



U.S. Citizenship
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Office: VERMONT SERVICE CENTER

Date: MAR 29 2007

IN RE:

Petitioner:

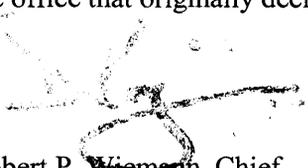
PETITION:

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.


Robert P. Wieman, 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 The decision of the director will be withdrawn and the petition will be remanded for further action.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 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 because the petitioner did not establish that he entered into marriage with his former wife in good faith.

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:

(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 person who was subjected to abuse in the form of forced prostitution or who can establish that he or she was forced to engage in other behavior that could render the person excludable under section 212(a) of the Act would not be precluded from being found to be a person of good moral character, provided the person has not been convicted for the commission of the offense or offenses in a court of law. A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she willfully failed or refused to support dependents; or 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. If the results of record checks conducted prior to the issuance of an immigrant visa or approval of an application for adjustment of status disclose that the self-petitioner is no longer a person of good moral character or that he or she has not been a person of good moral character in the past, a pending self-petition will be denied or the approval of a self-petition will be revoked.

* * *

(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 contained 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.

* * *

(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. Self-petitioners who lived outside the United States during this time should submit a police clearance, criminal background check, or similar report issued by the appropriate authority in each foreign country in which he or she resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. 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 in 1986 as a nonimmigrant student (F-1). On January 13, 1998, the petitioner's Form I-589, application for asylum, was approved. On March 29, 2001, the Los Angeles Asylum Office terminated the petitioner's asylum status because the petitioner presented false testimony with his application and his grant of asylum was based on fraudulent information. On April 2, 2001, the petitioner was served with a Notice to Appear for removal proceedings, which charged the petitioner as removable pursuant to section 237(a)(1)(B) of the Act as an alien present in the United States in violation of the law and section 212(a)(6)(C)(i) of the Act as an alien who sought to procure an immigration benefit by fraud or willful misrepresentation. The petitioner remains in removal proceedings before the Los Angeles Immigration Court and his next hearing is scheduled for August 30, 2007.

On November 13, 2003, the petitioner married D-K-¹, a U.S. citizen, in Nevada. On November 18, 2003, D-K- filed a Form I-130, petition for alien relative, on the petitioner's behalf, which was denied due to abandonment on November 9, 2004. The petitioner filed this Form I-360 on December 3, 2004. On December 10, 2004, the petitioner's marriage to D-K- was dissolved by order of the Superior Court of California, Los Angeles County. The director subsequently issued a Request for Evidence (RFE) of, *inter alia*, the petitioner's good moral character and good-faith entry into the marriage. The petitioner, through counsel, responded with additional evidence. On December 16, 2005, the director denied the petition for lack of the petitioner's good-faith entry into the marriage. Counsel timely appealed.

On appeal, counsel claims that the former couple's financial accounts were completely commingled and that the petitioner would not have endured his former wife's extreme cruelty if he had not married her in good faith. We concur with the director's determination. However, the case will be remanded for further consideration of the applicability of section 204(g) of the Act, the evidence regarding battery or extreme cruelty, the petitioner's good moral character, and for issuance of a Notice of Intent to Deny (NOID) pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

¹ Name withheld to protect individual's identity.

Good Faith Entry into Marriage

The petitioner submitted the following evidence relevant to his claim that he entered into marriage with his former wife in good-faith:

- The petitioner's declarations dated December 1, 2004 and October 26, 2005;
- Declaration of the petitioner's friend and co-worker [REDACTED];
- Affidavit of the petitioner's friend, [REDACTED];
- Affidavit of the petitioner's friend, [REDACTED] submitted on appeal;
- Affidavit of the petitioner's friend, [REDACTED] submitted on appeal;
- Various grocery store and retail sales receipts dated between November 2003 and June 2004;
- Various bills and notices addressed to the petitioner's former wife individually at the former marital residence;
- Automobile insurance policy declarations dated November 21 and December 21, 2003, which identify the petitioner and his father as the policy holders and the petitioner's former wife as an additional driver;
- Voided check for a joint bank account of the former couple;
- Printout of an electronic mail message sent to the petitioner on November 11, 2003 regarding wedding ceremony packages at a hotel and casino in Las Vegas, Nevada;
- Bank statements for the former couple's joint checking account dated November 24, 2003 through March 17, 2004 submitted on appeal.

