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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  
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Services

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FILE:



Office: VERMONT SERVICE CENTER

Date: OCT 06 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:

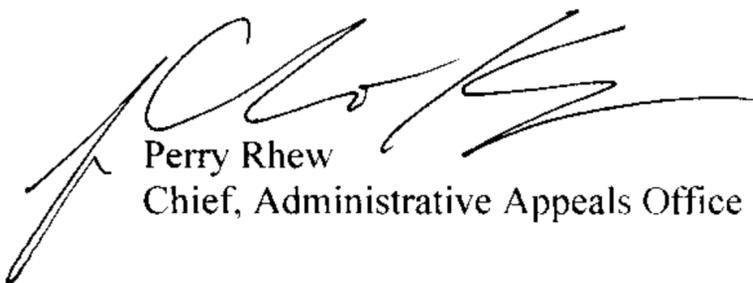


INSTRUCTIONS:

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 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 a United States citizen.

The director denied the petition on the basis of his determination that the petitioner had failed to establish: (1) that his wife subjected him to battery or extreme cruelty; and (2) that he is a person of good moral character. On appeal, counsel submits a brief.

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 Chile. He married Z-N-,<sup>1</sup> a citizen of the United States. After the permanent residency petition that Z-N- had filed on behalf of the petitioner was denied, a Form I-862, Notice to Appear in Removal Proceedings, was issued on December 23, 2008.<sup>2</sup> The petitioner submitted the instant Form I-360 on August 31, 2009. The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, submitted timely responses. After considering the evidence of record, including counsel's responses to the director's requests for additional evidence, the director denied the petition on June 11, 2010.

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 grounds for denying this petition.

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

<sup>2</sup> The petitioner remains in proceedings before the New York Immigration Court and his next hearing is scheduled for March 23, 2011.

### Battery or Extreme Cruelty

The first issue before the AAO on appeal is whether the petitioner has established that Z-N- subjected him to battery or extreme cruelty during their marriage. At the time he filed the petition, the petitioner submitted letters from [REDACTED], and [REDACTED].

In his August 20, 2009 letter, [REDACTED] stated that he had been seeing the petitioner since January 30, 2009. According to [REDACTED], the petitioner told him that Z-N- had been physically abusive on various occasions. He also stated that he had prescribed antidepressants to the petitioner, and that he referred the petitioner to a psychotherapist. In his August 7, 2009 letter, [REDACTED] stated that he had been seeing the petitioner since January 31, 2009. [REDACTED] stated that the petitioner told him that he had begun seeing [REDACTED] after Z-N- attacked him with a knife. [REDACTED] stated further that the petitioner told him that Z-N- was possessive and aggressive.

In the undated statement he submitted in response to the director's September 8, 2009 request for additional evidence, the petitioner stated that Z-N- became jealous and violent after their wedding. He also submitted a November 9, 2009 letter from [REDACTED] who, although he discussed the petitioner's consumption of alcohol, did not discuss any abuse to which he was subjected by Z-N-.

The petitioner submitted an updated statement as well as additional letters from [REDACTED] and [REDACTED] in response to the director's January 22, 2010 request for additional evidence. In his April 8, 2010 letter, the petitioner stated that after their wedding, misunderstandings turned into huge arguments as a result of Z-N-'s jealousy and mistrust. He stated that Z-N- repeatedly called his cell phone while he was working and, when he was unable to answer, called his place of employment in order to ensure he was actually working. Although the petitioner had previously told [REDACTED] that he began seeing [REDACTED] in January 2009 after Z-N- attacked him with a knife, he now stated that the knife incident had actually occurred in December 2007. According to the petitioner, the incident occurred one evening when the petitioner returned home from work and Z-N- accused him of having been out with another woman rather than working. The petitioner stated that on that night Z-N- yelled at him; called him names; threatened his immigration status; accused him of cheating; scratched him with her fingernails; and eventually, charged toward him with a knife. The petitioner stated that he left the house and, when he returned the following morning, saw that Z-N- had attacked a couch with the knife and ruined his jeans, shirts, and dress shirts by placing them in a bathtub and pouring bleach on them. Although they reconciled, the petitioner stated that on other occasions Z-N- called him names; yelled at him; accused him of cheating; threatened his immigration status; and threw a pan at him as a result of her feelings of jealousy. Eventually, she told him to move out of the apartment.

In his April 7, 2010 letter, [REDACTED] stated that the petitioner had been "totally depressed" when he began treating him in January 2009. Mr. Vilsaint stated that he initially used hypnotherapy and Neuro-Linguistic Programming with the petitioner, as well as semi-weekly therapy sessions, which worked well. In his April 13, 2010 letter, [REDACTED] stated that he first saw the petitioner in January 2009 due to depression, insomnia, and severe anxiety, which the petitioner claimed were secondary to marital problems. [REDACTED] also stated that the petitioner told him that Z-N- was aggressive and

attacked him on one occasion. He also stated that he has seen the petitioner approximately once every two to three months since his initial visit.

