



U.S. Citizenship
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FILE:

EAC 04 005 50383

Office: VERMONT SERVICE CENTER

Date: JUN 15 2007

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.

for *Laura 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 The decision of the director will be withdrawn and the petition will be remanded for further action.

The petitioner seeks immigrant classification 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 an alien battered or subjected to extreme cruelty by his former spouse.

The director denied the petition, finding that the petitioner failed to establish that he entered into marriage with his former wife in good faith, that she subjected him to battery or extreme cruelty during their marriage and that he was a person of good moral character.

On appeal, counsel submits a brief and additional evidence. On appeal, the petitioner, through prior counsel, also requested oral argument. The petitioner states that oral argument “would be the best way for [him] to explain incorrect interpretations made by the adjudicator of his I-360 and would allow him to explain more fully the evidence he has provided.” Citizenship and Immigration Services (CIS) has sole authority to grant or deny a request for oral argument and will grant oral argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the petitioner identified no unique factors or issues of law to be resolved and the written record of proceedings fully represents the facts and legal issues in this matter. Consequently, the request for oral argument is denied.

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:

(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.

* * *

(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 facts and procedural history. The petitioner is a native and citizen of Iran who entered the United States on December 14, 2001, as the K-1 nonimmigrant fiancé of M-A-¹, a U.S. citizen. The petitioner married M-A- on December 20, 2001 in Houston, Texas. On November 20, 2002, the petitioner was convicted of assault against his spouse. On November 22, 2002, he was served with a Notice to Appear, charging him as removable under section 237(a)(2)(E)(i) of the Act as an alien convicted of a crime of domestic violence. On April 14, 2003, the petitioner's assault conviction was dismissed, the case was refiled and the petitioner was convicted of a terroristic threat offense. On April 15, 2003, an immigration judge of the Houston Immigration Court terminated the removal proceedings against the petitioner. On September 4, 2003, the petitioner and M-A- were divorced by order of the Harris County, Texas District Court.

On October 2, 2003, the petitioner filed the instant Form I-360. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the requisite good-faith entry into the marriage, battery or extreme cruelty and good moral character. The petitioner, through prior counsel, requested and was

¹ Name withheld to protect individual's identity.

granted additional time to respond and submitted further evidence on November 8, 2005. On January 20, 2006, the director denied the petition for lack of the requisite good-faith entry into the marriage, battery or extreme cruelty and good moral character. We concur with the director's determinations. Nonetheless, the case must be remanded because the director denied the petition without first issuing a Notice of Intent to Deny (NOID), as required by the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

Entry into the Marriage in Good Faith

The record contains the following evidence relevant to the petitioner's claim that he entered into marriage with his former wife in good faith:

- The petitioner's first, 18-page handwritten, undated statement submitted with the Form I-360 (hereinafter "first statement"); his second, 29-page handwritten, undated statement submitted in response to the RFE (hereinafter "second statement"); his third, five-page, undated statement submitted on appeal (hereinafter "third statement") and his eight-page, undated affidavit submitted with present counsel's brief on appeal (hereinafter "affidavit");
- The April 10, 2001 letter of the petitioner submitted with his former wife's Form I-129F, Petition for Alien Fiancé, filed on his behalf;
- Copy of the December 2, 2002 letter of the petitioner's former wife that was submitted to the immigration judge during the petitioner's removal proceedings;
- Apartment Lease Contract and Addendum dated February 15, 2002 for a lease term from February 17 to August 31, 2002 that is signed by the petitioner and his former wife as residents and a corresponding Statement of Security Deposit Account (the latter submitted on appeal);
- Copy of an automobile purchase receipt dated January 4, 2002 and signed by the petitioner and his former wife as co-purchasers;
- A Washington Mutual Bank printout dated January 7, 2002, which lists the petitioner and his former wife as co-owners of an account that was opened on December 17, 2001;
- Copy of a statement of the petitioner's French bank account (submitted on appeal);
- Copies of ten receipts for jewelry that the petitioner allegedly purchased for his former wife abroad (submitted on appeal);
- Photographs of the petitioner and his former wife at their engagement party, wedding and other occasions; and
- Copies of the approval notice of the Form I-129F fiancé petition filed by the petitioner's former wife on his behalf and a letter acknowledging receipt of the petitioner's Form I-485, Application to Adjust Status.

