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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

PUBLIC COPY

B9

[redacted]

DATE: JUL 12 2011 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]

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:

SELF-REPRESENTED

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 $630. 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 and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will remain denied.

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 determined that the petitioner had not established that: he had a qualifying relationship with a United States citizen; he is eligible for immediate relative classification based on the qualifying relationship; he had been subjected to battery or extreme cruelty perpetrated by a United States citizen; he is a person of good moral character; or he had entered into the marriage in good faith. On appeal, the petitioner submits a Form I-290B, Notice of Appeal or Motion, a statement in support of the appeal, and additional documentation.

Applicable Law and Regulations

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 based on his or her relationship to the abusive spouse, 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.

* * *

(ix) *Good faith marriage.* A spousal self-petition cannot be approved if the self-petitioner entered into the marriage to the abuser for the primary purpose of circumventing the immigration laws. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are set forth 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.

(ii) *Relationship.* A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen or proof of the immigration status of the lawful permanent resident abuser. It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate issued by civil authorities, and proof of the termination of all prior marriages, if any, of . . . the self-petitioner . . . .

* * *

(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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and

affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

Facts and Procedural History

The petitioner is a native and citizen of Nepal. He entered the United States on September 26, 1991 on an M-1 visa with temporary authorization to remain in the United States until February 29, 1992. He married K-T-,[1] the claimed abusive United States citizen on March 23, 2009. On March 2, 2010, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. On July 27, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that a qualifying relationship with the claimed abusive United States citizen spouse existed when the petition was filed and consequently the petitioner had not established eligibility for immigrant classification based on a qualifying relationship. The director also determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by K-T-, that he is a person of good moral character, or that he had entered into the marriage in good faith. The petitioner timely submits a Form I-290B, Notice of Appeal or Motion, a statement, new documentation, and previously submitted documentation in support of the appeal.

Qualifying Relationship

The director determined that the petitioner had not established a qualifying relationship with the claimed abusive spouse, because the petitioner made reference to his ex-wife and indicated that she had filed for divorce. As the record did not include evidence of the actual dissolution date of the marriage, the director found that the petitioner had not established a qualifying relationship. On appeal, the petitioner submits a copy of a Final Decree of Divorce signed September 27, 2010. The petitioner had previously explained, in response to the director's RFE, that when K-T- abandoned him in January 2010, he thought she had filed for divorce but after waiting a couple of months he filed for divorce and that he found K-T- at her workplace where she agreed to sign the divorce waiver and finalize the divorce. As the divorce judgment was not entered until September 27, 2010, and the Form I-360 petition was filed on March 2, 2010, the petitioner has established the existence of a qualifying relationship when the petition was filed. The director's decision to the contrary is withdrawn.

Immigrant Classification

As the petitioner has established a qualifying relationship with a United States citizen, he has also established that he is eligible for immediate relative classification based on a qualifying relationship with K-T-, as required by section 204(a)(1)(A)(iii)(II)(cc) of the Act. The regulation at 8 C.F.R. § 204.2(c)(1)(B) requires that a self-petitioner be eligible for immediate relative classification under section 201(b)(2)(A)(i) of the Act based on his or her relationship to the claimed abusive spouse. In this matter his relationship to the claimed abusive spouse has been established and the director's

[1] Name withheld to protect the individual's identity.

decision to the contrary is withdrawn.

Battery or Extreme Cruelty

The petitioner initially stated that K-T- left him in January 2010 and that she had been threatening him since December 2009 and that she had harassed him several times. The petitioner also indicated that she had attacked him several times. In a letter in response to the director's RFE on this issue, the petitioner stated that the marriage started out fine but the relationship turned bad because of her anger and abusive nature. The petitioner reported that K-T- sexually abused him many times, called him derogatory names, would throw things, and threatened to file criminal charges against him if he reported these incidents to the police.

Based on the lack of probative information in the record on this issue, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by his former wife.

On appeal, the petitioner states that his former wife was abusive, that he suffered emotional distress when she was physically abusive, and he had never told his friends or family about the abuse.

Upon review of the record, the petitioner has not provided probative testimony establishing that he was subjected to battery or extreme cruelty perpetrated by K-T-. His general references to threats, harassment, and physical abuse without probative detail of specific instances of battery or extremely cruel behavior are insufficient to establish eligibility under the Violence Against Women Act's (VAWA) statute and regulations. The record does not provide detailed, probative testimony or other evidence that demonstrates that the petitioner was the victim of any act or threatened act of physical violence or extreme cruelty, that K-T-'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 him. The petitioner's statements lack the consistent detail necessary to establish that K-T-'s actions constitute extreme cruelty as defined in the statute and regulation or that he was subjected to battery perpetrated by or solicited by K-T-. The petitioner has failed to establish that K-T-'s actions were 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 K-T-'s behavior was part of an overall pattern of violence or coercion. 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 (9th Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). In this matter, the record presented lacks sufficient information to establish that the petitioner was subjected to battery or extreme cruelty perpetrated by his former spouse.

Good Moral Character

The petitioner has not provided clearances from local police or a state-issued criminal background check from each locality or state in the United States in which he has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. The director specifically requested this information in the July 27, 2010 RFE and the petitioner failed to provide this essential information. The petitioner does not further address this issue on appeal. Consequently, the petitioner has not established that he is a person of good moral character.

Good Faith Entry Into Marriage

The petitioner does not indicate how he met K-T-, he does not describe their interactions prior to marriage, and he provides only a broad statement of his interactions with K-T- subsequent to the marriage regarding the alleged abuse. He fails to provide probative information regarding his specific intent when entering into the marriage. The documentary evidence in the record regarding the couple's joint life for the time that the couple was married and allegedly residing together is insufficient for the reasons set out in the director's decision. On appeal, the petitioner simply states that he married K-T- in good faith. He does not provide the requisite information regarding his interactions with K-T- prior or subsequent to the marriage.

Upon review, the petitioner's statement fails to provide substantive information regarding his courtship with and marriage to K-T-. The petitioner does not describe the couple's mutual interests, he does not describe their daily routines in detail, and he does not provide any probative information for the record that assists in determining his intent when entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS,* 511 F.2d 1200 (9th Cir.1975). In this matter the petitioner has not set forth his intent in probative detail and the record does not include probative evidence that the couple established a life together. Upon review, the record in this matter does not include sufficient relevant evidence establishing that the petitioner entered into marriage with K-T- in good faith, as required by section 204(a)(1)(B)(ii)(I)(aa) of the Act.

Conclusion

The petition will be denied and the appeal dismissed for the above stated reasons. 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. The petition remains denied.