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



**U.S. Citizenship  
and Immigration  
Services**



B9.

FILE: [REDACTED]  
EAC 08 182 50235

Office: VERMONT SERVICE CENTER

Date:

**AUG 03 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

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, and counsel filed a timely appeal on January 5, 2010. On appeal, counsel submits a memorandum of law and 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 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 Brazil who entered the United States as a nonimmigrant visitor on or around March 27, 2004. He married K-M-,<sup>1</sup> a citizen of the United States, on ██████████. He filed the instant Form I-360 on June 18, 2008. The director issued a subsequent request for additional evidence, to which the petitioner, through counsel, filed a timely response. After considering the evidence of record, including the petitioner's response to his request for additional evidence, the director denied the petition on December 3, 2009.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's ground for denial of the petition.

### **Battery or Extreme Cruelty**

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

The first issue before the AAO is whether the petitioner has established that he was subjected to battery and/or extreme cruelty by K-M- during their marriage. Upon review of the record, the AAO agrees with the director's determination that the petitioner has failed to make that demonstration.

The record contains three statements from the petitioner. In his May 10, 2008 statement, the petitioner stated that a few months into their marriage, the relationship changed completely. He stated that K-M- became very disrespectful; began staying out late; and forgot to pick up her children several times. K-M- began spending a great deal of time with a female friend and, eventually, told the petitioner she was bisexual. She also informed the petitioner that she was unable to have more children. After a long conversation, the two agreed they should divorce.

In his second, undated statement, which the petitioner submitted in response to the director's request for additional evidence, he repeated his earlier assertions and expanded his description of the alleged abuse to which he was subjected by adding that over time, K-M- began shifting her responsibilities toward her children to the petitioner. She also humiliated the petitioner by yelling at him in front of the couple's roommate. On another occasion, K-M- tried to persuade the petitioner to engage in sexual conduct with which he was not comfortable.

In his January 20, 2010 statement submitted on appeal, the petitioner stated that a few months into their marriage, K-M- began staying out late, drinking heavily, and abusing drugs; she became controlling, cold, and irritable; she ridiculed his car; she yelled and cursed at the petitioner; called him names; told him that he was there only to look after her children; threatened his immigration status; and came out to him as bisexual. The petitioner stated that he was no longer happy; felt daily, intense pain over the situation; and lost twenty pounds. The petitioner stated that although "she never punched or hit me, she did push and punch me sometimes." He then stated that although he "was not physically abused" by K-M-, her behavior was emotionally abusive.

In his statement, ██████████, who lived with the petitioner and K-M-, stated that although the petitioner was polite, respectful, and cared for K-M-'s children, K-M- would disappear for hours at a time.

In his statement, ██████████ stated that although the petitioner used to be happy, positive, and energetic, he is now quiet, unhappy, cold, rarely happy, and has low self-esteem. ██████████ attributed these changes to the petitioner "finding out the truth about" K-M-.

Finally, the record contains two statements from ██████████ a licensed clinical social worker. In his first statement, which he prepared after interviewing the petitioner on September 15, 2009, ██████████ stated that the petitioner told him that a few months into the marriage, K-M- began staying out late and coming home intoxicated; yelled at him; humiliated him; had an extramarital affair; came out to him as bisexual; and encouraged him to engage in sexual conduct of which he did not approve. On the night K-M- revealed her sexual orientation to the petitioner, she also informed him that she was unable to have any more children. ██████████ stated that the petitioner told him that these revelations left him feeling betrayed and dishonored. ██████████ diagnosed the

petitioner with depressive disorder, not otherwise specified, and generalized anxiety disorder. He recommended that the petitioner obtain a psychiatric evaluation, individual therapy, and psychotherapy in a cognitive behavioral framework.

In his second statement, which he prepared after interviewing the petitioner on January 20, 2010, [REDACTED] added that K-M- cursed at the petitioner, ridiculed his accent; called him names; pushed and punched him on one occasion; and threatened his immigration status; and again recommended that the petitioner obtain a psychiatric evaluation, individual therapy, and psychotherapy in a cognitive behavioral framework.

In sum, the relevant evidence fails to establish that K-M- subjected the petitioner to battery or extreme cruelty during their marriage. First, the testimonial evidence of record is inconsistent with regard to whether the petitioner was subjected to battery. [REDACTED] stated that the petitioner told him that K-M- pushed and punched the petitioner on one occasion. Although the petitioner stated that K-M- "sometimes" pushed and punched him, he also stated that she "never" punched or hit him, and that he was not physically abused. Given these contradictory statements, the record does not establish that the petitioner was subjected to battery. Second, the petitioner has also failed to establish that K-M-'s non-physical actions constituted extreme cruelty, as defined by the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The record does not demonstrate that K-M-'s maltreatment of the petitioner was accompanied by coercive actions or threats of physical or psychological violence, or that her behavior was part of an overall pattern of violence. Nor do [REDACTED] statements establish that the petitioner was subjected to extreme cruelty. While the AAO does not question [REDACTED] professional qualifications, it notes that each of his letters was based upon a single interview with the petitioner; he has met with the petitioner a total of two times, and his letters do not reflect the insight of an established, ongoing relationship with the petitioner based on a significant period of mental health counseling and treatment. Nor is there any evidence that the petitioner has received any treatment for the conditions diagnosed by [REDACTED] or followed his advice with regard to receiving additional counseling. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." *See Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner has failed to establish that K-M- subjected him 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**

Beyond the decision of the director, 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. 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 2005 and ending in June 2008).

The record contains a state-issued criminal background check, issued by the State of California. However, there is no such evidence covering the petitioner's residence in Arizona. The record indicates that the petitioner has been residing in Arizona since February 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 petitioner has failed to overcome the ground for denial of the petition and has not established that K-M- subjected him to battery or extreme cruelty during their marriage. Beyond the decision of the director, the AAO finds further that the petitioner has failed to establish that he is a person of good moral character. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act, and this petition must be denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.