



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **FEB 04 2013** Office: VERMONT SERVICE CENTER

File:

IN RE: Self-Petitioner:

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 AAO inappropriately applied the law 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 in accordance with the instructions on Form I-290B, Notice of Appeal or motion, with a fee of \$630, or a request for a fee waiver. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion to reopen will be granted. The appeal will remain dismissed and the petition will remain 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 a United States citizen.

The director denied the petition for failure to establish the requisite battery or extreme cruelty. The AAO concurred and dismissed the appeal. On motion, the petitioner submits additional evidence.

*Applicable Law*

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 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. . . . 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. . . .

The evidentiary guidelines at 8 C.F.R. § 204.2(c)(2) state, 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.

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(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 Senegal who claims to have first entered the United States as a nonimmigrant visitor on May 8, 2005. On September 29, 2009, the petitioner married a U.S. citizen in New York. The petitioner filed the instant Form I-360 on June 28, 2010. The director denied the petition for failure to establish that the petitioner's wife subjected him to battery or extreme cruelty, and the AAO dismissed the petitioner's subsequent appeal. In its May 7, 2012, decision on appeal, the AAO upheld the director's decision regarding the failure to show battery or extreme cruelty.

On motion, the petitioner fails to state the reasons for reconsideration and does not establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy or that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). The petitioner's submission fails to meet the requirements for a motion to reconsider, and consequently, the motion to reconsider must be dismissed. See 8 C.F.R. § 103.5(a)(4).

However, the petitioner's submission meets the requirements for a motion to reopen at 8 C.F.R. § 103.5(a)(2). On motion, the petitioner submits an addendum to his psychiatric evaluation and a new affidavit. Accordingly, the motion to reopen is granted.

*Battery or Extreme Cruelty*

In our May 7, 2012 decision, incorporated here by reference, we fully discussed the pertinent facts and relevant evidence submitted below. Accordingly, we will only address the new evidence submitted on motion. In his new affidavit on motion, the petitioner reports that his wife threw things at him, locked the door and yelled at him that he could not go out, called him names, and was sometimes not intimate with him. He also states that his wife threw out his clothes, that she made him sleep on the couch on occasion, and that she embarrassed him in front of his family and friends. The petitioner reports that "the final straw" in the breakdown of their marriage occurred when she had an affair, they argued, and she moved out of their apartment.

In an addendum to his psychiatric evaluation, [REDACTED] a psychotherapist, stated that she met with the petitioner again and that the petitioner reported that on one occasion his wife threw hot coffee on him. [REDACTED] repeated the petitioner's account of his wife's throwing things and telling him he could not go out. [REDACTED] concluded that the petitioner's wife's behavior undermined his mental health and led to his severe depression. [REDACTED] further stated that the petitioner's "mental illness is solely related to this trauma." However, this conflicts with [REDACTED] January 26, 2011, evaluation in which she attributed the petitioner's symptoms to the threat of deportation, inadequate mental health care services, and his untreated mental illness as well as his wife's behavior.

When viewed in the aggregate, the relevant evidence submitted below and on motion fails to demonstrate that the petitioner's wife subjected him to battery or extreme cruelty during their

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marriage. The petitioner and [REDACTED] fail to describe any abuse in probative detail. Furthermore, the non-physical behavior described by the petitioner and [REDACTED] does not constitute extreme cruelty, as defined at 8 C.F.R. § 204.2(c)(1)(vi). The relevant evidence in this case fails to demonstrate that the petitioner's 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.

#### *Good Moral Character*

Beyond the prior decisions of the director and the AAO,<sup>1</sup> the record also fails to demonstrate that the petitioner is a person of good moral character. On motion, the petitioner asserts that he is honest and has no criminal record, but he has not provided the requisite evidence of his good moral character. The petitioner failed to provide 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 three-year period immediately preceding the filing of the self-petition as required under 8 C.F.R. § 204.2(c)(2)(v). He also failed to provide an explanation of why said background checks were not provided. *Id.* As such, the petitioner has failed to demonstrate that he is a person of good moral character as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

#### *Conclusion*

On motion, the petitioner has not established that his wife subjected him to battery or extreme cruelty during their marriage. In addition, the petitioner also has not established that he is a person of good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act.

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; *Matter of Chawathe*, 25 I&N Dec. 369 at 375. Here, that burden has not been met. Upon reopening, the prior decision of the AAO will be affirmed. The appeal will remain dismissed and the petition will remain denied.

**ORDER:** The appeal remains dismissed and the petition remains denied.

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<sup>1</sup> A 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 (9th Cir. 2003).