B9

U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: JUN 16 2004
EAC 02 197 51708

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:

SELF-REPRESENTED

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

Identifying data deleted to prevent clearly unwarrante invasion of personal privacy

PUBLIC COPY

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center. The director denied the petition, finding that the petitioner had failed to establish that he had entered into the marriage to his United States citizen in good faith. The director's decision was appealed to the Administrative Appeals Office (AAO).[1]

The petitioner is a native and citizen of Iran 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 citizen of the United States. The record of proceeding contains evidence that the petitioner was placed in exclusion proceedings on July 30, 1992 and that the proceedings were terminated on January 20, 1993. He was placed in removal proceedings in November 2001 and an individual hearing is scheduled for June 17, 2004.

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 or her 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;

[1] The AAO notes that it is treating the petitioner as self-represented as he has submitted this appeal without the assistance of counsel. We note that the petitioner has been previously represented by two different counsel in connection with his I-360. His first counsel, Molly C. Curtis, represented the petitioner in connection with the filing of the I-360 in May of 2002. Ms. Curtis submitted a letter in June of 2003 indicating that she no longer represented the petitioner and that future correspondence should be sent directly to the petitioner. However, between the times of these submissions, a different attorney, Haleh Mansouri, filed a G-28, albeit on a white copy of the official G-28. The last indication that CIS had that Mr. Mansouri was representing the beneficiary, was in November 2003. Because the petitioner has elected to pursue the appeal without the assistance of counsel, we will treat him as self-represented with respect to the appeal.

(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.

Background

As noted in the director's decision, the petitioner has an extensive immigration history. Because the decisions of the director and the AAO on the instant petition depend, in part, on representations made in previous immigration matters, the AAO will relate pertinent facts from the petitioner's immigration history. The record reflects that the petitioner entered the United States on a K-1 visa, as the fiancé of a United States citizen on March 9, 1999. Prior to that admission, Citizenship and Immigration Services (CIS) records reflect that the petitioner's U.S. citizen wife filed three separate petitions on behalf of the petitioner. The first was a Form I-130 Petition for Alien Relative filed with the California Service Center (CSC) on August 1, 1997, (WAC9722550376) which was denied for failure to submit a copy of a marriage certificate issued by civil authorities.[2] The second was Form I-129F Petition for Alien Fiancé filed with the CSC on February 3, 1998, (WAC9808952015) seeking to have the petitioner admitted as a fiancé. The CSC denied the petition on May 20, 1998 for failure to submit evidence of termination of the first marriage of the U.S. citizen spouse, despite two separate requests being made for such evidence.[3] The third petition in the form of another I-129F was filed at the CSC on July 9, 1998. (WAC9819851451). It appears from the record that information relating to the termination of the previous marriages of both the petitioner and the U.S. citizen spouse was provided, and the petition was approved on September 25, 1998, following the receipt of the additional information.[4]

---

[2] Instead of submitting the requested civil marriage certificate, the parties submitted a certificate of marriage recorded by the Islamic Culture Center of Northern California. In addition, while the I-130 noted a previous marriage by the U.S. citizen spouse, it failed to indicate any prior marriage by the petitioner, and no such marriage was reflected on the Form G-325A Biographic Information sheet executed by the petitioner. In connection with the petition, the CSC requested proof of the legal termination of the citizen spouse's marriage. While the decision of the CSC indicates that such evidence was provided, it appears that this conclusion was in error, as the document submitted was merely a copy of the petition for divorce filed by the former spouse.

[3] The Form I-129 and the G-325A executed by the petitioner, likewise reflect no prior marriages for the petitioner.

[4] Once again, the Form G-325A executed by the petitioner did not indicate his prior marriage, but it appears that at some point during the processing at the consulate, he was asked for, and provided information relating to his first marriage. The record also contains an untranslated German document, which, from subsequent submissions of the petitioner purports to be the German decree terminating the petitioner's marriage to his German spouse. It is noted, further, that the petitioner was asked to execute Form 156K Supplement to Form OF 156, which he did, on November 18, 1998. On that form, he indicated that he had no minor children, though later in subsequent filings he indicated that he has two children; the decree of divorce from his first wife, also submitted by the petitioner, assuming it relates to him, and that the later translation is correct, indicates the existence of a child of the petitioner and his first wife. The AAO additionally notes that the divorce decree bears a translation certificate that appears not to conform to the regulatory

Following the petitioner's admission to the United States on the K-1 visa, he and the citizen spouse were married on March 17, 1999, in Contra Costa County, California.[5] On March 22, 1999, the petitioner filed Form I-485 with the San Francisco District, seeking to adjust his status to Lawful Permanent Resident based upon his marriage to a U.S. citizen. On February 24, 2000, the district director denied the petition due to the petitioner's failure to submit required documents. Specifically, the decision noted that the petitioner had been requested in September 1999 to submit the original or court certified copies of the records related to the May 11, 1999 arrest, as well as a copy of the final divorce decree from his first wife, with a certified translation.[6] The decision noted that although the petitioner had been given twelve weeks to submit the documentation, the documents were not submitted, and consequently the petition was denied.

