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



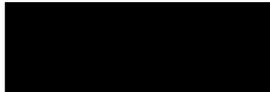
U.S. Citizenship  
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FILE:



Office: VERMONT SERVICE CENTER Date: **NOV 01 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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 Director, Vermont Service Center, denied the immigrant visa petition. 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 pursuant to 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 his United States lawful permanent resident spouse.

On May 21, 2010, the director denied the petition, determining that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse and that he had failed to establish that he is a person of good moral character.

Counsel for the petitioner submits a Form I-290B, Notice of Appeal or Motion, a letter, the petitioner's affidavit, and a local police clearance based on a name check of the variations of the petitioner's name in support of the appeal.

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 explained 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 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 Egypt. He entered the United States in or about July 2005 as a B-2 visitor with authorization to remain in the United States for a temporary period not to exceed January 1, 2006. On May 27, 2007, the petitioner married S-S<sup>1</sup>, the claimed abusive United States citizen. On August 11, 2009, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On the Form I-360, the petitioner indicated that he had resided with S-S- from August 2006 to April 1, 2009.

#### *Good Moral Character*

The petitioner has provided the requested local police clearances on appeal. The director's determination that the petitioner has not established that he is a person of good moral character is withdrawn.

#### *Abuse*

The petitioner initially provided a personal statement dated July 22, 2009. The petitioner declared: that shortly after his marriage, S-S- changed dramatically; that she found reasons to criticize and complain; that the complaints were over small things initially; and that over time they became more

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

frequent and hostile. The petitioner stated: that many of the problems developed because S-S- wanted him to give her money; that S-S- used the money meant to pay bills to go out drinking with her friends; that when she came home drunk, she would call him derogatory names; and that she kicked him out of the house many times. The petitioner also indicated that he was fired from his job because S-S- kept creating problems for him at work.

The petitioner also submitted three letters/affidavits written on his behalf. In the August 5, 2009 affidavit signed by [REDACTED] declared that the couple used to be happy but when the petitioner stopped agreeing about "wrong things" S-S- would give the petitioner a hard time and was rude to him and called him names. In the August 5, 2009 affidavit of [REDACTED] [REDACTED] noted that the couple used to be happy but that S-S- wanted to change the petitioner and she would do "a lot of bad to him like cursing him and hurting his dignity," and that S-S- would ask him for money that he could not afford. In the July 31, 2009 letter of [REDACTED], [REDACTED] [REDACTED] noted that he was the petitioner's neighbor and that the petitioner had asked him in June what he could do about his wife harassing him and calling his cell phone six to ten times.

In response to the director's RFE, the petitioner submitted a second personal statement. The petitioner reiterated that the couple argued over money; that S-S- used his money to go out drinking and partying; and that she would come home drunk and call him names and punch him with her hand. The petitioner indicated that S-S- used the rent money for something else and he had to pay the rent again and that he was getting fired from work because she would keep asking for him but he could not answer. The petitioner noted that he was depressed about the relationship, that the couple separated several times, and during their last separation he saw her with a man that she identified as her boyfriend.

The petitioner also provided an additional three affidavits. In the undated affidavit of [REDACTED] [REDACTED] noted that he was at the couple's house to fix something and S-S- gave the petitioner a hard time, calling him derogatory names and cursing, so he just left. In the undated affidavit of [REDACTED] [REDACTED] declared that on one occasion the petitioner asked if [REDACTED] dad could drive him to pick up S-S- at a bar because she was too drunk to drive and when they arrived, S-S- screamed and cursed at the petitioner and when they arrived back in the neighborhood, S-S- would not let the petitioner in their house, so the petitioner slept over at the affiant's house. In the undated affidavit of [REDACTED] [REDACTED] declared: that he rented the house to the couple; that S-S- did not pay the total rent; and that when he told the petitioner that his wife had not paid the total rent, the petitioner paid it all; and that S-S- was mad at the affiant for telling the petitioner about the rent not being completely paid.

The director determined that the petitioner's statements were not detailed but were brief and general and insufficient to establish that the petitioner had been subjected to battery or extreme cruelty by S-S-.

On appeal, counsel for the petitioner provides the petitioner's third personal statement. Counsel notes that the petitioner had the assistance of an Arabic speaker when preparing the proffered

personal statement on appeal and consequently, the personal statement on appeal is more detailed. Counsel requests that the affidavits submitted on behalf of the petitioner be reviewed with the petitioner's culture in mind, as the affiants did not want to embarrass the petitioner regarding the abuse perpetrated by his wife. Counsel also indicates that the petitioner attempted to obtain bank documents to support his claim that his wife exploited him financially, but the bank had closed the account and the information was no longer held by the bank.

