petitioner does not provide any probative testimonial evidence regarding his residence with L-R-. The petitioner does not provide a description of the residence, its location, the shared belongings in the apartment, or other information that would assist in determining that the petitioner actually lived at the residence. The AAO finds that the petitioner has not provided sufficient evidence establishing that he and L-R- actually resided together.

Battery or Extreme Cruelty

In the petitioner's initial personal statement, the petitioner indicated that after his marriage to L-R-, he began to notice a change in L-R-'s attitude toward him: that she became "increasingly disrespectful and insulting, and became very argumentative and petty about unimportant things." The petitioner noted that he became suspicious that L-R- was unfaithful. The petitioner indicated that L-R- would not spend time with him, would not sleep with him or have sexual relations, would not converse with him, and had no concern for the effect her actions had on him, his children, or his status in Cambodia. The applicant provided letters from two individuals who declared that they saw L-R- verbally abuse the petitioner by using American obscenities and insults when referring to the petitioner. The claimed abuse described by the petitioner and his two friends, while unpleasant is insufficient to establish either battery or extreme cruelty as set forth in the criteria for this benefit.

The record also includes three psychological evaluations of the petitioner prepared by two different examiners who conclude that the petitioner suffers from a major depressive disorder due to abandonment issues and disappointments throughout his life. One evaluator offers his opinion that the petitioner's depressive disorder is the consequence of the rejection and emotional abuse manifested toward him by L-R-. Upon review of the three evaluations, the AAO finds that although the evaluators focus on L-R-'s rejection of the petitioner, they do not provide substantive, probative information indicating that L-R-'s behavior included actual threats, controlling actions, or other abusive behavior that was part of a cycle of psychological or sexual violence. The evaluators also recognize the difficulties the petitioner faced in Cambodia and his fear of returning to Cambodia. The evaluators do not provide substantive factual information indicating that the L-R-'s rejection of the petitioner constituted extreme cruelty. The breakup of a marriage and the subsequent rejection that a spouse might feel do not constitute extreme cruelty under this statute and the pertinent regulations. The AAO observes, as well, that the evaluations include inconsistencies. For example, the one evaluator who provided two reports bases her very general conclusions on one examination in October 17, 2005 resulting in the May 23, 2006 evaluation and a subsequent examination on May 31, 2007 that resulted in the June 1, 2006 evaluation. It is unclear from the two evaluations submitted why the evaluator notes the date of the examination as May 31, 2007, a year after the date of the alleged report. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The second evaluator bases his opinion that the petitioner's depressive disorder is the consequence of the rejection and emotional abuse manifested toward him by L-R- on examinations on July 30, 2007 and on July 31, 2007, more than three years after the petitioner left L-R-. The AAO finds the evaluations insufficient to establish that the petitioner was subjected to extreme cruelty perpetrated by his spouse as required to receive this benefit.

Upon review of the totality of the information in the record regarding the claimed abuse of the petitioner, the AAO finds that the petitioner has failed to describe in probative detail specific threatening or controlling behavior of his wife that constitutes battery or extreme cruelty. The petitioner has not demonstrated that L-R-'s actions and rejection of his intimacy constituted

psychological or sexual abuse or were otherwise part of an overall pattern of violence. As described, L-R-'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 fail to establish that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that L-R-'s behavior was accompanied by any substantiated coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. The AAO finds that the record lacks definitive information regarding specific instances of abuse that should be categorized as battery or extreme cruelty. The AAO declines to accept generic information with little chronological timeline and no detail of specific harm to establish eligibility for this benefit. The AAO is aware of the difficulties of obtaining information to substantiate eligibility for this benefit; however, the petitioner must provide some credible evidence that he has been subjected to battery or extreme cruelty perpetrated by his spouse in order to meet his burden of proof. In this matter, he has failed to do so. Accordingly, we concur with the finding of the director that the petitioner failed to establish that he was battered or subjected to extreme cruelty by his spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Faith Entry into Marriage

Upon review of the statements submitted by the petitioner's friends, the four photographs that include the petitioner and L-R-, the petitioner's personal statement, and the documents in the record submitted to establish residence and good faith marriage, the AAO finds the evidence insufficient. The petitioner provides only general information regarding how he met L-R- and does not provide any detail that would establish the necessary intent on his part that the marriage was entered into in good faith. The petitioner does not offer probative details of his life with L-R- before or after their marriage except as it relates to the claimed abuse. The record does not establish that the petitioner entered into marriage with L-R- in good faith as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Good Moral Character

The record before the AAO does not include the requisite evidence of the petitioner's 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 record includes a statement from the petitioner regarding his good moral character and a statement from the Cambodian criminal record office that the petitioner does not have a criminal record in Cambodia, the record does not include police clearances or state-issued criminal background checks from the places the petitioner lived in the United States. As the record does not include the requested clearances, the AAO is precluded from finding that the petitioner has established good moral character. 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.

We concur with the director's determination that the petitioner has not demonstrated the requisite residence, battery or extreme cruelty, entry into a good faith marriage, and good moral character required to establish eligibility for this benefit.

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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.