Following the denial, the petitioner filed for asylum on two separate occasions. The first filing was on March 2000, and the second, filed in April 2001, shortly after the denial of the first application in January of that year. Following the issuance of the asylum decisions, the petitioner's counsel, on May 22, 2002, filed a self-petition on behalf of the petitioner claiming eligibility as a special immigrant alien who has been battered by, or has been the subject of extreme cruelty perpetrated by, his citizen spouse during their marriage.

The petition was accompanied by extensive exhibits, including identification and marriage records relating to the petitioner and his citizen spouse, copies of police reports by the petitioner to the Pittsburg, California Police Department, numerous declarations from witnesses regarding the petitioner's marriage and relationship with the U.S. citizen spouse, medical reports pertaining to the petitioner's mental state, certificates of non-existence of records from the Los Angeles County Sheriff's Department, and the Contra Costa County Coordinated Trial Courts, and a photograph of the petitioner and his citizen spouse.

Deficiencies Noted in the Service Center's Request for Evidence

On June 9, 2003, the Service Center issued a Form I-797, Request for Additional Evidence (RFE). The RFE sought additional evidence from the petitioner, noting that the petition was deficient in several respects. First, the RFE noted that although the evidence submitted by the petitioner included affidavits attesting to verbal, physical, and sexual abuse imposed by the U.S. citizen wife, none of the affidavits provided specific instances of battery/extreme cruelty as witnessed by the affiants. In addition, the record reflected that the petitioner was arrested for inflicting corporal injury on his spouse, and though it appeared no charges were pursued, the U.S. citizen spouse had received a three-year-protective order from the courts, thus casting doubt on the petitioner's claim of being the abused party. Second, the RFE noted that although psychological evaluations

---

requirements of 8 C.F.R. § 103.2(a)(3). (See text of this regulation at p. 9 of this decision.) The certificate of translation, which appears to be a stamp, contains no signature, and identifies no individual as the translator, merely states, "Department of German University of Southern California." This same certificate of translation appears on another important document in the record, namely, the translation of a provision of German law regarding how permanent resident status is terminated in Germany, offered by the petitioner to rebut a finding by the asylum office that he had been firmly resettled in Germany.

[5] The record contains a letter dated February 20, 2004 from the Islamic Cultural Center of Northern California, stating that the previous religious minister performed a religious ceremony on June 21, 1997. The marriage license, however, was issued on March 16, 1999, and the civil marriage took place the following day, on March 17, 1999.

[6] The petitioner had indicated in the I-485 that he had no arrests, which was correct at the time of filing. However, it appears that information subsequently came to the attention of CIS regarding the petitioner's arrest. Consequently, at the interview the arrest was admitted, as was the existence of his children, not previously disclosed. It was following the admission that he was asked to submit supplemental information regarding his arrests and his divorce from his German wife.

indicated that the petitioner was diagnosed with Post Traumatic Stress Disorder (PTSD), the record also reflected that the petitioner had filed asylum applications relating to fleeing from Iran after being sentenced to death, and experiencing acts of persecution in Iran and Germany. Thus, the RFE noted that the record was unclear whether the source of the petitioner's illness was due to his wife's actions, or to the claimed acts of persecution. Third, the RFE noted that the record reflected that the petitioner had submitted false information to CIS on numerous occasions. Specifically, the petitioner had submitted a marriage certificate reflecting no previous marriages, but additional records in the petitioner's file reflected the petitioner's prior marriage in Germany; the petitioner's asylum applications claimed that he had only held student status in Germany, but it was later revealed that he had been granted asylum in Germany; the petitioner had indicated on the adjustment of status application filed December 2, 2001, that he was not in removal proceedings, but the file reflected that petitioner was placed in removal proceedings the previous month, or November, 2001.

The RFE requested that the petitioner supply additional information regarding the issues identified. On the issue of whether the petitioner had suffered battery or extreme cruelty, the Service Center requested one or more of the following: 1) reports or affidavits from others, including police, judges, court officials, medical personnel, counselors, social workers, or other social service agency personnel, or school officials. On the issue of the petitioner'spousal abuse arrests and subsequent protective order, the petitioner was asked to submit all available police and court documentation regarding the incidents, as well as a statement in his own words detailing each incident and the circumstances that led to the arrests.[7] The RFE also noted that the police clearances submitted by the petitioner were not satisfactory as the record reflected that the petitioner had used additional names. The RFE requested that the petitioner submit clearances relating to all names and dates of birth used. It further suggested that the State of California provide clearances. Finally, the RFE noted that the record did not contain sufficient evidence indicating that the petitioner had married his wife in good faith, and requested additional evidence as to this issue.

