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[Redacted]

MAY 19 2009

FILE: [Redacted] Office: VERMONT SERVICE CENTER Date:  
EAC 07 082 50812

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.

  
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 AAO will withdraw the director's decision; however, because the petition is not approvable, it will be remanded for further action and consideration.

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 April 1, 2008, determining that the petitioner had not established that she had been battered or subjected to extreme cruelty by her former spouse.

On appeal, counsel submits a brief and a copy of the petitioner's Decree of Divorce entered on February 1, 2008 in the District Court of Clark County, Nevada.

We concur with the director's determination that the petitioner has not established that she was subjected to battery or extreme cruelty perpetrated by her spouse, J-H-K-<sup>1</sup>. Nonetheless, the matter must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID) the petition pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii) that was in effect at the time the petition was filed. Beyond the decision of the director, the AAO finds that the petitioner has not established that she is a person of 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 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:

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<sup>1</sup> Name withheld to protect individual's identity

(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.

\* \* \*

(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 Korea who entered the United States in September 1998 as a nonimmigrant visitor. On July 9, 2002, the petitioner married J-H-K-, a naturalized U.S. citizen, in the State of Nevada. The petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant, on January 29, 2007. The petitioner noted on the Form I-360 that she resided with J-H-K- from April 2002 to March 2004.

*Battery or Extreme Cruelty*

The petitioner submitted a January 5, 2007 personal affidavit in support of the Form I-360 petition.

The petitioner does not claim that she was subjected to battery by her former spouse; instead she claims that her former spouse subjected her to extreme cruelty. The petitioner stated: that she first met J-H-K- in 1998 while visiting Las Vegas, Nevada; that she made about ten trips to Las Vegas to visit J-H-K- over the next four years and that he made about five trips to New York to visit her; that prior to the marriage, she lent J-H-K- a few thousand dollars to buy a car and lent him 50,000 dollars to pay back his father but he used that money to buy a house; that she moved to the house that J-H-K- had purchased on [REDACTED] in Las Vegas in April 2002; and that the couple married on July 9, 2002. The petitioner also stated that she lived with J-H-K- until March 2004 when he wanted her to move out of the house because he had filed for divorce. The petitioner also indicated that J-H-K- told her he wanted her out of the house because he had made another girl pregnant and wanted to marry the other girl to help her get her permanent residence. The petitioner noted that J-H-K- had her sign an agreement written in English and dated August 18, 2004, wherein she agreed to give up any rights she had to the house. The petitioner indicated that she signed the agreement but did not understand English when she signed it. The petitioner provided a copy of the agreement.

The record also includes a December 20, 2006 statement from the petitioner's divorce lawyer [REDACTED]. Mr. [REDACTED] indicated: that J-H-K- was to have aided the petitioner in obtaining her green card by December 2006; that he has refused to do so; that the petitioner's greatest complaint against J-H-K- is the money she paid him for the purchase of the marital residence in Las Vegas, Nevada; that J-H-K- in a deposition admitted that the petitioner had contributed 50,000 dollars for the purchase of the house; and that "[t]hroughout this marriage, and the purchase of the house, he has used her financially, and defrauded her of over \$50,000" and that the "lack of help with immigration has been another slap in the face."

The record also includes three affidavits. In a June 15, 2007 affidavit signed by [REDACTED], the Reverend declared: that he visited the petitioner's house in February 2004 to give her computer lessons; that after a couple of months she told him not to come anymore as her husband had told her she had to leave the house; and that later the petitioner told him that her husband had betrayed her with another woman. In a June 18, 2007 affidavit signed by [REDACTED], the affiant declared that at some point she learned that the petitioner's husband cheated on her and that the petitioner told her she did not have any place to go when her husband was trying to kick her out of the house. In a June 4, 2007 affidavit signed by [REDACTED], the affiant declared that the petitioner had told her: that the petitioner's husband had kicked the petitioner out of the house because he was having an affair with another woman; that the petitioner's husband had asked for a divorce but that the petitioner hoped he would come back to her so she did not want to divorce him; that the petitioner's husband had threatened the petitioner in 2005, indicating that if she did not take her luggage out of their house he would file an order of protection against her; that the petitioner felt very frustrated because of her husband's lies; and that the petitioner's husband had told the petitioner that he would help her with her green card if she gave up her part of the house, but that the petitioner did not accept that.

Based on the above information, the director determined that the petitioner had presented evidence of marital incompatibilities but had not presented evidence of battery or extreme cruelty.

On appeal, counsel for the petitioner asserts that the director failed to consider the petitioner's affidavit and failed to consider the letter from the petitioner's divorce attorney showing that the petitioner's husband had admitted he had obtained money under false pretenses from the petitioner. Counsel also notes that the Family Court had found that the agreement prepared by the petitioner's former spouse that the petitioner had signed was void *ab initio*. Counsel asserts that the evidence of fraud and duress is persuasive evidence of extreme cruelty.

Counsel asserts that initially the petitioner's former husband treated her decently but that his mother was not pleasant to the petitioner; that the petitioner's former husband would take her shopping but would not let her go out on her own; that the petitioner's former husband advised her that she could not work as she did not speak enough English so no one would give her a job; and although the petitioner was not physically abused, she felt like a prisoner in her own home. Counsel asserts that the petitioner's former husband continued to tell her not to go out of the house without him and that he would take her where she wanted to go and that the petitioner stayed because she was afraid of being deported. Counsel contends that the agreement the petitioner's former spouse had her sign is evidence of his coercive treatment

The AAO concurs with the director's determination that the petitioner has not submitted probative evidence that she was subjected to extreme cruelty. The AAO notes that the director considered the petitioner's affidavit when making his determination. The AAO finds that the information submitted by the petitioner's divorce attorney does not establish that the petitioner's husband subjected her to extreme cruelty. Obtaining money to purchase a home, using the petitioner financially and failing to help her with her immigration status does not constitute extreme cruelty in this instance. The record lacks evidence that the petitioner's former husband threatened her with deportation or that her husband used the threat of deportation to abuse her. Counsel's assertions on appeal are not persuasive. 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). In addition, although the petitioner signed a document without understanding it at the behest of her former husband, there is no evidence in the record that she was coerced to do so.

The petitioner has described the general circumstances of marital discord between two individuals especially as the financial misbehavior of one party comes to light. The actions of the petitioner's former husband while contemptible, do not establish that J-H-K- subjected the petitioner to psychological, sexual abuse or exploitation, or that his 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, J-H-K-'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 her behalf fail to establish that the petitioner was the victim of any act or

threatened act of physical violence or extreme cruelty, that J-H-K-'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that his actions were aimed at insuring dominance or control over the petitioner. The record is simply insufficient in this regard. 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*

Beyond the decision of the director, the AAO observes that the record includes evidence that the petitioner pled guilty and has a conviction record in the State of New York. The record shows that the conviction was for an arrest on January 13, 2000 for loitering for the purpose of prostitution. The record does not include further information regarding the petitioner's sentence for this conviction. 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 record contains the petitioner's police clearances from the State of Hawaii and the State of Nevada. Although the conviction occurred more than three years prior to filing the petition, the director should request the disposition of this matter on remand so that a full determination regarding the petitioner's good moral character may be addressed. Additionally, the petitioner should explain the circumstances surrounding the arrest in an affidavit to support her claim that she is a person of good moral character.

Despite the petitioner's ineligibility based on the present record, this matter must be remanded to the director for issuance of a NOID in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii) that was in effect at the time the petition was filed. On remand, the director should address all grounds for the intended denial of the petition as cited in the foregoing discussion.

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. The petitioner has not sustained that burden.

**ORDER:** The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.