In his December 1, 2004 declaration, the petitioner states that he first found his former wife to be "a very intelligent, mature and bright woman whose articulate and logical conversations showed [him] that she had a lot to offer. Her mannerisms and interests in politics convinced [him] that she is an ideal woman to join lives with[.]" In his October 26, 2005 declaration submitted in response to the RFE, the petitioner states, "I entered into matrimony with [D-K-] thinking with the level of her education and political knowledge we could build a meaningful and fruitful life to help our community." The petitioner does not describe how he met his former wife, their courtship, wedding, honeymoon (if any), their joint residence and shared experiences, apart from his wife's alleged abuse.

The relevant statements of the petitioner's friends fail to provide probative details sufficient to support his claim. [REDACTED] states that she never met the petitioner's former wife and reports, "I found out [the petitioner] got married when he told me one day. I didn't know much about the girl and I didn't ask too many questions. He seemed really happy at that time[.]" [REDACTED] reports a similarly abbreviated account of the petitioner's marriage: "He told me that he had met a girl who seemed intelligent and that they wanted to be together. I was a little bit surprised that he got married so fast[.]" [REDACTED] states that the petitioner told her he had fallen in love with his former wife, wanted to propose to her and asked [REDACTED]'s advice about purchasing an engagement ring. [REDACTED] also never met the petitioner's former wife. [REDACTED] explains that she kept in touch with the petitioner during his courtship and she states, "I saw him very happy and I was happy for him

to find the love of his life according to him[,]” but [REDACTED] also explains that she never met the petitioner’s former wife or ever saw the former couple together.

The remaining, relevant evidence also does not demonstrate the requisite good-faith entry into the marriage. The grocery store and retail sales receipts simply show that the petitioner purchased groceries and household goods during his marriage. The bills and notices are addressed to the petitioner’s former wife individually and do not show that the former couple shared financial responsibilities. The automobile insurance policy declarations show that the petitioner and his wife were both covered by the policy, but the petitioner submitted no evidence that he and his wife, rather than his father, paid for the policy. The electronic mail message regarding a hotel’s wedding package does not show that the petitioner actually purchased the package. In fact, the record contains no documentation of the petitioner’s wedding, apart from the marriage certificate.

On appeal, counsel claims that “there was a complete commingling of financial accounts in [the petitioner’s] marriage.” Counsel asserts that the petitioner and his former wife “jointly opened a bank account where they put their entire assets together.” The record contradicts counsel’s claim. The blank, voided check and the joint checking account statements submitted on appeal do not demonstrate that the petitioner and his wife commingled their financial assets. The three statements dated from November 2003 to February 2004 show ending balances from \$18.02 to \$81.20. The listed withdrawals show only incidental purchases and reflect no payments for basic living expenses such as utilities, a mortgage, car or insurance payments. The statements also show that periodic transfers from other checking accounts (and one wire transfer from the petitioner’s brother) were the only source of deposits to the account. The statements do not indicate that the petitioner’s salary was ever directly deposited into the account. In fact, the petitioner’s paycheck receipt dated December 31, 2003 (submitted on appeal) shows that his earnings were directly deposited into a different bank account.

The petitioner provides no detailed description of how he met his wife, their courtship, wedding, joint residence and shared experiences, apart from his wife’s alleged abuse. The relevant statements of the petitioner’s friends and the relevant documentary evidence also fail to provide probative information sufficient to establish the petitioner’s claim. Accordingly, the present record fails to demonstrate that the petitioner entered into marriage with his former wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Restriction on Petitions Based on Marriages Entered while in Proceedings and the Bona Fide Marriage Exception

The petitioner married D-K- while he was in removal proceedings and the approval of this petition is consequently barred by section 204(g) of the Act, which states:

Restriction on petitions based on marriages entered while in exclusion or deportation proceedings. – Notwithstanding subsection (a), except as provided in section 245(e)(3), a petition may not be approved to grant an alien immediate

relative status by reason of a marriage which was entered into during the period [in which administrative or judicial proceedings are pending], until the alien has resided outside the United States for a 2-year period beginning after the date of the marriage.

The record does not indicate that the petitioner resided outside of the United States for two years after his marriage. Accordingly, section 204(g) bars approval of this petition unless the petitioner can establish eligibility for the bona fide marriage exception to section 204(g) of the Act, pursuant to section 245(e) of the Act, which states:

Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception. –

- (1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).
- (2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.
- (3) Paragraph (1) and section 204(g) shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the [Secretary of Homeland Security] that the marriage was entered into in good faith and in accordance with the laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 204(a) . . . with respect to the alien spouse or alien son or daughter. In accordance with the regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

The corresponding regulation at 8 C.F.R. § 245.1(c)(9)(v) states, in pertinent part:

Evidence to establish eligibility for the bona fide marriage exemption. Section 204(g) of the Act provides that certain visa petitions based upon marriages entered into during deportation, exclusion or related judicial proceedings may be approved only if the petitioner provides clear and convincing evidence that the marriage is bona fide.

