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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: ORLANDO

Date:

JAN 23 2008

EAC 07 070 50983

IN RE:

Petitioner:

[Redacted]

PETITION:

Petition for Abused Spouse Pursuant to Former Section 204(a)(1)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1154(a)(1)(A)(iii) (1996).

ON BEHALF OF PETITIONER:

[Redacted]

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 Orlando District Director denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal.¹ The appeal will be dismissed.

The petitioner seeks immigrant classification under former section 204(a)(1)(A)(iii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1154(a)(1)(A)(iii) (1996), as an alien battered or subjected to extreme cruelty by a United States citizen.²

The director denied the petition pursuant to section 204(c) of the Act because he determined that the petitioner had previously sought immediate relative status as the spouse of a U.S. citizen by reason of a marriage entered into for the purpose of evading the immigration laws. The director also denied the petition because the petitioner failed to establish that he resided with his second spouse, entered into their marriage in good faith, was subjected to his second spouse’s battery or extreme cruelty during their marriage and that his deportation would result in extreme hardship to himself.

On appeal, counsel submits a brief and additional evidence.

At the time this petition was filed, section 204(a)(1)(A)(iii) of the Act stated:

An alien who is the spouse of a citizen of the United States, who is a person of good moral character, who is eligible to be classified as an immediate relative under section 201(b)(2)(A)(i), and who has resided in the United States with the alien's spouse may file a petition with the Attorney General under this subparagraph for classification of the alien (and any child of the alien if such a child has not been classified under clause (iv)) under such section if the alien demonstrates to the Attorney General that—

(I) the alien is residing in the United States, the marriage between the alien and the spouse was entered into in good faith by the alien, and during the marriage the alien or a child of the

¹ Effective May 7, 1997, the Vermont Service Center has retained sole jurisdiction over the initial adjudication of all Form I-360 self-petitions filed under section 204(a)(1)(A)(iii) of the Act. *Direct Mail Program; Form I-360*, 62 Fed. Reg. 16607, 16608 (Apr. 7, 1997). At the time this petition was filed in 1996, however, the district offices had jurisdiction over Form I-360 self-petitions filed concurrently with a Form I-485, Application to Adjust Status. *Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses or Children*, 61 Fed. Reg. 13061, 13069 (Mar. 26, 1996). The April 7, 1997 Federal Register Notice specified that “[p]etitions filed prior to [that] date would be adjudicated at the place of initial filing. 62 Fed. Reg. at 16608.

² The petitioner filed his Form I-360 on April 26, 1996. Although the self-petitioning provisions of section 204(a)(1)(A) have been amended since that time, the relevant amendments were not retroactive and the petition will be adjudicated under the statute and regulations in effect at the time the petition was filed.

alien has been battered by or has been the subject of extreme cruelty perpetrated by the alien's spouse; and

(II) the alien is a person whose deportation, in the opinion of the Attorney General, would result in extreme hardship to the alien or a child of the alien.

Section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii) (1996).

At the time this petition was filed, section 204(a)(1)(H) of the Act stated, in pertinent part:

(H) In acting on petitions filed under clause (iii) or (iv) of subparagraph (A) or clause (ii) or (iii) of subparagraph (B), the Attorney General 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 Attorney General.

Section 204(a)(1)(H) of the Act, 8 U.S.C. § 1154(a)(1)(H) (1996).³

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

[N]o petition shall be approved if –

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

Section 204(c) of the Act, 8 U.S.C. § 1154(c) (2007).

The eligibility requirements for immigrant classification under former section 204(a)(1)(A)(iii) of the Act are explicated in the regulation at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part:

(iv) *Eligibility for immigrant classification.* A self-petitioner is required to comply with the provisions of section 204(c) of the Act

³ This section was amended and redesignated as section 204(a)(1)(J) of the Act by sections 1503(d)(1) and 1503(d)(3) of the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. 106-386 (Oct. 28, 2000).

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

(vi) *Battery or extreme cruelty*. For the purpose of this chapter, the phrase “was battered by or was the subject of extreme cruelty” includes, but is not limited to, being the victim of any act or threatened act of violence, including any forceful detention, which results or threatens to result in physical or mental injury. Psychological or sexual abuse or exploitation, including rape, molestation, incest (if the victim is a minor), or forced prostitution shall be considered acts of violence. Other abusive actions may also be acts of violence under certain circumstances, including acts that, in and of themselves, may not initially appear violent but that are a part of an overall pattern of violence. The qualifying abuse must have been committed by the citizen . . . spouse, must have been perpetrated against the self-petitioner . . . and must have taken place during the self-petitioner’s marriage to the abuser.