In his first statement, the petitioner reports that he and his former wife:

got acquainted [sic] on the net. She and her family came to Italy after I agreed to pay for everything (like plane ticket, hotel, and ...) then after two months she and her mom and her siblings came to Iran for the engagement party which again . . . I paid for the plane ticket to Iran. . . . I came to America on K1 visa. I bought a lot of jewelries for my wife in Iran I also had a bank account in Paris which before my marriage I had about 60K in my account. Any way [sic] I spent all my money on this girl and even now I am on [sic] debt.

The petitioner does not further describe how he met his former wife, their courtship, engagement, wedding, honeymoon, joint residence or any of their shared experiences, apart from the alleged abuse. In his second statement, the petitioner attests, "I married my wife in good faith, I loved her but love is not enough for a good life. . . . I spent all my money on this marriage. Overall I lost more than 120,000 dollars that I gained in 28 years of my life." Again, the petitioner reiterates his monetary expenditures, but offers no further, probative testimony regarding his purportedly good-faith entry into marriage with his former wife.

In his third statement submitted on appeal, the petitioner reiterates that he paid for his former wife and her family to go to Italy to meet him and to go to Iran for the engagement party and that he paid for both the engagement party and wedding. The petitioner further states that he took his former wife to Paris for their honeymoon and on several international and domestic trips during their marriage. The petitioner reports that he bought his former wife a car, rented a luxury apartment, bought her two suitcases of chocolates and paid for her education. Apart from detailing these expenses, however, the petitioner provides no probative details regarding his intentions in entering the marriage and his marital relationship, apart from the alleged abuse.

In his affidavit submitted on appeal, the petitioner provides further details regarding how he met his former wife and the reasons they became close. He also describes their engagement party and early plans for their marriage. However, the language, grammar and syntax of this affidavit differ greatly from that in the petitioner's three previous statements. These significant differences indicate that the language of the affidavit is not entirely the petitioner's own and detract from the document's credibility and probative value.

Moreover, in these proceedings, the petitioner's description of how he met his former wife contradicts his April 10, 2001 letter in which he states, "I was introduced to my fiancé, [M-A-], through a family friend on April 19, 2000." In this case, the petitioner states that he met his former wife through an Internet chat room.

The letter of the petitioner's former wife also fails to support the petitioner's claim. She states:

My husband is an overall good husband for he is very family-oriented and is very passionate. I love him very much and I believe the feeling is mutual. Being that we married for love I believe that we can work through our problems with a little bit of counseling and his deportation will not help either of us in the future.

Apart from simply affirming their mutual love, the petitioner's former wife does not describe in detail the petitioner's behavior during their courtship, wedding, honeymoon, joint residence or any of their shared experiences, apart from the incident leading to the petitioner's arrest.

The relevant documents also fail to support the petitioner's claim. The lease and automobile purchase receipt indicate that the petitioner and his former wife resided and bought a vehicle together, but these documents alone do not establish the petitioner's good-faith in entering their marriage. The bank

account printout is dated less than one month after the account was opened and does not show that both the petitioner and his former wife actually used the account. The photographs indicate that an engagement party and wedding occurred and that the petitioner and his former wife were together on other occasions, yet the pictures alone do not establish that the petitioner entered into their marriage in good faith. The fiancé petition approval notice and adjustment application receipt letter confirm that the petitioner filed his adjustment application based on his status as the fiancé of his former wife, but the documents do not establish his own good-faith in entering the marriage.

