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U.S. Citizenship
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JUL 30 2007

FILE:

EAC 05 259 51373

Office: VERMONT SERVICE CENTER

Date:

IN RE:

Petitioner:

PETITION:

Petition for 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:

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.

Maura Deadrick
Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, 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 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 pursuant to section 204(c) of the Act because the director determined that the petitioner had previously sought immediate relative status as the spouse of a U.S. citizen by reason of a marriage entered into for the purpose of evading the immigration laws. The director also denied the petition for lack of the requisite good-faith entry into the marriage, battery or extreme cruelty, joint residence and good moral character.

On appeal, counsel submits a brief and additional evidence.

Section 204(a)(1)(A)(iii) of the Act provides that an alien who is the spouse of a United States citizen may self-petition for immigrant classification if the alien demonstrates that he or she entered into the marriage with the United States citizen spouse in good faith and that during the marriage, the alien or a child of the alien was battered or subjected to extreme cruelty perpetrated by the alien's spouse. In addition, the alien must show that he or she is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i) of the Act, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) . . . , or in making determinations under subparagraphs (C) and (D), the [Secretary of Homeland Security] shall consider any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the [Secretary of Homeland Security].

The eligibility requirements are further explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(v) *Residence.* . . . The self-petitioner is not required to be living with the abuser when the petition is filed, but he or she must have resided with the abuser . . . in the past.

(vi) *Battery or extreme cruelty.* For the purpose of this chapter, the phrase "was battered by or was the subject of extreme cruelty" includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be

considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner's marriage to the abuser.

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. 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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

* * *

(ix) *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. A self-petition will not be denied, however, solely because the spouses are not living together and the marriage is no longer viable.

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:

Evidence for a spousal self-petition –

(i) *General.* Self-petitioners are encouraged to submit primary evidence whenever possible. The Service will consider, however, any credible evidence relevant to the petition. The determination of what evidence is credible and the weight to be given that evidence shall be within the sole discretion of the Service.

* * *

(iii) *Residence.* One or more documents may be submitted showing that the self-petitioner and the abuser have resided together Employment records, utility receipts, school records, hospital or medical records, birth certificates of children . . . , deeds, mortgages, rental records, insurance policies, affidavits or any other type of relevant credible evidence of residency may be submitted.

(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. . . . 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.

* * *

(vii) *Good faith marriage.* Evidence of good faith at the time of marriage may include, but is not limited to, proof that one spouse has been listed as the other's spouse on insurance policies, property leases, income tax forms, or bank accounts; and testimony or other evidence regarding courtship, wedding ceremony, shared residence and experiences. Other types of readily available evidence might include the birth certificates of children born to the abuser and the spouse; police, medical, or court documents providing information about the relationship; and affidavits of persons with personal knowledge of the relationship. All credible relevant evidence will be considered.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Ecuador who states in these proceedings that he entered the United States on April 23, 1993. On December 10, 1994, the petitioner married L-R-¹, a U.S. citizen, in New Jersey. L-R- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which was approved on April 22, 1998. On March 9, 2001, the former Immigration and Naturalization Service notified L-R- of its intention to revoke the approval of the Form I-130 because interviews with the former couple conducted by a consular officer indicated that the marriage was entered into solely to obtain immigration benefits for the petitioner. However, the March 9, 2001 notice was returned to the Service as undeliverable. The petitioner divorced L-R- on April 9, 1998.

¹ Name withheld to protect individual's identity.

On March 28, 2001, the petitioner married R-R-², a U.S. citizen, in New Jersey. The petitioner divorced R-R- on June 27, 2005. The petitioner filed this Form I-360 on September 26, 2005. On December 29, 2005, the director issued a Notice of Intent to Deny (NOID) the petition pursuant to section 204(c) of the Act because a consular officer determined that the petitioner and his first wife married for the sole purpose of obtaining an immigrant visa for the petitioner. The NOID also cited the lack of sufficient evidence of the requisite good-faith entry into the petitioner's second marriage, battery or extreme cruelty, joint residence and good moral character. The petitioner, through counsel, timely responded to the NOID with additional evidence. The director denied the petition on May 17, 2006 on the grounds cited in the NOID and counsel timely appealed.