The Petitioner's Response to the RFE

The petitioner's then counsel, Haleh Mansouri, submitted a response on November 13, 2003 with many of the same exhibits, but numerous additional exhibits. The petitioner's basic response was contained in his lengthy statement which sought to address the various issues raised in the RFE through his own statements and/or reference to additional exhibits. The petitioner's affidavit addressed various issues. On the issue of the petitioner's status as an abused spouse, the petitioner stated that he had been under his wife's control since his arrival in the United States in 1999, and that he had suffered abusive and controlling behavior of both a physical and mental nature. (Affidavit at p. 2). The petitioner described instances of verbal mistreatment in front of friends, including letters of such friends, and noted that the wife sought to use him as a sex slave, and made threats regarding his immigration status, as a means of obtaining control over the petitioner. (Affidavit at p. 3). As evidence supporting his claim to be a battered spouse, the petitioner included various letters and evaluations submitted by doctors, psychologists, and social workers, from September 2001, to July 2003, relating their evaluations of the petitioner following his self-reports of abuse at the hands of his U.S. citizen spouse, and his reports of persecution experienced in Iran and Germany. (See various letters and reports

[7] It appears that the Service Center was under the belief that the petitioner had been arrested on two occasions for spousal abuse. The petitioner's submissions clarified that of his two arrests, one was for spousal abuse, and the second was related to an assault by the petitioner on another student at a university dormitory.

contained in Exhibit C). In addition, the petitioner submitted various letters from friends who claimed to have witnessed or been told of instances of abuse of the petitioner by his U.S. citizen spouse.

On the issue regarding the petitioner's own abuse of his spouse, counsel offered the petitioner's affidavit providing a markedly different version of the circumstances leading to the petitioner's arrest than that contained in the police report. The petitioner's affidavit indicated that the U.S. citizen spouse had confronted the petitioner upon his return from a weekend trip to Los Angeles, accusing him of planning to leave her in order to marry a younger woman and practice as a medical doctor in Los Angeles. She allegedly then grabbed his hand and bit his finger, in an attempt to maim him, according to the petitioner. (Affidavit at pp. 4-4A). The petitioner stated in the affidavit that he was subsequently arrested due to his wife's false accusation. According to the affidavit, the petitioner's wife dropped all of the charges in court on May 13, 1999, and the case was dismissed on June 17, 2002 because the District Attorney concluded that the U.S. citizen wife was not credible. The evidence submitted on this point were two letters from the petitioner's own criminal attorney. The first letter, dated June 14, 2002, indicated that district attorney agreed to dismiss the case based on the passage of time and the alleged questionable credibility of the victim. The letter indicated that the case would likely be dismissed at a subsequent court hearing later that month and that a certified copy of the court's minute order would be sent. The petitioner submitted a copy of the subsequent letter from counsel indicating that the matter had been dismissed, and attaching a copy of a minute order reflecting the dismissal. The petitioner explained the existence of the restraining order obtained by his wife by stating that he was not sufficiently familiar with American law and did not realize its potential negative effect upon him, and thus did not contest it. (Affidavit at p. 4B).

Finally, with respect to the issue of the whether the petitioner entered into the marriage in good faith, the petitioner relied upon the affidavits and letters from friends, as well as letters submitted by the U.S. citizen wife to immigration authorities. (See Exhibit D). The petitioner explained that despite his best intentions, he had not established any commingled assets with his wife because the wife wanted to continue to receive public benefits, and because of the short duration of the marriage. (Affidavit at p. 4B).

The Service Center's Decision

Following receipt of the petitioner's extensive submission, the director issued a decision on January 9, 2004, in which he found that the petitioner had established eligibility as to all requirements except the requirement of demonstrating that he had entered into the marriage to the citizen or permanent resident in good faith. After noting that the petitioner had submitted extensive documentation, the director noted that numerous inconsistencies were present, including the petitioner's representation in his adjustment of status application of December 2001 that he had never been in removal proceedings, when in fact, he had been placed in such proceedings the previous month; the petitioner's submission of the marriage certificate to his U.S. citizen wife which failed to disclose his prior marriage in Germany; and the contradictory information regarding the issue of whether the petitioner was an abused spouse or an abuser. Because of the inconsistencies in the petitioner's submissions, the director determined that the petitioner's own statements were not credible. The director further noted that the affidavits submitted on his behalf were not sufficiently detailed to enable a finding of a good faith marriage. (Decision at pp. 2-3). In addition, the director noted no evidence other than the petitioner's statements regarding his intention to support his wife by establishing joint accounts,

statements, taxes, or other objective indicators of an intention to establish joint finances with his wife. The director concluded that as a result of these deficiencies, the petitioner had not submitted sufficient evidence to demonstrate that the marriage had been entered into in good faith. (Decision at p. 3).

