

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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

B9

FILE:

Office: VERMONT SERVICE CENTER

Date FEB 04 2011

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 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 Vermont Service Center director (“the 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 former wife subjected him to battery or extreme cruelty during their marriage; and (2) that he was a person of good moral character. On appeal, counsel submits a brief and copies of documents previously filed.

Applicable Law and Regulations

Section 204(a)(1)(A)(iii) of the Act provides, in pertinent part, 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). An alien who has divorced a United States citizen may still self-petition under this provision 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).

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.

Facts and Procedural History

The petitioner is a citizen of Lebanon who entered the United States as a nonimmigrant visitor on October 6, 1998. On February 16, 2000, he married a U.S. citizen in Arizona. The petitioner's former wife filed an alien relative immigrant petition on the petitioner's behalf, which she withdrew on November 2, 2004. On April 20, 2005, their marriage was dissolved by order of the Superior Court of Arizona, Maricopa County (██████████). The petitioner filed the instant Form I-360 self-petition on January 6, 2006. The director subsequently issued a request for evidence (RFE) of the petitioner's good moral character and his former wife's battery or extreme cruelty. The director found the petitioner's response to the RFE insufficient and denied the petition on those two grounds.

On appeal, counsel asserts that the petitioner submitted sufficient evidence of his good moral character and that the director failed to consider the significance of the racial aspects of the petitioner's former wife's verbal abuse.

The AAO reviews these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). On appeal, the petitioner has established his good moral character. He has failed, however, to demonstrate that his former wife subjected him to battery or extreme cruelty during their marriage.

Good Moral Character

In response to the director's RFE, the petitioner initially submitted an affidavit dated May 6, 2006 explaining that he had been unable to obtain a clearance from the Arizona Department of Public Safety. The petitioner included a letter from the Arizona Department of Public Safety explaining that the petitioner's application for a fingerprint clearance card was being returned because such cards are not issued for immigration purposes. The petitioner also submitted nearly identical affidavits from three acquaintances generally attesting to his good character. On September 11, 2006, the petitioner submitted a copy of his fingerprint clearance card issued on August 7, 2006 by the Arizona Department of Public Safety and an accompanying letter stating that the card was issued pursuant to a state and federal level criminal records check.

In his decision, the director stated that the petitioner's initial response to the RFE was insufficient to establish his good moral character, but the director did not address the petitioner's subsequent submission of his Arizona fingerprint clearance card and the accompanying letter from the Arizona Department of Public Safety.

Primary evidence of good moral character is the self-petitioner's affidavit accompanied by a local police clearance or a state-issued criminal background check for every location where the petitioner has resided for at least six months during the three years preceding the filing of the petition. 8 C.F.R. § 204.2(c)(2)(v). The record in this case shows that the petitioner resided in Arizona for over five years before this petition was filed. In his May 6, 2006 affidavit, the petitioner attested to his good moral character and he submitted documentation of a state-issued criminal background check. The director did not address this evidence, which demonstrates that the petitioner is a person of good moral character, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. Accordingly, the portion of the director's decision to the contrary will be withdrawn.

Battery or Extreme Cruelty

The appeal can not be sustained, however, because the petitioner has failed to demonstrate that his former wife subjected him to battery or extreme cruelty during their marriage. In his June 29, 2005 affidavit, the petitioner stated that after their marriage, his former wife quit her job and started demanding money from him for her gambling. When the petitioner refused to give her money, he reports that she threatened to call immigration authorities and have him and his children deported. In response to the director's RFE, the petitioner submitted a May 13, 2006 affidavit in which he stated that his former wife began insulting him with racial epithets after the attacks of September 11, 2001. The petitioner recounted that he felt it impossible to invite other people to their residence because his former wife kept herself and their home in disarray. He also stated that she argued with him and made him feel guilty when he visited his children and friends. The petitioner further asserted that during their marriage, he was depressed, tired, lost weight and suffered from insomnia.

The petitioner also submitted affidavits and letters from three friends. [REDACTED] stated that she observed the petitioner's former wife demanding money from him for her gambling and that she observed the petitioner's former wife flirting with other men. [REDACTED] recounted that the petitioner's former wife used the petitioner and threatened to report him to immigration authorities if he did not give her money for gambling. [REDACTED] stated that he never visited the former couple because of the petitioner's former wife's "behavior and her remarks about Arabs and Muslims." He also reported that the petitioner's former wife was "backbiting" and that the petitioner was always stressed because of her.

The director determined that the statements of the petitioner and his friends did not establish that his former wife's behavior constituted extreme cruelty. On appeal, counsel asserts that the director "trivialized extreme racially based abuse as 'name calling'" and failed to consider that the applicant "felt extremely vulnerable" to his wife's racial epithets as an Arab without immigration status.

We find no error in the director's assessment of the relevant evidence. The petitioner's statements and those of his friends are general and do not recount any specific incidents of abuse in probative

detail. Their statements also do not demonstrate that the petitioner's former wife ever subjected the petitioner to actual or threatened violence or other actions that were part of an overall pattern of violence such that they would constitute extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi).

We do not discount the harmful effects of the petitioner's former wife's behavior on him. However, the Ninth Circuit Court of Appeals, within whose jurisdiction this case arose, has explained that "[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 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The relevant evidence in this case fails to demonstrate that, during their marriage, the petitioner's former wife subjected him to battery or extreme cruelty, as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi) and as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship

As the petitioner has failed to establish the requisite battery or extreme cruelty, he has also failed to demonstrate any connection between his divorce and such battery or extreme cruelty. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with a U.S. citizen pursuant to section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc) of the Act.

Conclusion

In these proceedings, the petitioner bears the burden of proof to establish his eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Although the petitioner has overcome the director's determination regarding his lack of good moral character on appeal, he has failed to establish that his former wife subjected him to battery or extreme cruelty during their marriage and that their divorce was connected to such abuse. Accordingly, the appeal will be dismissed and the petition will remain denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

ORDER: The appeal is dismissed.