On appeal, counsel claims that section 204(c) of the Act should not bar the approval of this petition based on "an improperly conducted consular interview." Counsel further asserts that the director relied on electronic records that were not disclosed to the petitioner and that the director "improperly devalued" the evidence and did not demonstrate why the evidence was not credible. We do not reach the issue of whether section 204(c) of the Act bars approval of this petition because we concur with the director's determination that the petitioner has failed to demonstrate the requisite good-faith entry into his second marriage, battery or extreme cruelty, joint residence and good moral character. Counsel's claims and the evidence submitted on appeal fail to overcome these four grounds for denial.

On appeal, the petitioner submits affidavits from three individuals, a local police clearance and a state-issued criminal background check in support of his claims. The NOID gave the petitioner notice of the required evidence and gave the petitioner a reasonable opportunity to provide the evidence for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. Neither counsel nor the petitioner provides any explanation or documentation that the three affiants or the police clearances were unavailable before the petition was adjudicated. Accordingly, the AAO will not consider the affidavits or clearances submitted for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

Section 204(c) of the Act

Section 204(c) of the Act states, in pertinent part:

[N]o petition shall be approved if –

- (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative . . . status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the

² Name withheld to protect individual's identity.

immigration laws, or

- (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The regulation corresponding to section 204(c) of the Act, at 8 C.F.R. § 204.2(a)(ii), states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

A decision that section 204(c) of the Act applies must be made in the course of adjudicating a subsequent visa petition. *Matter of Rahmati*, 16 I&N Dec. 538, 539 (BIA 1978). Citizenship and Immigration Services (CIS) may rely on any relevant evidence in the record, including evidence from prior CIS proceedings involving the beneficiary. *Id.* However, the adjudicator must come to his or her own, independent conclusion and should not ordinarily give conclusive effect to determinations made in prior collateral proceedings. *Id.*; *Matter of Tawfik*, 20 I&N Dec. 166, 168 (BIA 1990).

Evidence that a marriage was not entered into for the primary purpose of evading the immigration laws may include, but is not limited to, proof that the beneficiary has been listed as the petitioner's spouse on insurance policies, property leases, income tax forms, or bank accounts, and testimony or other evidence regarding courtship, wedding ceremony, shared residence, and experiences together. *Matter of Phillis*, 15 I&N Dec. 385, 386-87 (BIA 1975).

In this case, the record contains a memorandum from an officer of the U.S. Consulate General in Ecuador, which states that the petitioner and his first wife, L-R- were interviewed on November 30, 1998 and gave discrepant answers regarding the day they met, whether or not they had sexual relations before their marriage, their method of birth control, when they agreed to have children and whether or not they were accompanied to their home by other individuals after their wedding. The memorandum reports that the petitioner returned for a subsequent interview on December 1, 1998, but offered "no credible explanation" for the discrepancies between his and L-R-'s responses. The consular officer concluded that the unresolved discrepancies combined with the lack of secondary evidence indicated that the petitioner and L-R- married for the sole purpose of obtaining an immigrant visa for the petitioner. The record contains a copy of the consular officer's notes detailing the responses of the petitioner and L-R- to identical questions and documenting their discrepant answers to seven significant questions. The record does not document the petitioner's subsequent interview at the consulate on December 1, 1998.

In his February 21, 2006 affidavit, the petitioner states that the consulate never gave him and L-R- a chance to rehabilitate themselves. The petitioner reports that the consular officer told him they were going to deny his case because he and his wife gave different answers regarding the model of his car and whether or not they used birth control. While the former couple's discrepant answers regarding the model of the petitioner's car is documented in the consular officer's notes, the consular officer does not cite that discrepancy as a basis for his decision in the memorandum. The petitioner's explanation in these proceedings of what he perceived to be the primary discrepancies arising at the consular interview indicates that he was never advised of the specific reasons for the denial of his visa application.