Finally, the French bank account statement and jewelry receipts submitted on appeal are printed in foreign languages and are not accompanied by certified translations. Any document containing a foreign language that is submitted to CIS must be accompanied by a full English 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. 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations of the documents, we cannot determine whether the evidence supports the petitioner's claim. *Id.* Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner submitted no other evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii) and the RFE. In his first statement, the petitioner reports that his former wife's family took all of his belongings including his "notebook," "business checks and letters." However, the record indicates that documentation of the former couple's shared assets and liabilities would be available from third parties, such as the bank where they held their joint account.

In his first three statements, the petitioner details the financial expenditures he made during his marriage, but does not provide probative testimony regarding how he met his former wife, their courtship, wedding, honeymoon, joint residence or any of their shared experiences, apart from the alleged abuse. More importantly, the petitioner's account in these proceedings of how he met his former wife contradicts his statement April 10, 2001 letter submitted with his former wife's fiancé petition. In addition, the significant differences in the language, vocabulary and syntax of the petitioner's affidavit compared to his three earlier statements indicates that the language of the affidavit is not entirely the petitioner's own and detracts from the affidavit's credibility. The relevant documentary evidence fails to overcome the noted factual discrepancy regarding how the petitioner met his former wife and the questionable credibility of his affidavit. Accordingly, the petitioner has not established that he entered into marriage with his former wife 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 his former wife subjected him to battery or extreme cruelty during their marriage:

- The petitioner's three statements and affidavit;
- Copy of the December 2, 2002 letter of the petitioner's former wife;

- November 5, 2002 affidavit of the petitioner's friend, [REDACTED] and [REDACTED]'s March 15, 2006 statement submitted on appeal;
- Letter of the petitioner's parents (submitted on appeal);
- Letter of the petitioner's aunt, [REDACTED] (submitted on appeal);
- Copy of two computer screen printouts entitled "D.A. Intake Management Summary of Facts" regarding the petitioner's former wife's report to the police on November 16, 2002;
- Harris County, Texas District Clerk Certificate of Disposition of the petitioner's conviction for assault, dismissal of the assault conviction and conviction for terroristic threat;
- Copies of the judgment of the petitioner's assault conviction, the order dismissing the assault conviction, and the judgment of the petitioner's terroristic threat conviction;
- Copy of the Emergency Protection Order issued for the petitioner's former wife against the petitioner on November 17, 2002;
- Webster Police Department Offense Report for an incident occurring on December 29, 2002;
- Copy of the petitioner's former wife's Original Petition for Divorce filed on January 3, 2003; and
- Final Decree of Divorce between the petitioner and his former wife dated September 4, 2003.

In his statements, the petitioner discusses three incidents of alleged abuse in detail. First, the petitioner states that on one occasion after an argument, his former wife took all of the wires for the television, computer, telephone and facsimile machine, which prevented him from running his business. The petitioner reports that he contacted his friend, [REDACTED] who brought him new wires. When the petitioner's former wife returned and found out that [REDACTED] had helped the petitioner, she became angry, told the petitioner to make [REDACTED] leave and when the petitioner refused, she went out and scratched [REDACTED] car. The petitioner states that afterwards, his former wife acknowledged that she cannot control herself and admitted that she had twice attempted suicide in the past.

Second, the petitioner states that on another, unspecified occasion, he was arguing with the petitioner's former mother-in-law when she tried to hit him. During the confrontation, the petitioner reports that his former wife broke his glasses and assaulted him. The petitioner only mentions this incident in his first statement and offers no further, probative details of his former wife's alleged assault in either of his two latter statements.²

Third, the petitioner reports that one night his former wife locked him out and he had to sleep in the car. According to the petitioner, the next day he told her that he wanted to get a divorce, but she refused. The following evening, the petitioner states that he called his parents who told him that his former wife had called them and falsely said that he drank and gambled. When the petitioner confronted his former

² In his appeal affidavit, the petitioner states that his former wife threw objects at him at least three times. The petitioner again mentions the incident where his former wife broke his glasses, but he fails to describe that incident or any other incidents of her alleged violence in any probative detail. Moreover, as previously discussed, the petitioner's affidavit is of questionable credibility and he does not explain why he failed to mention any further incidents of his former wife's violence until his second appellate filing.

wife upon her return, she did not respond, but just entered the house. The petitioner went out and closed the door because he needed their car, but when he got outside he realized that his former wife had driven her parent's car. When he went back to their home, his former wife had locked him out. The petitioner reports, "So I thought the best thing is I can let the air go out from tires [sic] so she can not move the car and her mom has to bring the car back." The petitioner reports that his former wife called the police and he was arrested.