The Appeal

The petitioner filed a self-represented appeal from the director's decision on or about February 9, 2004. The petitioner submitted a statement with the appeal and requested an additional period of 60 days to submit a brief or additional evidence to the AAO, and requested oral argument. The case is not so complex that it cannot be decided on the record and the request for oral argument is denied under the provisions of 8 C.F.R. § 103.3(b).

The petitioner's statement indicated that the lack of evidence of commingled funds or accounts was due to the short duration of the marriage which lasted only seven weeks. (Statement in Support of Appeal dated February 6, 2004). The petitioner indicated with the additional time requested, he would be able to demonstrate through a letter from Bank of America that he had opened "a joint account number...and with Fund [sic] of that account support the household during early months of my arrival to the United States of America." In addition, the petitioner noted that he would be submitting a statement from Dresdner Bank in Germany "which indicate that I paid for food and grocery and another [sic] expenses with my Visa Card...." (Statement at pp. 1-2). The petitioner also asserted that he would provide a letter from the Islamic Culture Center as evidence of a religious wedding on June 21, 1997, before the legal marriage on March 17, 1999, thus, according to the petitioner, indicating a good faith marriage. According to the petitioner, it was only the citizen spouse's cruelty toward him that prevented them from commingling assets and providing further evidence of a relationship. The petitioner stated that although the director's decision noted that there had been two arrests of the petitioner for battery on the petitioner, it had, in fact, only been one arrest for that reason. The other arrest was an arrest of the petitioner for a dispute with another student which did not result in any charges or an arrest report. (Statement at p. 3).

The additional documentation was received on or about March 15, 2004. The evidence submitted consisted of the previous statements from the petitioner and some new documents addressed here, including letters from the Islamic Center, the petitioner's banks, letters and affidavits from petitioner's friends and relatives. The AAO does not find this evidence compelling on the issue of whether the petitioner entered into his marriage in good faith for the following reasons. First, the letter from the Islamic Cultural Center of Northern California verifies that a religious marriage was performed on June 21, 1997, by the then religious minister in accordance with the requirements of Islamic law. The letter goes on to state that, "in our estimation, it was a marriage entered into in good faith by both the respective parties." (Letter dated February 20, 2004). This letter, however, is of little value to a determination of the bona fides of the petitioner's marriage. First, the letter is written by the current Religious Director who apparently was not involved in performing the marriage and offers no personal basis for the determination that the marriage was entered in good faith. Second, the marriage was performed in June 21, 1997, at a time when the petitioner who had not entered the United States until 1999, was residing in Germany; thus, it is difficult to understand on what basis the conclusion regarding the good faith nature of the marriage was formed. Third, the letter makes no reference to the author's personal relationship, if any, with the petitioner or his spouse, upon which an opinion regarding the bona fides

of the marriage was reached, nor does it reference any other basis for this conclusion.[8] Although the petitioner offers the evidence of his marriage by the Islamic Cultural Center in 1997 as evidence of the bona fide nature of his marriage, the AAO is not so persuaded. The record reflects that the petitioner and his wife may have been under the impression that the religious ceremony may have entitled the petitioner to immigrate to the United States as the spouse of a U.S. citizen, as evidenced by the filing of the Form I-130 Petition for Alien Relative on August 19, 1997, described previously, which was denied upon the failure to submit required documentation. Consequently, the AAO is unconvinced that the evidence from the Islamic Center demonstrates the petitioner's entry into the marriage in good faith.

The next items submitted by the petitioner are letters from his German and U.S. banks which the petitioner had indicated would establish that he maintained accounts from which it would be clear that he was contributing to the household. These letters, however, do not establish such facts. The letter from the German bank, dated March 2, 2004, merely establishes that the petitioner had a Visa card issued on January 1, 1999 and had a "payment framework" of 10,000 euros, and that the petitioner has "paid only in the USA with this Visacard to this day." The letter establishes little with respect to the petitioner's finances with his wife or even whether the Visa card was used in any way to support the household, and thus adds little to the petitioner's appeal.[9] The petitioner also submitted correspondence he has exchanged with Bank of America in the United States. That correspondence likewise fails to establish anything meaningful with respect to the petitioner's good faith marriage. It simply relates the fact that at one point, the petitioner apparently had sought closure of an account on January 31, 2001. As the bank itself notes, it was unable to verify why the accounts were closed, but note that the petitioner's letter asserts that the accounts were closed because his previous wife was accessing his accounts by using his social security number. If anything, the letters indicate that the petitioner did not have common accounts with his wife. Consequently, the letters add nothing to the petitioner's assertion that he entered into his marriage in good faith.