In response to the NOID, the petitioner submitted Banco Popular statements for two accounts jointly held by the petitioner and L-R- and one account held by the petitioner in trust for L-R-. All of the statements are dated after the petitioner divorced L-R- on April 9, 1998 and are consequently of no probative value in establishing the bona fides of the petitioner's marriage to L-R-.

On appeal, counsel claims that the facts in this case do not rise to the level of those discussed in an unpublished, non-precedent decision of the BIA. Counsel's claim is unpersuasive. Nonetheless, although the record documents the petitioner's discrepant answers to significant, identical questions posed to him and L-R- at their consular interview, the record does not document the petitioner's subsequent consular interview on December 1, 1998. The record also shows that the Vermont Service Center director issued a Notice of Intent to Revoke (NOIR) the approval of the Form I-130 filed by L-R- on the petitioner's behalf, based on the consular memorandum and interview notes, but that the NOIR was returned to the service center as unclaimed. The record contains no final decision revoking the approval of the Form I-130. These deficiencies in the record prevent an independent conclusion, based on substantial and probative evidence, that the petitioner married L-R- for the purpose of evading the immigration laws. Accordingly, we do not reach the issue of whether or not section 204(c) bars approval of the instant petition because, as discussed below, the petitioner has failed to overcome the other four grounds for denial. The portion of the director's decision regarding section 204(c) of the Act is consequently withdrawn.

Joint Residence

The record contains the following evidence relevant to the petitioner's claim that he resided with his second wife, R-R-:

- The petitioner's undated and unsigned affidavit initially submitted with the Form I-360 and his February 21, 2006 affidavit;
- Copy of the marriage license and certificate of the petitioner and R-R- listing the same residential address on [REDACTED] in Elizabeth, New Jersey for the former couple;
- Residential lease dated August 25, 2000 between [REDACTED] and the petitioner and R-R- as tenants of an apartment on [REDACTED] in Elizabeth, New Jersey, for a lease term of September 1, 2000 to August 31, 2002 and that is signed by the petitioner and R-R-;

- Gas account statement jointly addressed to the petitioner and R-R- at a residence on ██████████ ██████████ in Elizabeth, New Jersey and dated August 4, 2005, which shows payments from August 2003 through December 2004;
- Bills from the same gas account dated January through April 16, 2003 and listing the service address as the S ██████████ residence;
- Partial copies of electric bills jointly addressed to the petitioner and R-R- at the S ██████████ ██████████ residence and dated August through December 2001;
- Partial copies of electric bills for the same account individually addressed to the petitioner at the ██████████ residence and dated January through July 2001;
- Partial copies of telephone bills jointly addressed to the petitioner and R-R- at the ██████████ ██████████ residence and dated May 2001 through November 2004;
- Partial copies of telephone bills for the same account individually addressed to the petitioner and dated from January through May 2001;
- Joint checking and savings bank account statements and copies of statements addressed to the petitioner and R-R- at the ██████████ ██████████ residence and dated between January 31, 2001 and January 26, 2005;
- Copies of six checks written by the petitioner from his joint account with R-R- and dated in February 2004 and copies of six cancelled checks written by the petitioner from the same account in September 2004;
- Form G-325, Biographic Information, signed by the petitioner on April 18, 2001 and submitted with the Form I-130 filed by R-R- on the petitioner's behalf; and
- An electronic search of public telephone book listings from 1998 to 2005 for the petitioner and R-R-, which found no common address for the former couple.

