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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

EAC 07 193 50131

Office: VERMONT SERVICE CENTER

Date: APR 20 2010

IN RE:

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The service center director 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 the basis of his determination that the petitioner had failed to establish that his wife subjected him to battery or extreme cruelty. The petitioner submitted a timely appeal on May 26, 2009.

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

- (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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

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 petitioner is a citizen of Ghana. He married D-B-,¹ a citizen of the United States, on September 15, 2003. D-B- filed Form I-130, Petition for Alien Relative, on behalf of the petitioner on January 20, 2004. The petitioner filed Form I-485, Application to Register Permanent Residence or Adjust Status, on that same date. The Form I-485 was denied on November 14, 2005. Although the Form I-130 had initially been approved, approval of that petition was revoked on February 20, 2007. D-B- filed for divorce on or around July 21, 2006, and the divorce was granted on November 16, 2007.

The petitioner filed the instant Form I-360 on June 22, 2007. On February 14, 2008, the director issued a request for additional evidence, and requested additional evidence to establish that the petitioner had been abused by D-B. The petitioner responded on May 12, 2008, and submitted additional evidence. After considering the evidence of record, the director denied the petition on April 23, 2009.

Battery or Extreme Cruelty

The sole issue on appeal is whether the petitioner has established that D-B- subjected him to battery and/or extreme cruelty. In his April 23, 2009 decision, the director found the petitioner's evidence insufficient to make that determination. The director stated that although USCIS understands that

¹ Name withheld to protect individual's identity.

the breakdown of a marriage is difficult and stressful, the relationship issues described by the petitioner do not rise to the level of battery or extreme cruelty as envisioned by Congress. Upon review of the entire record of proceeding, the AAO agrees with the director's decision to deny this petition.

In his June 21, 2007 self-affidavit, the petitioner stated that D-B- "single handedly caused our once blissful marital union to become ugly and engulfed with darkness." The petitioner stated that D-B- pressured him to marry her; that D-B- was disrespectful; that she stayed out with friends until late in the night; that D-B- made him transfer the deed of his home into her name; that D-B- threatened his immigration status; that she emasculated him; that D-B- made degrading comments; that after recording D-B-'s telephone calls, he discovered she was still speaking with a previous boyfriend; that D-B- compared him to her previous boyfriend; that D-B- accused him of infidelity; that D-B- spit into his face; that D-B- flirted with his friend; that D-B- controlled him; that D-B- belittled the manner in which he changed their daughter's diapers; that D-B- used their daughter as a weapon against him; that D-B- filed false police reports against him; and that D-B- withdrew all the money from their joint bank account.

The AAO finds the petitioner's testimony regarding the alleged abuse vague and lacking in detailed, probative information regarding specific instances of abuse. Moreover, the AAO finds that many of the issues he raises, particularly those related to D-B-'s alleged flirtation and comparing the petitioner to her old boyfriend, as well as those related to D-B-'s habit of staying out late, reflect a deteriorating marriage rather than abuse. Finally, his statement that D-B- refused to respond to a notice of intent to revoke (NOIR) approval of the Form I-130 was done "in bad faith" is not supported by the evidence of record, as the record indicates clearly that the NOIR was issued on November 28, 2006, several months after D-B- had filed for divorce. As she had already filed for divorce by that point, it is unclear to the AAO why she would have wished to continue her sponsorship of the petition.

In their affidavits, [REDACTED] and [REDACTED] state that the petitioner was abused by D-B-. However, it does not appear as though any of them personally witnessed any instances of abuse. Rather, it appears as though their testimony is based upon that of the petitioner. Their testimony, therefore, is of limited probative value. In her affidavit, [REDACTED] states that she provided the petitioner with shelter while he was married to D-B-. However, it does not appear as though she personally witnessed any specific instances of abuse, either.

The record also contains evidence that the petitioner sought medical attention for depression. However, the AAO notes that the petitioner did not seek such treatment until April 18, 2007, a date more than one year after the couple separated, nearly one year after D-B- filed for divorce, and just prior to the filing of the instant Form I-360. Moreover, the record contains no evidence of any follow-up treatment beyond a second visit in May 2007. The AAO finds the timing of the petitioner's medical treatment, and lack of any meaningful follow-up, to raise questions as to whether the petitioner in fact sought such treatment in an attempt to bolster the instant petition.

The AAO finds the evidence of record insufficient to establish that the petitioner was subjected to battery or extreme cruelty. Again, the AAO finds the petitioner's testimony regarding the alleged abuse vague and lacking in detailed, probative information regarding specific instances of abuse, and the evidentiary deficiencies with regard to the other evidence of record was set forth previously. Moreover, while the actions of D-B- may have been cruel and unkind, the AAO finds the petitioner's testimony alone insufficient to establish that they rose to the level of battery or extreme cruelty, as those terms are set forth in the statute and regulation. With regard to battery, the AAO notes that no such allegations have been made. With regard to extreme cruelty, the AAO finds that D-B-'s behavior fails to rise to that level. The AAO recognizes that the breakdown of a marriage can cause a great deal of mental anguish and trauma. However, as noted by the court in *Hernandez v. Ashcroft*, 345 F.3d 824 (9th Cir. 2004), because Congress "required a showing of extreme cruelty in order to ensure that [a petitioner is] protected against the extreme concept of domestic violence, rather than mere unkindness," not "every insult or unhealthy interaction in a relationship rises to the level of domestic violence. . . ." The petitioner has failed to establish that D-B-'s actions rose 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. Nor has the petitioner established that D-B-'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 petitioner has failed to overcome the director's concerns regarding the issue of battery and/or extreme cruelty. The petitioner has failed to establish that D-B- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Beyond the decision of the director, the AAO finds that the petition may not be approved for another reason, as the record fails to establish that the petitioner is a person of good moral character.

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 (in this case, during the period beginning in June 2004 and ending in June 2007).

The record establishes that the petitioner has used several aliases since his arrival in the United States. The petitioner has failed to submit one of the forms of documentation described at 8 C.F.R. § 204.2(c)(2)(v) for each alias to cover the period beginning in June 2004 and ending in June 2007. Accordingly, he has failed to establish that he is a person of good moral character. For this additional reason, the petition may not be approved.

Conclusion

The AAO agrees with the director's determination that the petitioner has failed to establish that his wife subjected him to battery or extreme cruelty. Beyond the decision of the director, the petitioner

has also failed to establish that he is a person of good moral character. Accordingly, based on the present record, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. For all of these reasons, the AAO will not disturb the director's denial of the petition.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). *See also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.

ORDER: The appeal is dismissed.