Finally, the petitioner has submitted various letters and affidavits, from friends, acquaintances, and family members of the petitioner which are offered as evidence that the individuals writing the letters knew of the circumstances leading to the petitioner's marriage to his U.S. citizen spouse and believed that the petitioner entered into the marriage in good faith. The AAO accords little weight to the statements. First, they are letters submitted on behalf of the petitioner by his friends who no doubt wish to see the petitioner remain in the United States. Second, the letters contain little objective evidence regarding the bona fide nature of the petitioner's relationship with his wife. In addition to the statements of friends, the petitioner offers a translation of a letter from the U.S. citizen wife to the petitioner's sister in Iran. The letter presumably is offered to show that in May of 1997 the U.S. citizen spouse was corresponding with the petitioner's family about their relationship, and looking forward to filing a petition on his behalf. The AAO observes some technical and substantive issues with the letter which raise doubts. First, although the petitioner has offered a certified translation, the translation itself shows that it is merely an "excerpt" taken from 11 sheets of Farsi letters. Why the entire text of the letters was not offered is unclear, but the failure to submit the entire

[8] The AAO notes that there appears some contradiction regarding the steps taken by the petitioner in 1997 to be married under Islamic law with his professed faith as a Christian Scientist which he adopted in 1995, and for which he was allegedly persecuted in Germany, according to his asylum application executed in April 2000.

[9] It is noted that the petitioner also submitted an untranslated letter that he submitted to the German bank. The AAO is unable to consider the letter because it is untranslated.

translated document renders the submission deficient. The regulations at 8 C.F.R. § 103.2(a)(3), provide as follows:

> *Translations.* Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The document submitted does not confirm with the regulatory requirements. Aside from its failure to meet the regulatory requirements, even if considered, the excerpts do not establish a bona fide marital relationship. The May 1997 letter was sent just a few weeks before the Islamic marriage and the beginning of the petitioning process on behalf of the petitioner, begins without any context and merely seems to recite that the citizen spouse and the petitioner met two years previously, and that the U.S. citizen spouse was going to file a petition on behalf of the petitioner, and is honored to be associated with him. In fact, the translation reads more like a letter of recommendation for the petitioner than like a letter describing the relationship of two people soon to be married. The next two excerpts read similarly and again recite curiously that the citizen spouse intends to "follow up his Immigration case...because he deserves to immigrate to America." Furthermore, it appears from the 1998 excerpt that the petitioner may have been experiencing some impatience at the efforts on his behalf, which, as discussed previously were foundering, as the citizen spouse states in the letter, "please tell Mohsen to be patient, so that I will not worry on his behalf." These letters from the citizen spouse do little to eliminate doubts about the bona fide nature of the marriage. At best, they indicate that there was in fact, a relationship between the petitioner and his citizen spouse prior to his entry to the United States and that the relationship was made known to family members. This much is not in dispute, the citizen spouse no doubt had to be associated with the petitioner in some way to have filed the petitions on his behalf while he was abroad. However, as noted, the letters do little to explain the nature of the relationship and sincerity of two individuals to marry; rather they merely provide the backdrop for the relationship. The letters do not conform to the regulatory requirements, and in any event, add little to the petitioner's ability to establish the bona fide nature of the relationship.

Additional Matters Not Sufficiently Addressed in the Director's Decision

In addition to the issue of the petitioner's good faith in entering into the marriage, there are other issues, beyond the director's decision which merit additional consideration, and which the AAO believes were not adequately addressed in the director's decision. These issues are whether the petitioner has, in fact, demonstrated that he has been battered by, or has been the subject of extreme cruelty perpetrated by the citizen spouse, and whether the petitioner has demonstrated that he is a person of good moral character as required by statute. The AAO finds that the evidence is inconclusive on the former, and as to the latter demonstrates that the petitioner lacks good moral character.