On the Form I-360, the petitioner stated that he lived with R-R- from September 2000 to October 2002. In his February 21, 2006 affidavit, the petitioner states that those dates are "typographical errors" made by his previous attorney and that he actually lived with R-R- only from March 2001 until December 2001. However, the petitioner signed the Form I-360 and thereby affirmed, under penalty of perjury, that the petition was true and correct. Part 10 of the Form I-360 is printed with the name and address of the petitioner's prior attorney, but was not signed by the attorney.

In his undated and unsigned affidavit, the petitioner states that he met R-R- in December 2000 and the former couple lived together in Elizabeth, New Jersey, but that his wife would often leave for days and stay with her family in New York. The petitioner does not state the address or dates of their purportedly joint residence or provide any further, probative information. In his February 21, 2006 affidavit, the petitioner simply states that he has documents that prove he lived with R-R- from March 2001 until December 2001 when R-R- left their home.

The relevant documentary evidence is either inconsistent with the petitioner's statements or does not establish the petitioner's claim. The marriage license and the lease list the ██████████ address as the joint address of the petitioner and R-R-, however, the evidence indicates that the petitioner never actually resided with R-R-. The petitioner's Form G-325A states that he lived at the Sheridan Avenue

residence since September 2000. The lease was signed by the petitioner and R-R- on August 25, 2000, but in his undated affidavit, the petitioner states that he did not meet R-R- until December 2000 and in his February 21, 2006 affidavit, the petitioner attests that he did not reside with R-R- until March 2001. The petitioner provides no explanation for this discrepancy on appeal.

The electric and telephone bills show that the petitioner established the accounts individually at the Sheridan Avenue residence from at least January 2001, but did not add R-R- to the accounts until August and May 2001, respectively. All of the gas bills are dated after the petitioner states that he and R-R- separated and are consequently of no probative value. The bank statements show that the savings account was opened from at least January 2001, before the petitioner and R-R- were married and purportedly began living together. Although the petitioner submitted joint savings and checking account statements for the nine-month period he purportedly lived with R-R-, the record contains no evidence that R-R- actually used the accounts. The copied and cancelled checks were all written by the petitioner and the petitioner submitted no evidence of checks, other withdrawals or deposits executed by R-R-.

In his decision, the director cited “electronic records” indicating that the petitioner never resided with R-R-. On appeal, counsel asserts that the director should have provided the petitioner with a copy of the records. The records referred to by the director are the results of an electronic search of telephone book listings from 1998 to 2005, which found no common address for the petitioner and R-R-. As the telephone listings are available to the public, the director was under no obligation to provide the petitioner with a copy of the records. Even if R-R- was never jointly listed with her husband in a telephone book due to the short duration of their marriage, the remaining evidence, as discussed above, fails to establish the petitioner’s claim.

Although the marriage license and some of the electric and telephone bills and bank statements list a common address for the petitioner and R-R-, the petitioner fails to explain why the residential lease was signed by him and R-R- three months before he attests that they met and seven months before he asserts that they began residing together. This unresolved discrepancy detracts from the credibility of the petitioner’s testimony and the remaining, relevant evidence fails to establish that the petitioner resided with R-R-, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

Good Faith Entry into Marriage

The same evidence listed above in regards to the issue of joint residence is also relevant to the petitioner’s claim that he entered into marriage with R-R- in good faith. In his undated and unsigned affidavit, the petitioner states that a friend introduced him to R-R- in December 2000. However, in his February 21, 2006 affidavit, the petitioner states that he met R-R- in the summer of 2000. The petitioner provides no explanation for the discrepancy between his two statements.

In his undated affidavit, the petitioner explains that, after they met, he and R-R- frequently spoke on the telephone, met at the park and decided to get married three or four months later. In his February 21,

2006 affidavit, the petitioner explains that he met R-R- when he was romantically involved with the mother of his son, that the two couples saw each other frequently and that his relationship with the mother of his son began to deteriorate as he was falling in love with R-R- and the mother of his son fell in love with R-R-'s brother. The petitioner reports that the two couples were married on the same day. The petitioner states that he and R-R- were married by a judge and had a small get together at their home with a cake to celebrate. The petitioner does not further describe his courtship, wedding, residence or shared experiences with R-R-, apart from the alleged abuse.