While identical or similar evidence may be submitted to establish a good faith marriage pursuant to section 204(a)(1)(A)(iii)(I)(aa) of the Act and the bona fide marriage exception at section 245(e)(3) of the Act, the latter provision imposes a heightened burden of proof. *Matter of Arthur*, 20 I&N Dec. 475, 478 (BIA 1992). *See also Pritchett v. I.N.S.*, 993 F.2d 80, 85 (5th Cir. 1993) (acknowledging “clear and convincing evidence” as an “exacting standard.”) To demonstrate good faith entry into the qualifying relationship for a self-petition under section 204(a)(1)(A)(iii)(I)(aa) of the Act, the petitioner must establish his or her good faith entry into the qualifying relationship by a preponderance of the evidence and any credible evidence shall be considered. Section 204(a)(1)(J) of the Act, 8 U.S.C. § 1154(a)(1)(J) (2007); *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774, 782-83 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151, 152 (BIA 1965). However, to be eligible for the bona fide marriage exception under section 245(e)(3) of the Act, the petitioner must establish his or her good faith entry into marriage by clear and convincing evidence. Section 245(e)(3) of the Act, 8 U.S.C. § 1255(e)(3); 8 C.F.R. § 245.1(c)(9)(v). “Clear and convincing evidence” is a more stringent standard. *Arthur*, 20 I&N Dec. at 478.

As discussed in the preceding section, the present record fails to establish the petitioner’s good-faith entry into his former marriage by a preponderance of the evidence under section 204(a)(1)(A)(iii)(I)(aa) of the Act. Accordingly, the present record also fails to establish such good-faith under the heightened standard of proof required by section 245(e)(3) of the Act. The record shows that the petitioner married his former wife less than one week before a scheduled hearing on the merits of his removal case. In this case, the petitioner has provided no detailed, probative testimony describing when and how he met his wife, their courtship, wedding and any of their shared experiences, apart from his wife’s alleged abuse. Upon remand, the director should address the applicability of section 204(g) of the Act and the petitioner’s eligibility for the bona-fide marriage exception at section 245(e) of the Act.

Good Moral Character

Section 101(f) of the Act states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

* * *

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraphs (A) and (B) of section 1182(a)(2) of this title [section 212(a)(2) of the Act] . . . if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period;

* * *

(6) one who has given false testimony for the purpose of obtaining any benefits under this Act[.]

Section 212(a)(2)(A) of the Act includes, in pertinent part:

any alien convicted of , or who admits having committed, or who admits committing acts which constitute the essential elements of –

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime[.]

The record shows that the petitioner included false written statements on his asylum application and gave false testimony when interviewed under oath by an asylum officer. At his asylum interview, the petitioner stated that his father was imprisoned for his political activities and died in Iran. The petitioner also stated that his brother was killed as a result of his political activities and that the petitioner returned to Iran in 1997 for his brother's funeral and was arrested and detained. The petitioner was granted asylum on January 13, 1998 based on his written statements and oral testimony. However, after the Los Angeles Asylum Office notified the petitioner of its intent to terminate his asylum status, the petitioner admitted at an interview on March 15, 2001 that none of the information about his father and brother was true, that he had not returned to Iran since his arrival in the United States in 1983 and so was never arrested or detained in Iran in 1997.

The petitioner's false statements made under oath at his asylum interview constitute false testimony. *Ramos v. INS*, 246 F.3d 1264, 1265-66 (9th Cir. 2001). Because the petitioner gave false testimony to obtain asylum in the United States, he is statutorily barred from establishing his good moral character pursuant to section 101(f)(6) of the Act. Although the petitioner has not been convicted of a crime arising from his false testimony, he has admitted committing the essential elements of a crime involving moral turpitude, namely, immigration fraud under 18 U.S.C. § 1546(a).² Accordingly, section 101(f)(3) of the Act also bars a finding of the petitioner's good moral character.

Although the petitioner complied with the regulation at 8 C.F.R. § 204.2(c)(2)(v) by submitting a clearance letter from the Superior Court of California, Los Angeles County; a fingerprint clearance from the Federal Bureau of Investigation (FBI), and a criminal background check from the California

² Section 1546(a) of the United States Code, in pertinent part, subjects to a fine, imprisonment up to 25 years, or both:

Whoever knowingly makes under oath, or as permitted under penalty of perjury under section 1746 of title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document which contains any such false statement or which fails to contain any reasonable basis in law or fact[.]