The petitioner, in his third personal statement, declared: that his wife had a drinking problem; that she was angry at the money he spent on hiring an attorney to prepare immigration papers so he could finish his education in the United States; that the couple fought over money all the time; that his wife took money out of their joint bank account until the bank closed the account; and that she would embarrass him in front of others by calling him names. The petitioner indicates that on one occasion he asked a friend if he and the friend's dad could drive him to pick up S-S- at a bar because she was too drunk to drive and when they arrived S-S- screamed and cursed at him and when they returned to the house S-S- would not let him in their house, so he had to sleep at the friend's house. The petitioner also indicated that S-S- did not pay the total rent after he had given her the money to pay it and that the landlord asked for the rent and that he had to pay it all. The petitioner reiterates that S-S- would call him derogatory names and that she would kick him out of the house a lot when she came home drunk. The record on appeal also includes an article on Maintaining Family Honor.

Upon review of the record, the petitioner's statements do not provide the detailed, probative evidence that establishes eligibility for this benefit. The petitioner generally describes the difficulties the couple had regarding money and his wife's drinking and partying. He does not provide any details of the circumstances that led to his wife punching him with her hands other than that she had been drinking and does not indicate that her drunken physical behavior resulted in injury to him. The petitioner's brief and general statement does not provide the probative detail necessary to conclude that his spouse subjected him to battery. The petitioner's general description of his wife demanding money and accessing their joint bank account is insufficient to conclude that his spouse subjected him to financial extortion. Similarly, the petitioner's indication that his wife cursed at him and called him derogatory names is without the probative detail necessary to conclude that her actions constituted extreme cruelty. The petitioner has also failed to provide the necessary detail regarding his spouse's behavior as it impacted his work. The behavior of the petitioner's spouse as described, although maybe embarrassing to the petitioner, does not constitute extreme cruelty.

The petitioner's affidavit on appeal only adds the incidents mentioned by third party affiants but does not provide the necessary probative detail to substantiate that his wife's actions constituted battery or extreme cruelty. Because the petitioner's statements are critical in establishing extreme cruelty or battery, the statements must include sufficient detail of specific events and incidents to result in a conclusion that the petitioner was subjected to such abuse. In this matter, the petitioner provides statements that indicate his spouse's behavior was embarrassing and that her demands for money caused the couple to argue. However, as noted by the court in *Heranadez v. Ashcroft*, 345 F.3d 824 (9<sup>th</sup> 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 his spouse’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. The statements submitted on the petitioner’s behalf also fail to include sufficient probative information regarding incidents of battery or extreme cruelty. Again, although the petitioner’s spouse abused alcohol and cursed and called the petitioner derogatory names, the general embarrassing scenes described do not demonstrate that the petitioner’s spouse subjected him to extreme cruelty as defined by the statute and regulation. The record does not include sufficient information or evidence that the declarants who submitted statements on the petitioner’s behalf were reluctant to provide probative information describing specific incidents of abuse because of the petitioner’s culture.

It is the generality of the petitioner’s statements and of those who submitted statements on his behalf and the lack of specific incidents of abuse described in detail that fail to establish that the petitioner was subjected to battery or extreme cruelty. 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 has failed to do so. Counsel’s explanation that the affiants and the petitioner did not provide further details out of respect for the petitioner’s culture does not suffice. The record must contain probative evidence of specific and detailed incidents of abuse. The petitioner’s failure to provide such information requires the denial of the petition on this ground.

Beyond the director’s decision, we find that the petition is also not approvable because the record includes evidence that a divorce terminating the marriage was in process in February 2009, almost six months prior to the petitioner’s filing of the Form I-360. As the record does not include definitive information detailing when the divorce between the petitioner and S-S- was finalized, it is not possible to conclude that the petitioner had a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen and is eligible for immediate relative classification based on a qualifying relationship with his former spouse when the petition was filed. An alien who has divorced a United States citizen may still self-petition under section 204(a)(1)(A)(iii) of the Act if the alien demonstrates “a connection between the legal termination of the marriage within the past 2 years and battering or extreme cruelty by the United States citizen spouse.” Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II)(aa)(CC)(ccc). As the petitioner has failed to establish that he was battered or subjected to extreme cruelty by S-S-, he could not establish a causal connection between his divorce and any abuse. Until the petitioner submits evidence concerning the outcome of his divorce, we cannot find that he had a qualifying relationship as the spouse, intended spouse, or former spouse of a United States citizen, when he filed the Form I-360 petition. Consequently, we also cannot find that he is eligible for immediate relative classification based on a qualifying relationship with his former spouse.

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 143, 145 (3d Cir. 2004) (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 a separate and independent alternative basis for the decision. As always, the burden of proof in visa petition proceedings 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.