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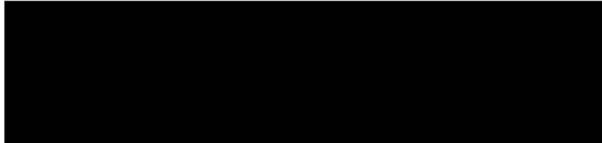
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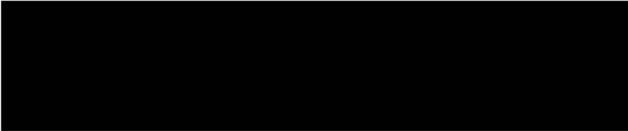
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FILE:  Office: VERMONT SERVICE CENTER Date:  
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IN RE: Petitioner: 

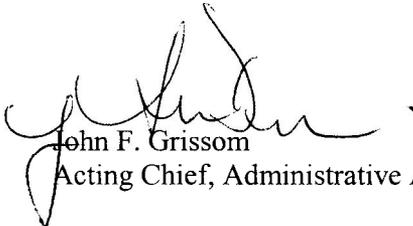
PETITION: Petition for Immigrant Abused Spouse Pursuant to Section 204(a)(1)(A)(iii) of the  
Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii)

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.

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 his former wife subjected him or his child to battery or extreme cruelty during their marriage and that he was a person of good moral character.

On appeal, counsel submits 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 . . . 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 pertinent facts and procedural history. The petitioner entered the United States on July 22, 1996 as a nonimmigrant visitor (B-2) with authorization to remain in the United States until January 21, 1997. On November 1, 1999 the petitioner married V-F<sup>1</sup>, a U.S. citizen, in Nevada. V-F- subsequently filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which she subsequently withdrew. The Las Vegas District Office denied the petitioner's concurrently filed Form I-485, Application to Adjust Status, on July 10, 2002 and served the petitioner with a Notice to Appear for removal proceedings. On March 18, 2003, the Las Vegas Immigration Court terminated the proceedings to afford the petitioner the opportunity to seek adjustment of status based on the instant Form I-360 self-petition. The petitioner and V-F- divorced on September 4, 2003.

The petitioner filed this Form I-360 on February 28, 2003. The director subsequently issued a Request for Evidence (RFE) and Notice of Intent to Deny (NOID) the petition for failure to demonstrate the requisite battery or extreme cruelty and good moral character. The petitioner, through counsel, responded to both the RFE and NOID with additional evidence, which the director found insufficient to establish his eligibility. The director denied the petition on February 28, 2007 and the petitioner, through counsel, timely appealed.

On appeal, counsel reasserts the petitioner's eligibility and submits a copy of a family court order finding his former wife in arrears and ordering her to pay child support to the petitioner. Counsel's claims and the evidence submitted on appeal fail to overcome the grounds for denial and the appeal will be dismissed for the following reasons.

#### *Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim of battery or extreme cruelty:

- The petitioner's August 21 and September 10, 2002; and October 20, 2005 affidavits;
- Affidavits of the petitioner's friends, [REDACTED] and [REDACTED];
- Copies of court documents from the family law case of the petitioner and his former wife;
- Health insurance statement listing the number of prescriptions filled for the petitioner's family in 2002;
- Transcript of telephone messages left by the petitioner's former wife; and
- Letter from [REDACTED], Clark County, Nevada Department of Family Services.

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

In his affidavits, the petitioner stated that his former wife had 65 prescriptions filled in one year, had an alcohol problem, slept during the day and did not care for their daughter, gambled away \$1,000 they had saved for their daughter; threatened to put him in jail, and that her brother forged the petitioner's signature on a \$700 check. The petitioner also recounted that on one occasion, his former wife disappeared for two weeks with their daughter and told him that her father had accidentally injured their daughter. The petitioner further stated that on July 31, 2002, he was served with a temporary order of protection filed by his former wife, which was later dissolved. The petitioner also reported that Child Protective Services once took their daughter away from his former wife due to her neglect.

While the petitioner makes serious assertions of battery and extreme cruelty, he does not describe any particular incident in probative detail and the remaining, relevant evidence fails to support his claims. The testimony of the petitioner's friends is consistent with his assertions, but does not provide any further, substantive information sufficient to establish his claim. [REDACTED] stated that she lived with the petitioner and his former wife for five months in 2000, that she was present during arguments between the former couple when the petitioner's former wife threatened to have him deported and jailed. [REDACTED] also stated that she observed the petitioner's former wife sleeping most of the day and not properly feeding their daughter and that their daughter bore a scar from the accident with the petitioner's former father-in-law. [REDACTED] stated that the petitioner confided in him about his former wife's threats of deportation and that he saw the petitioner's former wife smoke when she was pregnant and after their daughter was born. Neither [REDACTED] nor [REDACTED] describe any specific incident of abuse in probative detail.