The Petitioner's Claims as an Abused Spouse

As noted previously, the petitioner has submitted his own statements, statements and letters of friends and acquaintances, and letters from mental health professionals in support of his claim that he was subject to

abuse and/or extreme cruelty by his citizen spouse. The preceding discussion has elaborated upon the reasons why the AAO places little weight on the statements of the petitioner's friends. They simply do not provide objective, or sufficiently detailed information based on first hand knowledge of the events that allegedly transpired between the petitioner and his citizen spouse.[10] Aside from the various statements, there are two forms of evidence submitted by the petitioner that the AAO considers to be more objective in nature. These are the petitioner's criminal history report and a restraining order issued by the Municipal Court of Contra Costa County, California on June 11, 1999. The second type of objective evidence submitted, though not without different problems, are the reports from medical professionals who treated the petitioner when he sought treatment for his subsequently diagnosed Post Traumatic Stress Disorder (PTSD). As will be discussed, the AAO believes that neither one of these additional forms of evidence furthers the petitioner's claim.

Although the petitioner claims that he was, in fact, the subject of physical and psychological abuse perpetrated by his citizen spouse, the objective evidence does not support his contention. The record contains an arrest report sent by the State of California, Department of Justice (CAL DOJ), to the petitioner on October 29, 2003. That report reflects that the petitioner has been arrested on two occasions. The latter arrest occurred on February 26, 2000, for battery on a person. The CAL DOJ report reflects that no disposition information is available. However, this arrest appears to relate to the Notice to Appear issued by the Los Angeles Police Department on February 26, 2000, a copy of which was submitted by the petitioner in response to the Service Center's request of June 9, 2003 for additional information relating to his arrests. According to the petitioner's statements, and the annotation on the face of the ticket (uncertified), it appears that no charges were pursued relating to this incident. The second, and more pertinent arrest to these proceedings is the petitioner's arrest, as reflected by the CAL DOJ report on May 10, 1999, for the offense of inflicting corporal injury on a spouse. The CAL DOJ report notes that the case was dismissed on June 17, 2002, and the petitioner has submitted the minute order. While the petitioner has asserted that the case was dismissed due to issues surrounding the spouse's credibility, the minute order submitted merely states that the matter was dismissed in the "interest of justice." The dismissal could be as a result of a number of issues, to include those asserted by the respondent, or others such as the spouse's fear of pursuing the charges, or reconciliation between the spouses—something not uncommon in spousal abuse cases.

The AAO notes that although the petitioner has asserted in his statements that the events leading to the arrest in May 1999, involved an assault upon him by his spouse, rather than any action on his part, it is noted that the petitioner has failed to submit any arrest report prepared by the police in connection with that arrest. Nevertheless, the record reflects that a copy of the arrest report exists in the record, as it was obtained by the government and has been submitted into the record before the Immigration Court as Exhibit 6, in the removal proceedings against the petitioner. The petitioner was served with a copy of the arrest report at the removal hearing held on May 21, 2002. A review of that record reflects that it largely contradicts the petitioner's

[10] The AAO recognizes that the statement of Toran Jahanian does recount an instance in which the affiant claims to have witnessed the citizen spouse mistreat the petitioner, including two occasions during which the petitioner was threatening toward her husband, including an instance when the citizen spouse allegedly tried to hit him over the head with a fruit bowl, and another during which she allegedly tried to stab him. The AAO remains unconvinced about this claim for several reasons. First, the affiant notes that he is a relative of the petitioner. Second, the petitioner failed to report these incidents to the authorities. Third, the petitioner allowed a restraining order to be issued against him during this period at a hearing at which he was present, and failed to offer an opposition to the restraining order, or to seek his own restraining order with the assistance of his multiple witnesses.

version of events, as it notes the observations of the arresting officers, including injuries to the citizen spouse, and recites a significantly different version of events as related by the citizen spouse and neighbors/witnesses. The petitioner received a copy of the arrest report during the course of his immigration court proceedings. (See Exhibit 6) The AAO notes that the petitioner failed to submit such documentation despite the Service Center's request in its RFE of June 9, 2003, that the petitioner "[s]ubmit all available police and court documentation regarding these incidents."

Furthermore, the AAO also notes that the director's decision noted that the petitioner's spouse obtained a three-year protective order issued against the petitioner. It likewise does not appear that the petitioner submitted a copy of the protective order as part of his submissions in response to the RFE. The protective order was issued on June 11, 1999 for a three-year period and reflects that the both the citizen spouse and the petitioner were present before the court. We consider the petitioner's failure to be forthcoming with the Service Center in his responses to the RFE to constitute a significant failure to respond, and therefore will treat them as significant adverse factors which contradict the petitioner's contention that he, in fact, was the abused spouse. The AAO also notes that the petitioner's participation in the hearing relating to the restraining order makes his explanation that he did not fully understand the proceedings enough to be aware that he should contest its issuance to be without merit and not credible.