* * *

(viii) *Extreme hardship*. The Service will consider all credible evidence of extreme hardship submitted with a self-petition, including evidence of hardship arising from circumstances surrounding the abuse. The extreme hardship claim will be evaluated on a case-by-case basis after a review of the evidence in the case. Self-petitioners are encouraged to cite and document all applicable factors, since there is no guarantee that a particular reason or reasons will result in a finding that deportation would cause extreme hardship. Hardship to persons other than the self-petitioner or the self-petitioner’s child cannot be considered in determining whether a self-petitioning spouse’s deportation would cause extreme hardship.

(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 former 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.

(ii) *Relationship*. A self-petition filed by a spouse must be accompanied by evidence of citizenship of the United States citizen It must also be accompanied by evidence of the relationship. Primary evidence of a marital relationship is a marriage certificate

issued by civil authorities, and proof of the termination of all prior marriages, if any, of both the self-petitioner and the abuser. . . .

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

(iv) *Abuse*. Evidence of abuse may include, but is not limited to, reports and affidavits from police, judges and other court officials, medical personnel, school officials, clergy, social workers, and other social service agency personnel. Persons who have obtained an order of protection against the abuser or have taken other legal steps to end the abuse are strongly encouraged to submit copies of the relating legal documents. Evidence that the abuse victim sought safe-haven in a battered women's shelter or similar refuge may be relevant, as may a combination of documents such as a photograph of the visibly injured self-petitioner supported by affidavits. Other forms of credible relevant evidence will also be considered. Documentary proof of non-qualifying abuses may only be used to establish a pattern of abuse and violence and to support a claim that qualifying abuse also occurred.

* * *

(vi) *Extreme hardship*. Evidence of extreme hardship may include affidavits, birth certificates of children, medical reports, protection orders and other court documents, police reports, and other relevant credible evidence.

(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.

Pertinent Facts and Procedural History

The record in this case provides the following facts and procedural history. The petitioner is a native and citizen of Malaysia who entered the United States on October 14, 1985 as a nonimmigrant visitor (B-2). On March 24, 1986, the petitioner married L-S-,* a U.S. citizen, in Virginia. L-S- subsequently

* Name withheld to protect individual's identity.

filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf, which she withdrew on December 23, 1986. On that same date, the former Immigration and Naturalization Service (INS) completed an investigation which found that the petitioner was not living with L-S- and that L-S- stated that the petitioner paid her \$200 to marry him. The petitioner left the United States on December 21, 1986 and returned to Malaysia. On January 30, 1988, the petitioner returned to the United States as a nonimmigrant visitor (B-2). On December 7, 1988, the petitioner's marriage to L-S- was annulled.⁴

On November 19, 1995, the petitioner married his second spouse, L-L-S-*, a U.S. citizen, in Virginia. On April 26, 1996, the petitioner filed the instant Form I-360 with the Orlando District Office. On March 11, 1997, the director issued a Notice of Intent to Deny (NOID) the petition for failure to establish the requisite qualifying relationship, corresponding eligibility for immediate relative classification, joint residence, entry into the marriage in good faith, battery or extreme cruelty and extreme hardship. The NOID also cited section 204(c) of the Act as an additional ground for intended denial of the petition due to the INS investigation regarding the petitioner's first marriage and the annulment decree stating that the marriage was never consummated. The petitioner, through prior counsel, requested and was granted additional time to respond and submitted further documentation in July 1997. On December 11, 2003, the director denied the petition pursuant to section 204(c) of the Act and due to the petitioner's failure to meet his burden of proof to establish the requisite joint residence, good-faith entry into the marriage, battery or extreme cruelty and extreme hardship.

The petitioner, through counsel, timely appealed. On appeal, counsel asserts that the petitioner's first and second marriages were made in good faith and that the former INS's conclusions regarding the petitioner's first marriage were based on circumstantial evidence and unverified statements. Counsel further claims that the director misinterpreted certain evidence regarding the alleged abuse. Counsel does not address the director's remaining grounds for denial: the petitioner's failure to establish that he resided with his second wife and that he would suffer extreme hardship if deported.

We concur with the director's determinations. Counsel's claims and the evidence submitted on appeal fail to overcome the grounds for denial. Beyond the decision of the director, we further find that the petitioner failed to submit evidence of the legal termination of his second wife's prior marriage. Although this regulatory requirement has been superceded by subsequent amendment to the statute, the statute and regulation in effect at the time this petition was filed required proof of the legal termination of both the self-petitioner's and the abusive spouse's prior marriages. Accordingly, the petitioner has failed to establish both a qualifying relationship with his second spouse and his corresponding eligibility for immediate relative classification based on such a relationship.