The relevant documentation also fails to demonstrate battery or extreme cruelty. The petitioner submitted copies of the temporary order of protection his former wife obtained against him on July 31, 2002 and the September 4, 2002 order dissolving the protection order. The petitioner also submitted a statement from his health insurance company showing that 67 prescriptions were filled for his family in 2002. The statement does not, however, identify the individuals prescribed medication or the kind of medication prescribed.

In the transcript of the telephone messages of the petitioner's former wife, she asserts that the petitioner will be jailed or deported and that she may have to spend a couple of nights in a shelter if he does not send her child support. The petitioner's former wife also references taking their daughter to the hospital for X-rays and indicates that she was fine, but the petitioner's wife does not further describe the injury or the surrounding circumstances.

[REDACTED], of the Clark County, Nevada Department of Family Services, stated that her department received a referral from the Las Vegas Police Department on May 18, 2003 when the petitioner's daughter, former wife, and her father were encountered in an investigation of "suspicious activity in a parking lot." [REDACTED] recounted that the petitioner's daughter was placed in protective custody because his former wife was seeking shelter at the Salvation Army and had not given their daughter to the petitioner in compliance with the court order granting him custody. On May 20, 2003, [REDACTED] reported that the petitioner's child was released to him and "the case was closed[,] allegations of legal

protection substantiated.” Attached to [REDACTED] letter is a second letter stating that the records relating to the case are confidential and may only be released to a court for in camera inspection.

Court orders show that the petitioner and his former wife were ultimately granted joint legal custody of their daughter and the petitioner was granted primary physical custody. The court documents do not, however, establish that the petitioner’s former wife neglected, or otherwise abused their daughter. As noted by the director, the October 14, 2005 order states, in pertinent part: “Both parents can meet the emotional and physical needs of [their child] . . . . There is no history of abuse or neglect in this case; and [t]here is no history of domestic violence in this case between the parties” (internal numbering omitted).

On appeal, counsel asserts that the petitioner’s former wife has “an arrest warrant in her case for abuse of [the petitioner] and his daughter.” However, the June 5, 2007 court order submitted on appeal only states that the petitioner’s former wife was ordered to pay past due and future child support to the petitioner and acknowledges that the petitioner’s former wife is unemployed. The court order pertains to the former couple’s child support case, was issued nearly four years after their divorce and contains no indication that the petitioner’s former wife battered or subjected the petitioner or their daughter to extreme cruelty during their marriage.

In sum, the relevant evidence fails to demonstrate that V-F- subjected the petitioner or their daughter to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

### *Good Moral Character*

Primary evidence of good moral character is the self-petitioner’s affidavit. 8 C.F.R. § 204.2(c)(2)(v). The petitioner submitted no such evidence as he does not address his moral character in any of his affidavits. The regulation further prescribes that the self-petitioner’s affidavit regarding his or her moral character 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.” *Id.* The petitioner initially submitted a September 22, 2005 letter from the Las Vegas Police Department which stated that the petitioner was arrested, but the date, nature and disposition of the arrest was indecipherable from the accompanying record. In response to the NOID, the petitioner submitted a second letter from the Las Vegas Police Department dated May 1, 2006, which stated that the Department had no record of arrests of the petitioner. The petitioner failed to explain the discrepancy between the 2005 and 2006 letters. The 2005 letter was based on a search of the petitioner’s name [REDACTED] and the accompanying arrest record lists the petitioner’s name, [REDACTED] and his correct date and place of birth and former address. The 2006 letter states that the clearance was based on a search of the petitioner’s name [REDACTED].” Both letters note that the petitioner’s identity was not verified by fingerprints.

On appeal, counsel asserts that the petitioner was “NEVER arrested by any civi[l] police department” (emphasis in original). Counsel states that the petitioner was only arrested by U.S. Immigration and Customs Enforcement when he was placed in removal proceedings. Counsel submits no explanation for why the 2005 letter from the Las Vegas Police Department stated that the petitioner was arrested.

The record contains evidence that the petitioner was arrested in Nevada and he failed to submit sufficient evidence regarding the nature of his arrest and its disposition. The petitioner also failed to submit any testimony regarding his moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v). The relevant evidence consequently does not demonstrate that the petitioner is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

*Conclusion*

The petitioner has not demonstrated that his former wife subjected him or his child to battery or extreme cruelty during their marriage and 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 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.