U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

B9

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:
EAC 01 207 54477

MAY 17 2004

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]

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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'Brie

Robert P. Wiemann, Director
Administrative Appeals Office

PUBLIC COPY

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 native and citizen of Germany 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 was placed into removal proceedings on or about June 26, 1966. Removal proceedings were terminated on November 21, 1996. The record further reflects that the petitioner wed a United States citizen on October 24, 1996. The petitioner's wife filed a Form I-130 petition and withdrew it on June 29, 1999. On June 15, 2001, 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 denied the petition, finding 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. The director further determined that the petitioner failed to establish that he had been battered by, or had been the subject of extreme cruelty perpetrated by his citizen spouse.

On appeal, counsel submits a statement and requests an additional 60 days to submit a brief and additional evidence. More than nine months have lapsed since the date of the filing of the appeal and nothing more has been submitted for the record.

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 failed to establish that he is a person of good moral character.

According to Citizenship and Immigration Services (CIS) records, the petitioner was arrested on September 13, 1993 in Santa Monica, California and charged with possession of a controlled substance and stalking (Santa Monica CA0196500). The record indicates that the petitioner was arrested again in December 1994 in Las Vegas, Nevada and charged with possession of controlled substance for sale and conspiracy to violate the Controlled Substance Act (Las Vegas NV0020100). In 1996, the petitioner pled guilty to possession of a controlled substance and was given a deferred adjudication and three years probation (NVC135268).

The director determined that the record was insufficient to establish that the petitioner was a person of good moral character. On August 15, 2001, the director requested the petitioner to submit evidence of his good moral character. The director suggested that the petitioner submit his own affidavit supported by police clearances from each place he had resided for at least six months during the three-year period preceding the filing of the petition. The director further requested the final disposition of each charge filed against the petitioner, including a domestic violence charge made by the petitioner's wife against the petitioner.

In response to the request for additional evidence, the petitioner requested additional time to respond. The petitioner's request was granted. The petitioner made a second request for additional time to submit evidence and was denied. The petitioner failed to submit police clearances and final dispositions of charges filed against him. The petitioner has not overcome the director's objection to approving the petition.

The director denied the petition, in part, finding that the petitioner failed to establish that he entered into the marriage in good faith. The director requested additional evidence to establish that the petitioner entered into the marriage in good faith. The director suggested the types of evidence that might establish that he married his citizen wife in good faith. The petitioner did not respond to the request. The evidence is insufficient to establish that the petitioner married his wife in good faith.

The director denied the petition, in part, finding that the petitioner had failed to establish that he had been battered or subject to extreme cruelty by his wife during their marriage. The director requested additional evidence, but the petitioner failed to respond.

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 on the record consists of the following:

- A letter written by the petitioner's friend and client stating that she had witnessed the petitioner's wife verbally abusing the petitioner and threatening him with deportation.

- The petitioner's timeline outlining the history of his relationship with his citizen wife.

It is noted that the petitioner failed to submit reports and affidavits from counselors, or social workers. 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).

Beyond the decision of the director, the petitioner indicated that he and his citizen wife had divorced but did not state when they divorced. If they divorced more than two years prior to the filing of the instant petition, this would be another basis for denying the petition.

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.