In his June 11, 2010 denial, the director highlighted the inconsistent nature of the petitioner's statements with regard to the alleged abuse to which he was subjected by Z-N-. For example, the director noted that although the petitioner told [REDACTED] that he began seeing [REDACTED] in January 2009 after Z-N- attacked him with a knife, he reported in a later statement that the knife incident had actually occurred in December 2007.

The AAO has reviewed the entire record and finds that, in sum, the relevant evidence fails to establish that Z-N- subjected the petitioner to battery or extreme cruelty during their marriage. Although the AAO acknowledges the petitioner's allegations that he was battered by Z-N- during their marriage, it agrees with the director's analysis regarding the inconsistent nature of the petitioner's testimony regarding such battery. The significant inconsistency in the date of the alleged attack diminishes the probative value of the petitioner's testimony on this issue, and counsel does not address it on appeal. Nor do the letters from [REDACTED] and [REDACTED] independently establish that the petitioner was battered by Z-N-. While we do not question their expertise, neither [REDACTED] nor [REDACTED] provide any medical or psychological analysis of the petitioner's condition in regards to the specific incident of alleged battery.

Nor does the record demonstrate that Z-N-'s non-physical behavior constituted extreme cruelty. The letters from [REDACTED] and [REDACTED] show that the petitioner was treated for depression secondary to his marital problems and [REDACTED] recounted how he counseled the petitioner about alcoholism after the petitioner was convicted of driving while intoxicated. The petitioner's own statements describe several conflicts with his wife during his marriage, however the relevant evidence does not establish that Z-N-'s non-physical behavior was comparable to the types of 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 Z-N-'s non-physical behavior was accompanied by other coercive actions or that her behavior was aimed at insuring dominance or control over the petitioner. 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)).

Nor does the AAO find convincing counsel's assertion on appeal that the director incorrectly applied the "any credible evidence" standard because he did not fully credit Mr. Vilsaint's follow-up letter. Counsel conflates this evidentiary standard with the petitioner's burden of proof. Section 204(a)(1)(J) of the Act requires USCIS to "consider any credible evidence relevant to the petition." *Id.* This mandate is reiterated in the regulation at 8 C.F.R. § 204.2(c)(2)(i). However, this mandate establishes an evidentiary standard, not a burden of proof. Accordingly, "[t]he determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion

of USCIS.” Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The evidentiary guidelines for establishing the petitioner’s claim list examples of the types of documents that may be submitted and states, “Other forms of credible relevant evidence will also be considered.” 8 C.F.R. § 204.2(c)(2)(iv). In this case, as in all visa petition proceedings, the petitioner bears the burden of proof to establish his or her eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The mere submission of relevant evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2) will not necessarily meet the petitioner’s burden of proof. While USCIS must consider all credible evidence relevant to a petitioner’s claim of abuse, the agency is not obligated to determine that all such evidence is sufficient to meet the petitioner’s burden of proof. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J); 8 C.F.R. § 204.2(c)(2)(i). The relevant, credible statements and documentation in this case do not establish, by a preponderance of the evidence, that Z-N- subjected the petitioner to battery or extreme cruelty during their marriage.

The petitioner has failed to establish that Z-N- subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(D)(bb) of the Act.

#### **Good Moral Character**

The second issue before the AAO is whether the petitioner has established that he 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 August 2006 and ending in August 2009).

The director first requested copies of local police clearances or state-issued criminal background checks from each place the petitioner had lived for at least six months during the three-year period immediately preceding the filing of the self-petition in his September 8, 2009 request for additional evidence, and included a listing of agencies that could assist the petitioner in obtaining statewide clearances from each state in the United States. However, the petitioner did not respond to this portion of the director’s request. Accordingly, the director requested this documentation a second time in his January 22, 2010 request for additional evidence, and again included a listing of agencies that could assist the petitioner in obtaining statewide clearances from each state in the United States. The director also instructed the petitioner that if he was unable to submit such documentation, he was to submit a statement explaining why it was unavailable. Counsel submitted a letter explaining that a criminal case against the petitioner was pending and a certificate of disposition was consequently not yet available. Counsel did not, however, explain why a state criminal background check or other similar evidence could not be submitted.

On appeal, counsel submits a state-issued criminal background check issued by the [REDACTED] State Division of Criminal Justice Services, dated August 12, 2010. The AAO, however, will not consider this document on appeal. The regulation states that the petitioner shall submit additional

evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Where, as here, a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the state-issued criminal background check to be considered, he should have submitted it in response to one of the director's requests for additional evidence. *Id.* Under the circumstances, the AAO need not, and will not, consider the sufficiency of this document submitted for the first time on appeal. The petitioner has failed to establish that he 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 failed to overcome the grounds for denial, and has not established that his wife subjected him to battery or extreme cruelty during their marriage or 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 remain denied.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.