Department of Justice, those documents fail to establish his good moral character. The statute and the regulations also do not bar an investigation of the self-petitioner's character beyond the three-year period preceding the filing of the Form I-360 when there is reason to believe that the self-petitioner lacked good moral character during that time. *See* Preamble to Interim Regulations, 61 Fed. Reg. 13061, 13066 (Mar. 26, 1996).

Moreover, the petitioner's statements regarding his moral character in his October 26, 2005 declaration are disingenuous and greatly detract from the credibility of his testimony. The petitioner states, "After 19 years of living in the United States of America, I have never committed an act of harm anybody [sic]. Every record about me from driving to criminal is clear of any wrong doings. I have complied with all laws and regulations and I have lived as a good citizen." The petitioner does not acknowledge or discuss his false testimony in 1997 and the fact that he was granted asylum based on the fraudulent information he provided. The petitioner's failure to acknowledge his false testimony compromises his credibility.

The present record fails to establish the petitioner's good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

Battery or Extreme Cruelty

Upon remand, the director should also reconsider the sufficiency of the evidence relevant to battery or extreme cruelty. The petitioner submitted the following evidence relevant to his claim that his former wife subjected him to extreme cruelty:

- The petitioner's declarations dated December 1, 2004 and October 26, 2005;
- The November 11, 2004 and September 22, 2005 letters from the petitioner's counselor, [REDACTED];
- The statements of the petitioner's friends, [REDACTED] and [REDACTED];
- Printouts of electronic mail messages from the petitioner's former wife;
- Copies of the petitioner's credit card statement for January 22 through March 3, 2004 and letters addressed to the petitioner's father dated February 11 and 21, 2004 regarding possibly fraudulent use of his credit card accounts;
- Documents regarding the unpaid parking tickets of the petitioner's wife and the resulting impoundment of her car; and
- Three printouts from websites regarding domestic violence by women against men.

In his December 1, 2004 declaration, the petitioner indicates that after their marriage, his former wife had financial demands that were beyond his means. He states that he had to borrow money from his father to purchase his former wife a car and a computer and that his former wife incurred charges up to the \$5,000 limit of his credit card and also charged \$2,000 on his father's credit card. The petitioner states that his wife made him shop at Whole Foods, and that he had to pay for her parking tickets and

electrical damage that she caused in his home. The petitioner also reports that his former wife told him to stop associating with his Iranian friends and co-workers.

In his October 26, 2005 declaration submitted in response to the RFE, the petitioner states that his wife refused to let him invite any single women to their wedding reception, threatened to leave him if he spoke to his female cousins, and once got out of the car because she accused him of looking at a woman driving past. The petitioner reports that his wife was also jealous of his enduring love for his deceased mother and threw away his photographs of his mother. The petitioner states that his wife refused to let his father stay with them on one occasion, tried to persuade him from seeing his Iranian friends and never met them. The petitioner reports that on his former wife's birthday in 2003, they drove to a neighborhood with a nice view and when the petitioner suggested they leave because there was no place to park, the petitioner's former wife pushed him, accused him of not wanting to do anything romantic for her birthday and threw the camera he had given her as a gift down a cliff. On another unspecified occasion, the petitioner states that he woke up and found his wife sitting by his bed with a knife in her hand and that she started crying and said that she hated her father and some of the petitioner's actions reminded her of him. The petitioner further explains that after his former wife left him, she used his credit card to the limit, searched his files at home when he was at work, found his father's credit card number and then used his father's credit card without his consent. The petitioner reports that as a result of his wife's behavior, his relationships with his friends and family suffered, he was not able to focus on his work, he began smoking, contemplated suicide on two occasions, and now fears becoming romantically involved with other women.

The testimony of the petitioner's friends confirms that the petitioner was deeply affected by his marital problems, but does not establish that the petitioner's former wife subjected him to extreme cruelty. [REDACTED] states that he only saw the petitioner two or three times during the course of the petitioner's marriage. [REDACTED] states that the petitioner "seemed miserable," "was complaining" about his former wife and "seemed like he was almost crying" each time they spoke. [REDACTED] states that after the petitioner's former wife left him, [REDACTED] tried to set him up with some other women, but the petitioner had "developed a fear of the future and of commitment."