The AAO turns next to the additional objective evidence in the form of professional assessments offered to establish his status as an abused spouse.[11] We note that the petitioner has submitted numerous assessments, the majority of which note that the petitioner presents symptoms of post-traumatic stress disorder (PTSD). The director's decision raised some doubts about the connection between the petitioner's PTSD and the alleged physical abuse noting that it was not clear whether the PTSD was caused by the alleged abuse given the petitioner's additional claims regarding persecution in Germany and Iran. Nevertheless, the director concluded that, because the condition appeared to have been aggravated since his entry to the United States, the director "has no choice but to give you a finding of extreme cruelty." (Decision at p. 3) The decision further noted that although serious doubts had been raised regarding his credibility, there was insufficient evidence to deny his petition on this requirement. The AAO disagrees with the director's conclusions. For the various reasons discussed earlier and the additional reasons to be discussed in the subsequent section, the AAO finds that the petitioner is not credible. The evaluations stem from consultations initiated by the petitioner, beginning in October 1999.[12] An examination of those evaluations disclose that they are based on the petitioner's version of events, unencumbered by any knowledge on the part of the evaluators of the petitioner's arrests, or the issuance of a restraining order. Furthermore, significant parts of those evaluations and diagnosis of PTSD emanate from the petitioner's recitation of the alleged hardships encountered in Germany and Iran prior to his entry to the United States. Therefore, to the extent that the petitioner seeks to

---

[11] The evaluations consist of letters or evaluations from a number of individuals, with the following primary evaluations: 1) a letter from Jonathan A. Kislter, M.D., dated May 8, 2002; 2) a psychological report from Lorraine Allman, Psy.D., Clinical Psychologist II, dated May 1, 2002; 3) a letter from Linda Snouffer, MSW, CEAP. For purposes of this decision the AAO will refer to the various letters and reports as "assessments."

[12] This office does not believe that it is coincidental that the petitioner's consultations began, shortly following his application for adjustment of status based on the marriage, and more specifically a few short weeks following the district director's interview of the petitioner whereupon he was confronted with the information, previously undisclosed, about his arrest, and was asked to submit additional documentation concerning the arrest and his previous marriage in Germany.

rely upon the diagnosis of PTSD as evidence of battering or extreme cruelty he suffered, the AAO finds the evidence inconclusive on this point. Additionally, when coupled with our evaluation of the petitioner's credibility, which likely was also compromised in his dealings with the professionals, we find that the evaluations to not serve to establish battery or extreme cruelty.

The Director's Findings as to the Petitioner's Good Moral Character

The AAO also finds that the petitioner lacks good moral character, and withdraws the director's findings to the contrary. The AAO bases its conclusion upon the numerous instances in the record demonstrating repeated misrepresentations by the petitioner, some under oath, which lead us to conclude that the petitioner lacks credibility, and from our conclusion and that of the director's that the petitioner did not enter into his marriage in good faith. The director, while expressing significant doubts about the petitioner's credibility nonetheless treated the issue of the petitioner's good moral character as somehow being tied to the existence, or not, of a conviction. The director's decision found that "[b] ecause there appears to be no conviction for these alleged domestic battery incidents, this office must give you a finding of good moral character by default."

The director's assumption that, absent a conviction, he was compelled to find that the petitioner had met his burden of establishing good moral character is incorrect. A finding of good moral character consists of both statutory bars to good moral character and discretionary factors. The director was correct that the petitioner's arrests for battery did not result in a conviction that might have led to an automatic statutory bar to a finding of good moral character such as would result from a conviction for an aggravated felony under section 101(f)(8) of the Act, 8 U.S.C. § 1101(f)(8). The statute also provides that a person will be found to lack good moral character if they have given false testimony for the purpose of obtaining any benefits under this Act. See section 101(f)(6), 8 U.S.C. § 1101(f)(6). Furthermore, the fact that an individual does not fall within a statutory bar to good moral character does not preclude a finding that for other reasons a person is or was not a of good moral character. Section 101(f)(8), 8 U.S.C. § 1101(f)(8), and it has been recognized that an individual's immigration history and conduct taken as a whole, may result in a finding that he lacks good moral character. *Matter of Carbajal,* 17 I&N Dec. 272 (Comm. 1978); *Matter of T,* 1 I&N Dec. 158 (BIA 1941).