In his second statement, the petitioner explains that his former wife visited him in jail, apologized and said that she wanted to "teach [him] a lesson to know that here is America and women have the power not men." The petitioner states that his former wife dropped the charges against him and wrote a letter to the district attorney, but "still the [district attorney] takes the charges in US law." The petitioner states that his former wife then called his parents and told them, "if you want your son go get him from a corner of jail." The petitioner reports, "Because of this bad news, my sister had pain for 24 hours and ha[d] a very difficult delivering [sic] the baby."

After the petitioner's release from jail and immigration detention, the petitioner reports that he returned home and found that his former wife's family had moved everything out of the house except for some of his personal belongings. The petitioner states that his former wife's family would not let his former wife return to him unless he agreed to pay their credit card debts. When the petitioner refused, he reports that his former wife's family returned to his home and took all of his belongings and the former couple's car. The petitioner states that he called the police because he was frightened of his former wife's parents who had previously threatened that they could pay someone to kill him if he did not go back to Iran. The petitioner states that he moved to another apartment, but after his former mother-in-law came and "again started abusing [him] in some ways," he went to Florida to stay with his aunt.

The petitioner further states that his former wife called him derogatory names at least five days a week. The petitioner claims that he was also economically abused and in his second statement, the petitioner reports that he lost more than \$120,000, his life's earnings, during his marriage.

The letters from [REDACTED] and the petitioner's family fail to fully support his claims. In his first letter, [REDACTED] states that on one occasion when he went out to lunch with the petitioner, the petitioner's former wife was screaming and telling the petitioner that he could not go out with any friends. [REDACTED] states that he was aware that the petitioner's former wife locked him in the house on at least two occasions. In particular, in October 2002,³ [REDACTED] states that the petitioner and his neighbor told him that the petitioner's former wife locked the petitioner in their home and took the telephones with her. [REDACTED] confirms that on one occasion, she became angry with the petitioner while he was visiting and went outside and keyed his car. [REDACTED] account of these incidents differs significantly from the petitioner's own description. For example, [REDACTED] does not state that he bought wires for the petitioner and brought them to the petitioner's home after the petitioner

³ In his first affidavit, [REDACTED] states that this incident occurred in October 2001. In his second affidavit submitted on appeal, [REDACTED] states that a typographical error resulted in the 2001 date and that the incident actually occurred in October 2002.

called him for help. [REDACTED] also provides no detailed, probative testimony regarding any other incidents of alleged abuse that he witnessed.

The petitioner's aunt [REDACTED] states that the petitioner stayed with her for a few months because his former wife's family threatened to kill him. Yet [REDACTED] does not indicate that she ever witnessed such threats or other incidents of alleged abuse. The petitioner's parents confirm that the petitioner's former wife called them in Canada and said, "if you want your son go get him from the jail" and that because of her message, the petitioner's sister was upset and had difficulties delivering her baby. Their brief description of this incident does not establish that the action of the petitioner's former wife constituted extreme cruelty.

The police and court documents directly contradict the petitioner's claims. The Summary of Facts from the D.A. Intake Management printout regarding the November 16, 2002 incident states, in pertinent part:

An investigation showed that the defendant and his wife (victim) had been having marital problems and have been arguing a lot. When the female returned home this evening, she found that the door was bolted from the inside. The male eventually opened the door. When he did so, he pulled it back and then slammed it on the victim as she was walking thru [sic] it. The door hit her on her left forearm, causing pain, numbness and swelling. I observed a red, raised area on the forearm. . . . She told that the male is very violent towards her and has beat her at least three times in the past. He has also allegedly beat her mother. . . . She told me that due to cultural beliefs, she has not reported abuse in the past. He also allegedly told her, approximately three months ago, that if she contacted the police, he would cut off her head and place it on her chest. Because of the on going violence and threats, she has requested a MOEP [Magistrate's Order for Emergency Protection].

