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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: APR 19 2004
SRC 00 047 50442

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for Special Immigrant Battered 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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Elizabeth O'Brien
Robert P. Wiemann, Director
Administrative Appeals Office

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Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a 36-year old native and citizen of Syria who is seeking classification as a special immigrant 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 the battered spouse of a United States citizen.

The record reflects that the petitioner last entered the United States as a P-3 nonimmigrant on November 23, 1993. The petitioner was placed into removal proceedings on or about August 30, 2001. Citizenship and Immigration Services (CIS) records reflect that the next hearing in the case is scheduled for May 20, 2004.

The petitioner filed a Form I-360 claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his U.S. citizen spouse during their marriage.

The director initially denied the petition due to abandonment. Counsel for the petitioner filed a motion to reopen that was dismissed. Counsel filed a second motion to reopen that was granted and the petition was denied. The director determined that the petitioner failed to establish that he is eligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act. The director denied the petition, finding that the petitioner failed to establish that he was the spouse of a citizen or lawful permanent resident of the United States at the time of filing the Form I-360 petition. The director further determined that the petitioner failed to establish that he is eligible for immigrant classification based on his relationship to his wife. The director found that the petitioner failed to establish that he is a person of good moral character and that he entered into the marriage to the citizen in good faith.

On appeal, counsel submits a brief and additional evidence.

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, who is a person of good moral character, who is eligible to be classified as an immediate relative, and who has resided with his spouse, may self-petition for immigrant classification if the alien demonstrates to the Attorney General that—

> (aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and
>
> (bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

The regulation at 8 C.F.R. § 204.2(c)(1)(i) states, in pertinent part, that:

> A spouse may file a self-petition under section 204(a)(1)(A)(iii) or 204(a)(1)(B)(ii) of the Act for his or her classification as an immigrant relative or as a preference immigrant if he or she:
>
> > (A) Is the spouse of a citizen or lawful permanent resident of the United States;
> >
> > (B) Is eligible for immigrant classification under section 201(b)(2)(A)(i) or 203(a)(2)(A) of the Act based on that relationship;
>
> * * *

> (D) Has resided . . . with the citizen or lawful permanent resident spouse;
>
> (E) Has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage;
>
> (F) Is a person of good moral character; [and]
>
> * * *
>
> (H) Entered into the marriage to the citizen or lawful permanent resident in good faith.

The director denied the petition, in part, because the petitioner was no longer married to a citizen spouse at the time of the filing of the Form I-360 petition.

According to the evidence on the record, the petitioner wed his first wife on June 9, 1997 in Florida. The petitioner's first marriage was terminated on November 2, 1999.[1] The petitioner filed the Form I-360 petition on November 22, 1999, 20 days after his divorce was final. The petitioner indicated on the Form I-360 that he was still married to his first wife. According to the court documents in the file, the petitioner initiated divorce proceedings against his first wife.

At the time the petitioner filed the Form I-360 petition, the pertinent regulation at 8 C.F.R. § 204.2(c)(1)(ii) provided:

> The self-petitioning spouse must be legally married to the abuser when the petition is properly filed with the Service. A spousal self-petition must be denied if the marriage to the abuser legally ended through annulment, death, or divorce before that time. After the self-petition has been properly filed, the legal termination of the marriage will have no effect on the decision made on the self-petition.

On October 28, 2000, the President approved enactment of the Violence Against Women Act, 2000, Pub. L. No. 106-386, Division B, 114 Stat. 1464, 1491 (2000). Section 1503(b) amends section 204(a)(1)(A)(iii) of the Act so that an alien self-petitioner claiming to qualify for immigration as the battered spouse or child of a United States citizen is no longer required to be married to the alleged abuser at the time the petition is filed as long as the petitioner can show a connection between the legal termination of the marriage within the past 2 years and the battering or extreme cruelty by the United States citizen spouse. *Id.* Section 1503(b), 114 Stat. at 1520-21. Pub. L. 106-386 does not specify an effective date for the amendments made by section 1503. This lack of an effective date strongly suggests that the amendments entered into force on the date of enactment. *Johnson v. United States*, 529 U.S. 694, 702 (2000); *Gozlon-Peretz v. United States*, 498 U.S. 395, 404 (1991). If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. *Matter of George and Lopez-Alvarez*, 11 I&N Dec. 419 (BIA 1965); *Matter of Leveque,* 12 I&N Dec. 633 (BIA 1968). Considering the Form I-360 petition under the 2000 amendments to the Act, the petitioner has not overcome the objection of the director to approve the petition.

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[1] The evidence in the record includes a copy of a Judgment of Dissolution of Marriage effective on November 2, 1999.

Although the divorce of the two parties prior to the filing of the Form I-360 petition is no longer a bar, the petitioner has not established a connection between the legal termination of his first marriage and battering or extreme cruelty by his first spouse as required by the statute. Section 204(a)(1)(A)(iii)(II)(aa)(CC)(ccc), 8 U.S.C. § 1154 (a)(1)(A)(iii)(II)(aa)(CC)(ccc). Nonetheless, the petitioner's remarriage is a separate basis for the denial of a pending self-petition. 8 C.F.R. § 204.2(c)(1)(ii).

The director denied the petition, in part, finding that the petitioner had failed to establish that he is a person of good moral character. This portion of the director's decision will be withdrawn. The director noted that the petitioner had previously submitted a Biographic Information Sheet (Form G-325A) that he had signed under penalty of perjury that contained numerous discrepancies regarding his residences. The director further noted that the petitioner did not submit police clearances from all of the locations where he had lived.

