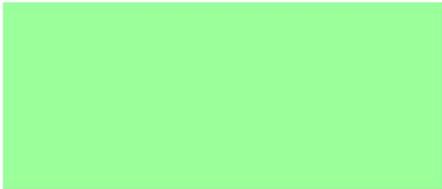




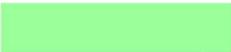
U.S. Citizenship
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Services

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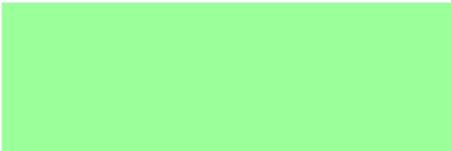
Date: **SEP 25 2014**

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:

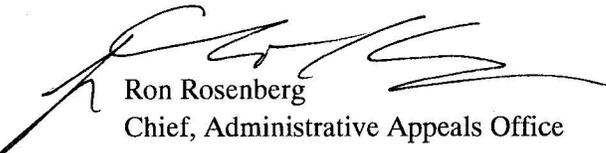


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
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 for failure to establish the petitioner’s good moral character and that the petitioner’s former spouse subjected him to battery or extreme cruelty. The petitioner, through counsel, submits a brief and other evidence on appeal.

Relevant Law and Regulations

Section 204(a)(1)(A)(iii)(I) 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).

An alien who has divorced an abusive 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 further 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 for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated 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 or the self-petitioner's child, 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.

The evidentiary guidelines for a self-petition under section 204(a)(1)(A)(iii) of the Act are further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

(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.

Section 101(f) of the Act, 8 U.S.C. § 1101(f), states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

* * *

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraphs (A) and (B) of section 212(a)(2) of the Act. . . if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period

The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character. . . .

As referenced in section 101(f)(3) of the Act, section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. section 1182(a)(2)(A)(i)(I) includes, “any alien convicted of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.”

Facts and Procedural History

The petitioner, a citizen of Pakistan, last entered the United States on August 19, 1998 as an F-1 nonimmigrant student. On August 2, 2004, he married H-G-¹, a United States citizen, in Maryland and they divorced on November 1, 2012.² The petitioner filed the instant Form I-360 self-petition on December 20, 2012. The director subsequently issued a Request for Evidence (RFE) of the petitioner's good moral character and a Notice of Intent to Deny (NOID) because the evidence in

¹ Name withheld to protect the individual's identity.

² The petitioner indicates that he is divorced. However, he has not submitted a final divorce decree for the record. Public records for the district court of Maryland show that the petitioner was divorced from H-G- on November 1, 2012.

the record was insufficient to establish the requisite battery or extreme cruelty and because the petitioner was convicted of a crime involving moral turpitude and failed to submit evidence of his entire criminal record. The petitioner, through counsel, timely responded with a rebuttal letter and additional evidence which the director found insufficient to establish his eligibility. The director denied the petition and the petitioner appealed.

We review these proceedings *de novo*. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon a full review of the record as supplemented on appeal, the petitioner has not overcome the director's grounds for denial. Beyond the director's decision, the petitioner has also not established that he had a qualifying relationship with his former spouse and is eligible for immediate relative classification based upon that relationship. The appeal will be dismissed for the following reasons.

Good Moral Character

On January 23, 2002, the petitioner was convicted in the District Court of Maryland for [REDACTED] County, of Theft \$500 Plus Value, a felony violation of former article 27, section 342(a) of the Maryland Annotated Code. At the time of the applicant's offense, a conviction under this provision required that the offender:

...willfully or knowingly obtain control which is unauthorized or exerts control which is unauthorized over property of the owner, and: (1) has the purpose of depriving the owner of the property; or (2) willfully or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or (3) uses, conceals, or abandons the property knowing the use, concealment, or abandonment probably will deprive the owner of the property.

MD. ANN. CODE ART. 27, § 347 (2002).

This statute categorically involves moral turpitude because all subsections of the law punish willful or knowing actions intended to permanently deprive the owner of his or her property. See *Prudencio v. Holder*, 669 F.3d 472, 484-485 (4th Cir. 2012) (applying first the categorical approach to determine whether a crime involves moral turpitude). See also *Matter of Jurado*, 24 I&N Dec. 29, 33 (BIA 2007) (finding the intent in retail theft to permanently deprive the owner and noting, "It is well settled that theft or larceny offenses involve moral turpitude."). The petitioner's conviction for a crime involving moral turpitude bars a finding of his good moral character under section 101(f)(3) of the Act.