[REDACTED] states that after the petitioner's marriage, he was no longer himself, seemed depressed and lost a lot of weight. She reports overhearing a heated argument between the petitioner and his former wife on the telephone where his former wife was screaming. [REDACTED] confirms that she gave the petitioner some of her clients because his work was suffering. [REDACTED] reports that he sold his car to the petitioner for the petitioner's wife and that she was very rude throughout the exchange and later told the petitioner he could not be friends with [REDACTED] when the car had a small problem. [REDACTED] states that after his marriage, the petitioner sent her an electronic mail message saying that he was not happy and his former wife was acting strange and then later asked [REDACTED] not to contact him because his wife was jealous. [REDACTED] states that when she ran into the petitioner after his former wife had left him, he looked very depressed. [REDACTED] also states that she ceased contact with the petitioner after his marriage, but that she saw the petitioner after his former wife

left him, that he told her of his marital problems and that while they were talking, the petitioner's former wife called him and [REDACTED] could hear his former wife screaming and yelling at him.

The credit card statements and letters regarding the credit account of the petitioner's father are consistent with the petitioner's account of his former wife's use of his and his father's credit cards, but these documents do not establish that the petitioner's former wife subjected him to economic abuse. The documentation of the unpaid parking tickets of the petitioner's wife and the resulting impoundment of her car may indicate that she was irresponsible, but the evidence does not demonstrate that the petitioner's former wife subjected him to extreme cruelty. The electronic mail messages also fail to support the petitioner's claim. The messages simply show that the petitioner and his former wife disagreed about the form of the legal termination of their marriage and disputed the legitimacy of his former wife's use of the petitioner's credit card.

The letters from the petitioner's counselor, [REDACTED], also fail to establish the petitioner's claim. In her November 11, 2004 letter, [REDACTED] states that the petitioner began weekly therapy with her on September 20, 2004. [REDACTED] states, "His presenting problem was in adjusting to the loss of his marriage. . . . His emotional state presents fears of similar themes, difficulty concentrating, anxiety and depression, and problems trusting people, particularly women." In her September 22, 2005 letter submitted in response to the RFE, [REDACTED] simply states that the petitioner is in therapy "for the purpose of working on his problems that resulted from his marriage. [The petitioner] reported verbal abuse by his ex-wife, [D-K-] who was also emotionally unstable and unpredictable. . . . Any details that are needed would need to be obtain [sic] from [the petitioner]." [REDACTED] provides no clinical analysis of the petitioner's symptoms and does not discuss any specific incidents of the alleged abuse, as reported to her by the petitioner. Consequently, [REDACTED] letters confirm that the petitioner engaged in therapy to address his marital problems, but [REDACTED] statements do not establish that the petitioner's former wife subjected him to extreme cruelty during their marriage.

In his October 28, 2005 letter submitted in response to the RFE, counsel claims that certain actions of the petitioner's former wife are consistent with examples of abusive behavior of women against men cited in the documents discussing men as victims of domestic violence. For example, counsel cites [REDACTED] [REDACTED] discussion of a woman with a mental illness who used the legal system to retaliate against her husband. Counsel claims that the petitioner's former wife similarly made false allegations against the petitioner in order to harm him and jeopardize his immigration status. In support of this claim, counsel cites the petitioner's October 26, 2005 declaration. In that declaration, the petitioner states that his former wife twice threatened to contact the Department of Homeland Security and say that the petitioner was a dangerous person. However, the petitioner does not describe his former wife's threats in probative detail and the record contains no evidence that the petitioner's former wife carried out her threatened action. Moreover, the record shows that the Form I-130 petition filed by the petitioner's former wife on his behalf was denied due to abandonment, not due to her withdrawal of the petition or other possibly abusive actions.

Counsel also claims that the petitioner's former wife's excessive use of his and his father's credit cards is analogous to a situation cited in the third document regarding domestic violence against men where "one day the man simply finds all their accounts have been drained and she is nowhere in sight." Again, the record fails to support counsel's claim. As previously discussed, the statements of the former couple's joint bank account indicate that the petitioner maintained other, separate accounts and that he did not deposit his salary directly into the former couple's joint account. In addition, the electronic mail messages show that the petitioner remained in contact with his wife after her allegedly abusive use of his and his father's credit cards.

The relevant testimonial and documentary evidence fails to support the petitioner's claims regarding his wife's purported abuse. Upon remand, the director should further consider whether the present record demonstrates that the petitioner's 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.

The present record fails to establish the petitioner's eligibility for immigrant classification under section 204(a)(1)(A)(iii) of the Act. Nonetheless, the case will be remanded for further consideration of the bar to approval of this petition pursuant to section 204(g) of the Act, the petitioner's moral character and the requisite battery or extreme cruelty; and for issuance of a NOID pursuant to the regulation at 8 C.F.R. § 204.2(c)(3)(ii).

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.