On appeal, counsel for the petitioner asserts that the previous attorney of record was responsible for providing the erroneous information and that the petitioner's affidavit dated January 22, 2002, clarified all residence discrepancies. As further evidence of the petitioner's good moral character, counsel submitted a credit report, an Employer's Quarterly Federal Tax Return for the petitioner's business and an Escambia County Sheriff's Office record showing that the petitioner had been arrested on February 9, 2001 for making harassing phone calls and evidence of the final disposition of the charge.

The regulation at 8 C.F.R. § 204.2(c)(1)(i)(F) requires the petitioner to establish that he is a person of good moral character. Pursuant to 8 C.F.R. § 204.2(c)(2)(v), 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 for 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 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.

In a request for additional evidence on April 12, 2000, the director instructed the petitioner to submit evidence of his good moral character, including his own affidavit supported by police clearances from each place that he had resided for at least six months during the three-year period prior to filing the petition. The petitioner submitted copies of arrest and court records from Escambia County, Florida. The evidence on the record indicates that the petitioner was cited for traffic violations and was arrested on February 9, 2001 in Escambia County, Florida and charged with making threatening phone calls to his second wife's mother. (Case # [redacted] charged with one count of violating Florida Statutes § 365.1b). According to the Pensacola Police Department offense report [redacted] the petitioner phoned his mother-in-law, demanding the location of her daughter and when the mother-in-law refused to tell him her daughter's whereabouts, the petitioner exclaimed, "if you call the police or immigration, I'll shoot you." The petitioner completed a Pretrial Diversion Program; hence the offense was dismissed August 11, 2001 as a nolle prosequi. [redacted]

The petitioner filed the Form I-360 petition on November 22, 1999. On the Form I-360, the petitioner indicated that he was married to his first wife at the time of the filing of the petition. According to the evidence on the record, the petitioner had commenced divorce proceedings against his first wife and the marriage was terminated on November 2, 1999, 20 days before the filing of the instant petition. The documentation submitted contradicts the Form I-360 that the petitioner signed under penalty of perjury.

In review, the petitioner submitted police clearances for all residences prior to and including his residence as of the date of filing, thereby establishing that he is a person of good moral character.

The third issue to be addressed in this proceeding is whether the petitioner established that he had entered into the marriage to his first United States citizen wife in good faith.

The regulation at 8 C.F.R. § 204.2(c)(1)(ix) states, in part:

> *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.

The petitioner wed his first United States citizen wife on June 9, 1997 in Florida. According to the evidence on the record, the petitioner's wife has an extensive criminal record. The petitioner's first wife filed a Form I-130 on behalf of the petitioner on June 16, 1997, one week after they wed. On February 10, 1998, the petitioner's first wife withdrew the Form I-130 petition. On February 19, 1998, the petitioner contacted the police to intervene in a domestic incident. The petitioner initiated divorce proceedings against his first wife and the marriage was terminated on November 2, 1999. The petitioner filed a Form I-360 self-petition on November 22, 1999. The petitioner indicated that he was married at the time he filed the Form I-360. The petitioner wed his second United States citizen wife, on January 10, 2000 in Kingsland, Georgia. The petitioner's second wife filed Form I-130 petition on April 13, 2000 and withdrew the petition on April 23, 2001. According to the evidence on the record, the petitioner's second wife stated that she had never lived with the petitioner.

The facts suggest that the second marriage may have been entered into for the purpose of obtaining an immigration benefit. While that marriage is not the basis for the current petition, it suggests that the petitioner may have come to the United States with the intention of entering into a marriage with a United States citizen for the primary purpose of obtaining an immigration benefit, i.e., permanent resident status; thereby seeking to circumvent the immigration laws. A marriage entered into for the primary purpose of circumventing the immigration laws is not recognized for the purpose of obtaining immigration benefits. *Matter of Laureano*, 19 I&N Dec 1 (BIA 1983).

More significantly, the petitioner failed to submit sufficient evidence to establish the bona fides of his first marriage. 8 C.F.R. § 204.2(c)(2)(vii). The record has not established a commingling of funds and assets or joint financial liabilities, or other objective evidence to indicate that the petitioner and his first wife intended to establish a life together.

Beyond the decision of the director, the petitioner's remarriage to his second wife is a basis for the denial of a pending self-petition. 8 C.F.R. § 204.2(c)(1)(ii). The 2000 amendments did not change or negate this portion of the regulation.

Beyond the decision of the director, the petitioner has failed to establish that he was battered by or subjected to extreme cruelty by his citizen wife. The regulation at 8 C.F.R. § 204.2(c)(1)(i)(E) requires the petitioner to establish that he has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage; or is the parent of a child who has been battered by, or has been the subject of extreme cruelty perpetrated by, the citizen or lawful permanent resident during the marriage.

The regulation at 8 C.F.R. § 204.2(c)(1)(vi) states, in pertinent part:

> *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 . . . 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 or lawful permanent resident spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

The qualifying abuse must have been sufficiently aggravated to have reached the level of "battery or extreme cruelty." 8 C.F.R. § 204.2(c)(1)(vi).

In review, the evidence is insufficient to establish that the petitioner was subjected to battery or extreme cruelty by his United States citizen wife. The evidence consists of the following:

- The petitioner's statements in his affidavit and on the Notice of Appeal, Form I-290B.
- A Santa Rosa County Sheriff report that provides that on February 19, 1998, the petitioner reported that his first wife punctured the tire of their car and pointed a knife at him.

It is noted that the petitioner failed to submit reports and affidavits from counselors, or social workers. The sheriff's report involves a single incident. The petitioner did not allege that there was more than one incident of domestic violence. The petitioner failed to submit evidence that he sought psychological or medical treatment for any abuse he endured. He did not submit evidence that he sought refuge in a shelter or elsewhere. He did not provide CIS with photographs of injuries. 8 C.F.R. § 204.2(c)(2)(iv). He did not allege he sustained any injuries, physical or mental. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

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 met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.