In connection with the petitioner's arrest and criminal proceedings, his former wife was granted an emergency order of protection on November 17, 2002, which was in effect for 60 days. In his affidavit submitted on appeal, the petitioner states that the court issued "mutual protective orders" to both the petitioner and his former wife to stay away from each other, but the petitioner submits no documentation of a protective order issued against his former wife.

The record shows that the petitioner pled guilty to, and was convicted of, assault against his former wife on November 20, 2002, but that his conviction was later dismissed and on April 14, 2003, he pled guilty to and was convicted of a terroristic threat offense. In his statements, the petitioner asserts that he did not slam the door on his former wife's arm and opines that she injured herself. The petitioner reports that although he was not guilty, he pled guilty to the assault charge because his court-appointed attorney told him he would be released immediately and did not tell him that he would be placed in removal proceedings. The petitioner states that after his release from immigration custody, he hired an attorney who told him he could change the assault case to a non-deportable offense. The petitioner explains, "So my case was dismissed . . . and I had no other choice but to except [sic] the terroristic attack case in order not to be deported." The petitioner does not further explain his choice to plead guilty to the terroristic threat offense despite his professed innocence.

The petitioner also denies ever threatening to cut off his former wife's head and place it on her chest, as reported in the D.A. Intake Management printout. However, in his first statement, the petitioner states, "I do not know exactly what I said but . . . in our culture and language if you are angry from someone [sic] and if you tell him or her that I kill you or something it means nothing and it is not a threat at all[.]"

The petitioner's former wife's letter does not fully support the petitioner's explanations. She concedes that the petitioner's threat "and many others, are among the everyday language of many Iranians who not only say it to their spouses, but also to their children." However, the petitioner's former wife further states:

On the night of his arrest . . . he became very angry and tried to leave the house in a hurry as I was entering, which is when the door hit me Being that I was very mad and angry at the time I did not think twice about my statements to the police for I wanted only to teach him a lesson about American law. Only later, when I calmed down, did I realize that he never meant to intentionally hurt me in any way.

Even if the petitioner's former wife's letter established that the petitioner only hurt her unintentionally, she indicates that she was injured as a result of his actions. Most importantly, the document fails to establish that she subjected the petitioner to battery or extreme cruelty.

The December 29, 2002 police report also fails to support the petitioner's claim. In his first statement, the petitioner claims that after his former wife and her family took all of his personal belongings, he called the police because he wanted a witness and because he was frightened that his former wife and her family might hurt him due to their previous threats. The petitioner states that he "explained everything" to the police officer. However, the police report simply states, "Assist Citizen – Wife came and got husband's things[.] [S] he is on lease and they still are married. He wants to know what he can do[.]" The report also notes, "Common Property." While it confirms that the petitioner's former wife took belongings from their apartment after their separation, the police report indicates that the missing objects were common property and does not mention any threats made to the petitioner by his former wife's family.

The documentation of the former couple's divorce also contradicts the petitioner's claim. The petitioner's former wife filed the divorce action and the divorce decree states that the former couple's marriage was "dissolved on the grounds of insupportability and cruel treatment." In his first statement, the petitioner claims that his former wife went to court when he was in Iran, told the court that he had left the country and so "the court gave everything to her favor." The original divorce petition of the petitioner's former wife cites insupportability as the only ground for divorce, which indicates that the ground of cruel treatment was added at a later time. Yet the final divorce decree states that the petitioner "previously made a general appearance in this action, and although properly noticed of the trial date, did not appear and wholly made default." In his affidavit submitted on appeal, the petitioner states that he did not receive notice of the final hearing, but the petitioner submits no credible explanation as to why the divorce decree states that he was properly notified of the final hearing date. The petitioner also submits no corroborative evidence that he was in Iran on the date of the hearing.