For his theft conviction, the petitioner was sentenced to 18 months of probation before judgment, 40 hours of community service, and criminal costs. Under section 6-220 of the Maryland Code of Criminal Procedure, successful completion of probation before judgment results in no conviction under Maryland state law. However, the petitioner's offense still constitutes a conviction for immigration purposes under section 101(a)(48)(A) of the Act, which requires only the adjudication of guilt and/or plea of guilty or nolo contendere by the offender combined with a judge's imposition of some form of punishment, penalty, or restraint on the alien's liberty. In this case, the trial docket shows that though the petitioner initially pled not guilty, a guilty verdict was later entered in

conjunction with probation before judgment and he was sentenced to punishment in the form of 18 months of probation, 40 hours of community service and criminal costs. Consequently, the petitioner's theft offense constitutes a conviction under section 101(a)(48)(A) of the Act.

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) is perpetuating an injustice done by the petitioner's public defender by denying the instant petition primarily for a crime the petitioner "clearly did not commit." Inasmuch as the petitioner and counsel aver his lack of culpability, we cannot look behind the petitioner's conviction to reassess his guilt or innocence. See *Matter of Rodriguez-Carrillo*, 22 I&N Dec. 1031, 1034 (BIA 1999) (unless a judgment is void on its face, an administrative agency cannot go behind the judicial record to determine an alien's guilt or innocence); *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1974) (same). Counsel adds that he is "in the process of reopening" the petitioner's felony theft conviction based on the lack of informed consent and competent legal representation, and that he expects a result within six months. Regardless of the outcome of counsel's efforts, the petitioner's conviction for a crime involving moral turpitude is only one factor for which the Form I-360 self-petition was and will remain denied.

Counsel claims that a Maryland Police Clearance shows no other police contact that would adversely reflect upon the petitioner's moral character and the petitioner stated on appeal that since his theft conviction he has had "only a Driving Under the Influence Pbj conviction." Counsel does not address this subsequent conviction and the petitioner has not described the offense, submitted a final disposition or explained his attempts to obtain one. Public records for the district court of Maryland show that the petitioner was arrested on August 23, 2007 and charged with: (1) Driving Vehicle While Under the Influence; (2) Driving Vehicle While Impaired by Alcohol; and (3) Driving Vehicle While Under the Influence Per Se. Counts one and three were subsequently *nolle prossed*, and on April 9, 2008, the petitioner pled guilty to Driving While Impaired by Alcohol, was convicted and sentenced to probation before judgment, a fine and costs.³

The police clearance also shows that the petitioner was arrested on December 10, 2004 by the [redacted] Police Department and charged with Assault in the Second Degree, for his actions on October 19, 2004. While the petitioner was subsequently found not guilty, public records for the district court of Maryland show that this is a result of H-G- invoking, on January 14, 2005, "marital privilege" which precludes a person from being compelled to testify against his or her spouse who is charged with a crime.⁴ The director identified the arrest as related to domestic violence and requested the related police and court records, but the petitioner has not discussed the incident or submitted any related police or court records.

In addition, public records for the district court of Maryland show that H-G- filed for and was granted a Temporary Restraining Order against the petitioner on November 21, 2006.⁵ A Final Protective Order was subsequently issued on November 29, 2006 and remained in effect against the

³ District Court for [redacted] County ([redacted] - Traffic System, citation number [redacted]

⁴ District Court for [redacted] County - Criminal System, case number [redacted]

⁵ District Court for [redacted] City - Civil System, case number [redacted]

petitioner through November 28, 2007. Neither the petitioner nor counsel has disclosed these events or submitted any explanation or documentation related to the protective order or the underlying offense for which it was issued.