The relevant documentary evidence fails to fully support the petitioner's claim. As discussed in the preceding section, the joint lease contradicts the petitioner's statements regarding when he met his wife and when they began residing together. The bank statements indicate that the accounts were jointly held, but the record contains no evidence that R-R- actually used the accounts. The telephone and electric bills show that the petitioner had established the accounts in his own name by January 2001 and did not add R-R- to the accounts until two and five months after their marriage. In addition, the majority of the bank statements, telephone and electric bills and all of the gas bills are dated after the petitioner states that he and R-R- separated and are consequently of no probative value.

In his two affidavits, the petitioner provides conflicting statements regarding the date he met his wife. The date of the joint lease also contradicts the petitioner's first statement of when he met his wife and his second statement of when they began living together. The petitioner provides no explanation of these discrepancies on appeal and the remaining relevant evidence fails to establish the petitioner's claim. Consequently, the petitioner has not demonstrated that he entered into marriage with R-R- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Battery or Extreme Cruelty

The record contains the following evidence relevant to the petitioner's claim that R-R- subjected him to battery or extreme cruelty during their marriage:

- The petitioner's undated and unsigned affidavit initially submitted with the Form I-360 and his February 21, 2006 affidavit.

In his undated affidavit, the petitioner states that he and R-R- argued about his work schedule and R-R- would leave their home for days at a time and stay with her family. The petitioner also reports that R-R- would yell at his son and that whenever his son came to visit, R-R- would go to her mother's house and the petitioner would have to send her money to return. The petitioner further states that R-R- would not cook for him, never wanted to have intimate relations with him, and wanted him to give her his paychecks.

In his February 21, 2006 affidavit, the petitioner further explains that R-R- always tried to make him pay all of the bills. The petitioner states that R-R- threatened him with deportation when he confronted her about her staying with her family so frequently and when she bought expensive clothes beyond their

budget. The petitioner further reports that R-R- refused to come with him to Ecuadorian functions, but that when he came home from Ecuadorian parties, she would grab him, tear his clothes and say that she was going to make sure of his fidelity. The petitioner states that he eventually became too stressed to go out. The petitioner does not explain why he did not mention these aspects of his wife's behavior in his first undated affidavit.

The petitioner submitted no other evidence of the types listed in the NOID and the regulation at 8 C.F.R. § 204.2(c)(2)(iv). Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i).

The petitioner's testimony fails to establish that his wife's behavior rose to the level of battery or extreme cruelty, as that term is described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi). The petitioner's descriptions of his wife's actions do not indicate that she engaged in violence against the petitioner or his son that resulted or threatened to result in physical or mental injury. The petitioner's testimony also does not demonstrate that R-R- subjected him or his son to psychological or sexual abuse, or that her nonviolent actions were part of an overall pattern of violence. Consequently, the petitioner has not established that R-R- subjected him or his son to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

Good Moral Character

The petitioner initially submitted no evidence of his good moral character. In his February 21, 2006 affidavit, the petitioner attested that he was a person of good moral character who had never been arrested or had any trouble with the law. Yet the petitioner failed to submit further evidence of his good moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(2)(v) and as specified in the NOID.

The petitioner's brief attestation of his good moral character cannot establish his eligibility because his statement is unsupported by local police clearances, state-issued criminal background checks, or an explanation of why such documentation is unavailable and other credible evidence of the petitioner's good moral character, as prescribed by the regulation at 8 C.F.R. § 204.2(c)(2)(v). Accordingly, the petitioner has failed to demonstrate that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

The petitioner has not established that he entered into marriage with R-R- in good faith, that he resided with her, that she subjected him or his son to battery or extreme cruelty during their marriage and that he is a person of good moral character. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the

benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.