The record shows that the petitioner was convicted of making a terroristic threat against his former wife, that his former wife was granted an emergency order of protection against him and that she was granted a divorce due, in part, to his cruel treatment. The petitioner's testimony and the letters of his friend and family fail to rebut the documentary evidence against the petitioner. Accordingly, the petitioner has not established that his former wife subjected him 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 submitted a Certificate of Disposition and certified copies of court records which show that on November 20, 2002, the Harris County, Texas Criminal Court convicted the petitioner of assault, a class C misdemeanor (Cause Number [REDACTED]). On April 14, 2003, the court dismissed the petitioner's assault conviction and the case was refiled. That same date, the court convicted the petitioner of terroristic threat, a class B misdemeanor (Cause Number [REDACTED]).

The court records submitted by the petitioner do not establish whether or not his terroristic offense was a crime involving moral turpitude, which would bar a finding of the petitioner's good moral character pursuant to section 101(f)(3) of the Act. When determining whether a crime involves moral turpitude, the statute under which the conviction occurred controls. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989). Where the statute includes offenses that both do and do not involve moral turpitude, the record of conviction may be examined to determine whether the crime committed involved moral turpitude. *Id.* The record of conviction includes the indictment or charging documents, plea, verdict and sentence. *Id.* at 137-38.

In this case, the Texas penal code defines the offense of terroristic threat as follows, in pertinent part:

- (a) A person commits an offense if he threatens to commit any offense involving violence to any person or property with intent to:
 - (1) cause a reaction of any type to his threat by an official or volunteer agency organized to deal with emergencies;
 - (2) place any person in fear of imminent serious bodily injury;
 - (3) prevent or interrupt the occupation or use of a building, room, place of assembly, place to which the public has access, place of employment or occupation, aircraft, automobile, or other form of conveyance, or other public place;
 - (4) cause impairment or interruption of public communications, public transportation, public water, gas, or power supply or other public service;
 - (5) place the public or a substantial group of the public in fear of serious bodily injury; or

(6) influence the conduct or activities of a branch or agency of the federal government, the state, or a political subdivision of the state.

Tex. Penal Code Ann. § 22.07 (2007).

Because it encompasses offenses that both do and do not involve moral turpitude, the Texas terroristic threat statute is divisible. The court documents submitted by the petitioner do not state the specific subsection under which he was convicted and the petitioner did not submit the charging document for his terroristic threat offense. We are consequently unable to determine whether or not the petitioner's conviction was for a crime involving moral turpitude, which would bar a finding of his good moral character under section 101(f)(3) of the Act. *Compare Chanmouny v. Ashcroft*, 376 F.3d 810, 813 (8th Cir. 2004) (not reaching the issue of whether the Minnesota terroristic threat statute was divisible because the record of conviction showed that the petitioner's offense was committed with a morally bereft intent).

Nonetheless, the regulation at 8 C.F.R. § 204.2(c)(1)(vii) prescribes that 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." On appeal, counsel claims that the petitioner established extenuating circumstances because he "categorically denies ever having assaulted or threatened his wife" and because the petitioner's statements show that his former wife "filed false charges against him as a vindictive act." The record does not support counsel's claims. The evidence indicates that the petitioner's terroristic threat conviction arose from the November 16, 2002 incident. Although the petitioner denies assaulting or threatening his former wife as reported in the D.A. Intake Management Summary of Facts, he acknowledges that his conviction arose from their dispute and his ensuing arrest. In her letter, the petitioner's wife states that she was injured as a result of the petitioner's actions during the November 16, 2002 incident. While the petitioner states that he "had no other choice" but to plead guilty to the terroristic threat charge in order to avoid deportation, he does not further explain why, if he was indeed innocent of the charge, he failed to so plead. Accordingly, the record does not establish extenuating circumstances, but rather indicates that the petitioner was convicted of a terroristic threat offense arising from a dispute with his former wife and his ensuing arrest, an unlawful act that adversely reflects upon his moral character.