Counsel asserts that “the USCIS looking past the normal three year look-back period for a Good Moral Character (or lack thereof) determination is totally unjustified and an overreach to exact an unjust and unjustified/unjustifiable result.” While the regulation at 8 C.F.R. § 204.2(c)(2)(v) requires evidence of the petitioner’s good moral character during the three years preceding the filing of the petition, the regulation does not limit the temporal scope of USCIS’ inquiry into the petitioner’s moral character because section 204(a)(1)(A)(iii) of the Act does not prescribe a time period during which a self-petitioner’s good moral character must be established. In this case, counsel acknowledges only the petitioner’s felony theft conviction while the petitioner himself admits to a subsequent conviction for driving under the influence. The petitioner does not, however, address the circumstances of this April 2008 conviction or submit related documents. The petitioner has also not acknowledged his December 2004 domestic violence arrest for assault in the second degree, and neither he nor counsel have acknowledged that a protective order was issued against the petitioner for a one-year period from November 29, 2006 to November 28, 2007. The petitioner’s lack of candor concerning his encounters with law enforcement subsequent to his 2002 conviction for a crime involving moral turpitude provided the director with reasonable cause to examine the entire record of the petitioner’s criminal history. *See Self-Petitioning for Certain Battered or Abused Spouses and Children*, 61 Fed. Reg. 13061, 13066 (Interim Rule Mar. 26, 1996) (USCIS may investigate the self-petitioner’s character beyond the three-year period when there is reason to believe that the self-petitioner lacked good moral character during that time).

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states, in pertinent part: “Primary evidence of the self-petitioner’s good moral character is the self-petitioner’s 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 has submitted two personal affidavits and the affidavit of one friend. In his first affidavit, the petitioner did not address his arrest and conviction history. In his second affidavit, submitted on appeal, the petitioner provides an account for one, but none of his three other arrests all of which occurred subsequent to his theft conviction. In addition, the petitioner has not submitted final dispositions for the offenses or explained his attempts to obtain them. The petitioner states that he is not guilty of the felony theft offense for which he was convicted, he did nothing wrong, and he blames a college roommate for the theft and the bad advice of a public defender for his conviction. Despite counsel’s contention to the contrary, the petitioner’s affidavit fails to establish that this offense was committed under extenuating circumstances. On appeal, the petitioner also submitted an affidavit from his friend, [REDACTED] Mr. [REDACTED] does not indicate that he has any knowledge of the petitioner’s criminal record and consequently, Mr. [REDACTED] has not demonstrated that he can knowledgeably attest to the petitioner’s good moral character as the regulation requires of supporting affiants at 8 C.F.R. § 204.2(c)(2)(v).

The petitioner has been convicted of a crime involving moral turpitude which bars a finding of his good moral character under section 101(f)(3) of the Act. The petitioner failed to submit complete

records of his criminal history and he did not acknowledge his three other arrests and the order of protection issued against him. While he discussed his theft offense, the petitioner did not express remorse or demonstrate rehabilitation. Rather, he asserted his innocence and blamed another individual for his conviction. The petitioner acknowledged his conviction for driving while impaired by alcohol but did not discuss the underlying circumstances. The record shows the petitioner's behavior fell below the standards of the average citizen and that he committed unlawful acts that adversely reflect upon his character. The record does not show that any of these acts were committed under extenuating circumstances. Consequently, the petitioner has not established his good moral character pursuant to section 101(f) of the Act and the regulation at 8 C.F.R. § 204(c)(1)(vii), (2)(v).

Battery or Extreme Cruelty

We find no error in the director's determination that the petitioner's former spouse did not subject him to battery or extreme cruelty, and the petitioner has not overcome this ground for denial on appeal. In the petitioner's first affidavit, dated December 17, 2012, he stated that he and H-G- lived together as husband and wife from August 2, 2004 to about June 1, 2011 and had what he thought was a terrific relationship. He recalled that they began having problems in late 2010 or early 2011, some of which were rooted in their inability to have children, and they attended family counseling. The petitioner stated that while he knew they had grown apart, he did not suspect H-G- had been unfaithful until he learned she was answering calls for a local dating and prostitution service. He recalled feeling astonished, emasculated and very angry as this behavior was so unlike H-G- and against his own religion and cultural beliefs. The petitioner stated that while suicide is against his religion, his anger was so great that he contemplated harming himself or H-G-. He explained that even after separating in June 2011, he believed that he and H-G- would reconcile but he learned in early to mid-2012 that she had conceived a child with a man connected to the questionable group, but the child died soon after her birth. The petitioner's affidavits do not demonstrate that his former spouse battered him, or that her behavior involved threatened violence, psychological or sexual abuse, or otherwise constituted extreme cruelty as defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi).

