

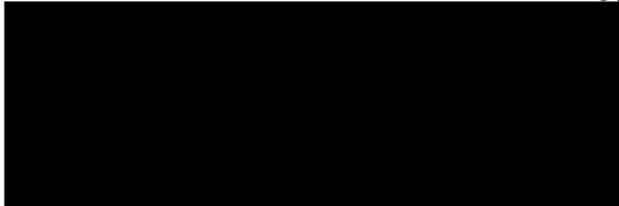
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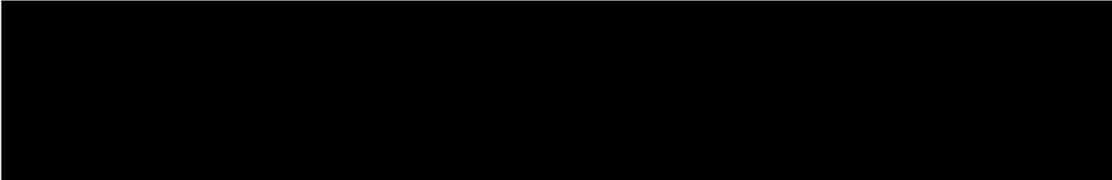
Office: VERMONT SERVICE CENTER

Date: FEB 20 2008

IN RE: Petitioner: [REDACTED]

PETITION: Petition for Immigrant Abused 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. Wiemann*  
Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition. On appeal, the Administrative Appeals Office (AAO) remanded the matter for further action. The matter is now before the AAO upon certification of the director's subsequent, adverse decision. The decision of the director will be affirmed and the petition will be denied.

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 a United States citizen.

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 clause (ii) or (iii) of subparagraph (B), 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].

In this case, the director initially denied the petition on December 16, 2005, for failure to establish that the petitioner entered into marriage with his former wife in good faith. In its March 29, 2007 decision on appeal, the AAO concurred with the director's determination and further found that the petitioner had not established his good moral character, his former wife's battery or extreme cruelty and his eligibility for the bona fide marriage exemption from the bar to approval of visa petitions based on marriages entered into while the alien is in removal proceedings under section 204(g) of the Act. The AAO nonetheless remanded the petition for issuance of a Notice of Intent to Deny (NOID) in compliance with the regulation at 8 C.F.R. § 204.2(c)(3)(ii). Upon remand, the director issued a NOID on June 19, 2007, which informed the petitioner, through counsel, that he had failed to establish that he entered into his marriage in good faith, was eligible for the bonafide marriage exemption from section 204(g) of the Act, that his former wife subjected him to battery or extreme cruelty during their marriage and that he was a person of good moral character. Counsel submitted a brief in response to the NOID. The director determined that counsel's claims did not overcome the grounds for denial and denied the petition on December 31, 2007. The director certified his decision to the AAO for review and informed the petitioner, through counsel, that he could submit a brief to the AAO within 30 days of service of the certified decision. To date, the AAO has received nothing further from the petitioner or counsel.

The relevant evidence submitted below was fully addressed in the AAO's prior decision, incorporated here by reference. Accordingly, we will only address the material submitted since that decision was issued. In response to the NOID, counsel submitted a brief in which he claimed that the AAO's prior decision was "patently incorrect." Specifically, counsel asserts that the petitioner entered his marriage in good faith because he and his former wife commingled their assets and lived in California, a state that has community property statutes. Rather than citing specific sections of the California law, counsel quotes a definition of community property from Wikipedia. While joint ownership of assets acquired during a marriage may be presumed under California law, that presumption alone cannot meet the petitioner's burden of proof to establish his good-faith entry into marriage with his former wife, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act. Counsel fails to establish that the petitioner and his former wife did, in fact, commingle their assets. Counsel does not address the AAO's prior discussion of the three joint bank account statements submitted below, which show ending balances between \$18.02 to \$81.20 and list withdrawals for only incidental purchases and no basic living expenses such as (but not limited to) utilities, rent, a mortgage, automobile or insurance payments. Counsel also fails to explain why the petitioner's December 31, 2003 paycheck receipt shows that his earnings were directly deposited not into the former couple's joint account, but an entirely different bank account. The petitioner submitted no further evidence in response to the NOID and we do not repeat our prior discussion of the remaining, relevant evidence submitted below. The petitioner has failed to establish that he entered into marriage with his former wife in good faith by a preponderance of the evidence, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

The petitioner has also failed to demonstrate his eligibility for the bona-fide marriage exemption from the bar to approval of this petition under section 204(g) of the Act. In his NOID response, counsel merely asserted that "the 204(g) exemption is routinely granted at the Los Angeles I-130 unit – that happens to be where this case is pending." Counsel provides no basis on which to find that the petitioner has met the heightened standard of proof by establishing by clear and convincing evidence that his marriage was entered into in good faith, as required for the exemption at section 245(e) of the Act. Consequently, section 204(g) of the Act further bars approval of this petition.

In regards to the petitioner's former wife's alleged abuse, counsel claims that the AAO's "own summary of the events describes textbook abuse." As authority for his assertion, counsel cites articles printed from the websites [www.batteredmen.com](http://www.batteredmen.com) and [open-site.org](http://open-site.org), but does not address the specific deficiencies of the relevant evidence discussed in the AAO's prior decision. Instead, counsel claims that the AAO shares a societal prejudice towards male victims of domestic violence. We find no gender bias in the prior decision of the AAO. The petitioner has failed to establish 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.

Finally, counsel claimed that the AAO erroneously concluded that the petitioner lacked good moral character due to his false testimony at his asylum interview. Counsel claims that there is no evidence that the petitioner's false statements were made under oath or that he admitted committing the essential elements of a crime involving moral turpitude. Counsel is mistaken. The record indicates that the

petitioner swore to the truth of his testimony before the asylum officer at his initial asylum interview on November 3, 1997. In his subsequent sworn testimony on March 15, 2001, the petitioner admitted that nothing in his original asylum claim or testimony was true except for his basic biographical information and his statements regarding a video production. The record further shows that the petitioner was aware of the prescription against immigration fraud under 18 U.S.C. § 1546 as this statutory provision is quoted on Part F of the Form I-589, Application for Asylum, which the petitioner signed on September 1, 1997. A summary of this provision is also provided in plain language on the "Record of Applicant's Oath During an Interview," which the petitioner signed on March 15, 2001 at his subsequent interview with an asylum officer during which he admitted to having lied regarding facts material to his asylum claim in his initial interview. Accordingly, counsel's reliance on *Matter of R-S-J*, 22 I&N Dec. 863 (BIA 1999) and *Matter of J*, 2 I&N Dec. 285 (BIA 1945) is misguided as both cases are inapposite.

Upon review, we concur with the director's determinations. The petitioner has failed to demonstrate that he entered into his marriage in good faith, that his former wife subjected him to battery or extreme cruelty during their marriage and 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. Section 204(g) of the Act further bars approval of this petition.

The denial of the petition will be affirmed for the four reasons discussed above, with each considered 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. The petitioner has not sustained that burden.

**ORDER:** The director's decision of December 31, 2007 is affirmed. The petition is denied.