We also concur with the director's determination that the petitioner failed to establish his good moral character because he did not comply with the regulation at 8 C.F.R. § 204.2(c)(v), which prescribes that primary evidence of a self-petitioner's good moral character is his or her affidavit supported by local police clearances or state criminal background checks for every location that the petitioner has resided for at least six months during the three-year period preceding the filing of the petition. The petitioner initially submitted no evidence of his good moral character. The petitioner did not discuss his moral character in any of his first three statements. In his affidavit, the petitioner attests that he has "been a very good person" during his stay in the United States because he has timely paid his taxes, has a good credit score and has his own business. However, as previously discussed, the

significant differences between the language, grammar, and syntax of this affidavit and the petitioner's first three statements indicates that the language of the affidavit is not entirely the petitioner's own and detracts from the document's credibility.

In response to the RFE, the petitioner submitted copies of the judgments of his assault offense, the order dismissing the assault offense and the judgment of his terroristic threat offense. The petitioner also submitted a Certificate of Disposition from the Harris County, Texas District Clerk, which states that a "criminal search" of the District Clerk's Office's records found the assault and terroristic threat cases against the petitioner. The certificate indicates that the search was conducted under the petitioner's name, [REDACTED]

However, the record shows that the petitioner has also used at least four aliases in the United States: [REDACTED] in the December 29, 2002 police report), [REDACTED] (on the lease), [REDACTED] (on the apartment security deposit account statement) and "[REDACTED] (on the automobile purchase receipt). In the RFE, the director specifically informed the petitioner, "if the police clearance is researched by name only, you must supply the law enforcement agency with all aliases you have used[.]" The petitioner failed to submit a police clearance in compliance with this request or a state criminal background check based on the petitioner's fingerprints. On appeal, the petitioner does not explain his failure to provide the requisite evidence or state that such evidence is not available.

In response to the RFE, the petitioner submitted affidavits from two relatives and one friend attesting to his good character. Yet the petitioner's relatives, [REDACTED] state that he never harmed, hurt or caused trouble for anyone "since he resided in Los Angeles." The record indicates that the petitioner did not move to California until January 2004, three months after this petition was filed. Accordingly, their affidavits do not address the petitioner's moral character during the pertinent years preceding the filing of his petition. The petitioner's friend, [REDACTED] indicates that he met the petitioner only two months before this petition was filed and [REDACTED] does not demonstrate that he can knowingly attest to the petitioner's good moral character for any significant period of time.

On appeal, the petitioner submits a letter from the California Department of Justice Bureau of Criminal Identification and Information dated June 7, 2006, which states that a search of the petitioner's fingerprints identified no criminal history record with the Bureau. While this document shows that the petitioner has no criminal record in California, it does not establish the petitioner's good moral character during his residence in Texas before this petition was filed.

The record shows that the petitioner was convicted of a terroristic threat offense arising from a dispute with his former wife and his ensuing arrest, an unlawful act that adversely reflects upon his moral character. The petitioner also failed to submit evidence of his good moral character pursuant to the regulation at 8 C.F.R. § 204.2(c)(v). Accordingly, the petitioner has not demonstrated 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 his former wife in good faith, that his former wife subjected him to battery or extreme cruelty during their marriage or that he is a person of good moral character. He is consequently ineligible for immigrant classification under section 204(a)(1)(A)(iii) of the Act based on the present record. Nonetheless, the case will be remanded because the director denied the petition without first issuing a NOID. The regulation at 8 C.F.R. § 204.2(c)(3)(ii) directs that CIS must provide a self-petitioner with a NOID and an opportunity to present additional information and arguments before a final adverse decision is made. Accordingly, the case will be remanded for issuance of a NOID, which will give the petitioner a final opportunity to overcome the deficiencies of his case.

As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision that, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.