In response to the NOID, the petitioner submitted a psychological evaluation by [REDACTED] Ph.D. based on two meetings with the petitioner in September 2013. Dr. [REDACTED] described the petitioner's marriage to H-G- as "rocky from almost the beginning." He relayed the petitioner's claims that she was rude, unpredictable, abused substances, and recklessly spent tens of thousands of dollars of his money which kept the petitioner from returning to school because he had to work in order to support her. Dr. [REDACTED] also stated that H-G- called the police on several occasions, one for which the petitioner was "locked up" for domestic violence, but H-G- promptly bailed him out and on other occasions changed her complaint once police arrived. Dr. [REDACTED] statements concerning the marriage, as reported to him by the petitioner, are inconsistent with the petitioner's own statements that theirs "was the ultimate terrific relationship" until they started having problems in late 2010 or early 2011. The petitioner also did not discuss any of H-G-'s actions listed by Dr. [REDACTED] including domestic violence arrests or the protective order issued against him years before he claimed that he and H-G- began having problems.

Dr. [REDACTED] diagnosed the petitioner with major depressive disorder and generalized anxiety disorder and recommended that he seek treatment as soon as feasible. While we do not question Dr.

professional opinion, his assessment conveys the petitioner's statements to him, many of which are inconsistent with statements in the petitioner's own affidavits, and provides no further, probative information regarding the claimed abuse.

Counsel asserts on appeal that the director gave insufficient weight to the impact of H-G-'s infidelity on the petitioner given his religious and cultural background and submits a friend's affidavit and several articles about how adultery is viewed by Islam. In his affidavit states that he has known the petitioner for more than a decade, met H-G- when she and the petitioner were dating, attended their wedding and remained in contact. Mr. claims that the former couple was very much in love but had periodic arguments rooted largely in the differences they had in "religious and life perspectives, gender roles, and other issues rooted in their respective differing cultural and religious backgrounds." He states that over the last two or three years of their marriage, H-G- neglected the petitioner, stayed away from home, and engaged in "harassment, excessive domination over their relationship, and essentially invalidating [the petitioner] as a strong and worthy man." Mr. does not, however, describe any particular incident. He recalls that he learned in 2010 that H-G- engaged in one or more extramarital affairs and had gotten pregnant as a result. Mr. then posits that H-G- betrayed the petitioner in a way beyond the comprehension of any Muslim man and notes that in many parts of Pakistan a woman committing such acts would be punished to death and the husband shamed and socially damaged. Similarly, the articles submitted on appeal concerning Islam and adultery indicate that an unfaithful woman could be stoned to death or whipped with one hundred lashes.

We acknowledge that the petitioner's religious and cultural background affected his response to his former spouse's behavior. The petitioner's affidavit shows that he felt astonished, emasculated and very angry when he learned of H-G-'s extramarital affair and that she had conceived a child with another man. Dr. evaluation also shows that the petitioner's mental health was negatively impacted by H-G-'s infidelity. The preponderance of the evidence does not, however, establish that the petitioner's former spouse subjected him to battery or extreme cruelty during their marriage. The preponderance of the relevant evidence does not demonstrate that H-G- ever battered the petitioner or threatened him with violence, psychologically or sexually abused him, or otherwise subjected him to extreme cruelty as that term is defined in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). Accordingly, the petitioner has not shown that his former spouse subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Qualifying Relationship and Corresponding Eligibility for Immediate Relative Classification

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 and his corresponding eligibility for immediate relative classification pursuant to subsections 204(a)(1)(A)(iii)(II)(aa)(CC)(cc) and (cc) of the Act.

Conclusion

The petitioner has not overcome the director's grounds for denial on appeal. He has not demonstrated

his good moral character or that his former spouse subjected him to battery or extreme cruelty during their marriage. Beyond the director's decision, the petitioner has also not established a qualifying relationship with his former spouse and his corresponding eligibility for immediate relative classification based on such a relationship. Accordingly, the petitioner is ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act on these four grounds.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed and the petition will remain denied for the above-stated reasons.

ORDER: The appeal is dismissed.