The director and this office have reached the conclusion that the evidence indicates that the petitioner did not establish that he had married his spouse in good faith. This is a substantial negative finding bearing on the petitioner's good moral character as it reflects that the petitioner sought to immigrate to the United States through a marriage of convenience. Additionally, the petitioner's entire immigration history appears to be rife with misrepresentations and half-truths, all designed to further the petitioner's immigration into the United States. Although the petitioner seeks to blame the citizen spouse for any misrepresentations made in the various applications submitted on his behalf, we find his assertions unpersuasive. The petitioner is an adult, and was fully aware of the efforts on his behalf. Furthermore, the record reflects that it is only when it appears that petitions and applications are denied, or are subject to additional scrutiny, that more complete, or accurate information is produced. Without repeating all of the previous findings from the record, we will briefly recap some of the misrepresentations given by the petitioner in connection with his previous

applications and petitions. Some of these are misrepresentations under oath, as noted, and constitute false testimony under the Act. 8 U.S.C. § 1101(f)(6).

1) I-130 filed in August 1997. The petition was denied for failure to provide a copy of a marriage certificate issued by civil authorities. At the time, the petitioner and his citizen spouse had not yet married in Martinez, California, yet they submitted an I-130, signed by the petitioner, indicating that they had married in Oakland. The I-130 indicated that the petitioner had used no other names, when in fact, the petitioner, as he later admitted had previously used both his last name and that of his German wife. Additionally, the I-130 failed to list his German wife in question 11 which asks for the names of prior husbands or wives, and the date the marriage ended.

2) Form G-325A filed with the I-130 in August 1997. The G-325A also fails to list the name the petitioner used in Germany when married to his first wife, and it likewise fails to list his first wife.

3) I-129F and G-325A submitted in connection with fiancé petition filed February 1988. The documents failed to disclose the petitioner's prior marriage.

4) I-129F and updated G-325A submitted in connection with fiancé petition filed July 1998. The G-325A fails to reflect the petitioner's prior marriage. The petitioner ultimately produced the divorce decree in response to a specific request during processing by the consulate. The petitioner failed to disclose the existence of two minor children on the Form 156K Supplement to Form OF 156. This was in a sworn statement and interview before the Department of State.

5) I-485 filed in March 1999, subsequent to his entry on the K-1 visa. The petitioner had failed to disclose the existence of his children in the application submitted and appears only to have modified his answer in response to specifically being questioned on the issue during his interview in September 1999. The petitioner also failed to list any organizations to which he had belonged since his 16th birthday, including military service. Nevertheless, in subsequent applications he listed military service and affiliation with organizations in Iran. This application was testified to under oath.

6) I-589s filed in March 2000 and April 2001. The Director, Los Angeles Asylum Office, denied the petitioner's asylum application noting that the petitioner provided information both written and in oral testimony that he had maintained only student status in Germany during his 19 year period in that country. However, the petitioner subsequently admitted to the asylum office that he had, in fact been granted asylum in Germany. (See Asylum Decision dated January 24, 2001). The Notice of Intent to Deny contained a finding that the petitioner had not testified credibly about his activities and status in Germany during the preceding 19-year period. Although in his second asylum application the petitioner disputed the fact that he was granted asylum in Germany, he apparently was conceding that he held permanent resident status in Germany as he submitted evidence to demonstrate that he had lost status as a permanent resident in Germany.

7) I-485 signed in December 2001 and filed on or about January 2002 in connection with approved I-140 petition. The petitioner made several misrepresentations on the I-485. While he responded

affirmatively to question 1b as to whether he had any arrests, his signed explanation only disclosed the arrest of February 26, 2000 for battery as to which no charges were filed. The petitioner made no mention of having been arrested in connection with the domestic violence incident of May 1999. Additionally, the petitioner indicated that he was not in removal proceedings at the time that the I-485 was filed. However, the record reflects that the petitioner had been placed in removal proceedings in November 2001. Finally, the petitioner indicated that he had not sought to procure, or procured a visa or other documentation, entry to the United States or immigration benefit by misrepresentation of a material fact. However, the record reflects numerous misrepresentations by the petitioner in connection with various petitions.

We find that the misrepresentations made in connection with his false testimony are material because in the case of the I-129F Petition for Alien Fiancé, those misrepresentations went to matters designed to hide the true facts concerning his actual family history, which affects an individual's ability and inclination to marry and have a U.S. citizen petition for him. The misrepresentations were also material because they obfuscated issues which, if not misrepresented, may have led the officials adjudicating his petitions to more closely scrutinize the relationship with the petitioning spouse. In the case of the false testimony given in connection with the I-589 Application for Asylum and Withholding of Deportation (asylum application), the false statements and misrepresentations were material in that they went to an issue of eligibility for the relief sought, specifically whether the petitioner was statutorily barred from asylum due to being firmly resettled in a third country. See section 208(b)(2)(A)(vi) of the Act, 8 U.S.C. 1158(b)(2)(A)(vi) and 8 C.F.R. § 208.13(c)(2)(B).

As the petitioner has failed to prove he is a person of good moral character, the petition may not be approved.

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 and the petition is denied.