⁴ Circuit Court of Arlington County, Virginia, Chancery Number 88-261

* Name withheld to protect individual's identity.

Section 204(c) of the Act

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

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

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

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

In this case, the record shows that the petitioner's first marriage was entered into for the purpose of evading the immigration laws and we are consequently barred from approving the instant petition pursuant to section 204(c) of the Act. Apart from their marriage and birth certificates, the only relevant supporting evidence submitted with L-S-'s Form I-130 petition and the petitioner's concurrently filed Form I-485 application was a copy of a lease for a residence in Falls Church, Virginia listing the petitioner and his first wife as lessees and [REDACTED] as the lessor for a six-month term beginning on March 1, 1986. The lease is signed by the petitioner's first wife and contains a second, illegible signature that does not match the signature of the petitioner on his Form I-360 and Forms I-485 and G-325A in the record.

The investigative report of the former INS states that on two occasions in December 1986, agents went to the petitioner's residence in Falls Church, Virginia and found that he was not living with his first spouse, but with another woman named [REDACTED] p. Ms. [REDACTED] told the investigators that the petitioner's first wife lived at the apartment, that theirs was a "good marriage" and that she was not the petitioner's girl friend and had been staying at the apartment for only a few days. The report

further states that two residents of the apartment across the hall from the petitioner's home stated that they had never seen the petitioner's first wife when shown her photograph. The neighbors identified the photographs of the petitioner and [REDACTED] and stated that they had moved into the apartment in the summer of 1986.

On December 19, 1986, the investigators spoke with the rental office for the apartment of the petitioner's first spouse in Arlington, Virginia, who confirmed that the petitioner's first wife had lived in her apartment since 1984 and provided a copy of her lease. On December 23, 1986, the investigators spoke to the petitioner's first wife who stated that the petitioner asked her to marry him at a bar and paid her \$200. She reported that the petitioner had told her that the investigators had visited his home and that he asked her to lie and say that she had lived with him.

The petitioner's annulment decree states that "the parties never consummated the marriage; that the parties never cohabited as husband and wife and separated on the same day that they participated in the marriage ceremony; that the separation of the parties has been continuous, without interruption, and without any cohabitation whatsoever."

In his 18-page letter, the petitioner states that he knew [REDACTED] in Malaysia and that when he came to the United States in 1985, he became her roommate. The petitioner relates that he dated his first wife while he was living with [REDACTED] and that [REDACTED] said the couple could live in her apartment after they were married. The petitioner states that at their wedding reception, he suddenly found out that his first wife had a son. The petitioner reports that his first wife lived with him until June when she threatened to get him in trouble with the former INS if he did not adopt her son.

The petitioner claims that his first wife's statement to the INS investigators was a lie because he would never have proposed marriage to a complete stranger and his first wife had a good job and would not have considered marrying him for just \$200. The petitioner further states that he obtained an annulment because he subsequently became romantically involved with a Catholic woman who would not marry him unless his prior marriage was annulled. The petitioner reports that he had his marriage annulled as instructed by his girlfriend, but that she subsequently left him. The petitioner submitted documents regarding the consequences of divorce and the practice of annulment in the Catholic Church. On appeal, the petitioner submits a letter from his mother attesting to his and their family's Catholicism.

On appeal, counsel asserts that the conclusions of the INS investigation were based on circumstantial evidence and unverified statements. We acknowledge that the record contains no signed, sworn statement by the petitioner's wife. However, the petitioner's explanation of events is similarly unverified. The petitioner has submitted no supporting affidavits from his first wife, [REDACTED], or any other individuals with knowledge of his first marriage. In addition, the record contains no documentary evidence that the petitioner and his first wife ever commingled their assets or shared liabilities. The petitioner has also submitted no detailed, probative testimony or documentary evidence of his courtship, wedding ceremony or other experiences that he shared with his first wife.

The joint lease submitted with his first wife's Form I-130 petition is not signed by the petitioner and directly contradicts the statements of the rental office of the petitioner's first wife's apartment in 1986 and the lease provided by the rental office indicating that the petitioner's first wife had lived in Arlington, Virginia with her son since 1984, not in Falls Church with the petitioner. The petitioner's explanation of his annulment is similarly unsubstantiated. Although the petitioner has established the consequences of divorce in the Catholic Church, he has provided no supporting, corroborative testimony from individuals who were aware of his relationship with his Catholic girlfriend and his reasons for obtaining the annulment. The petitioner's unsupported statements alone thus do not outweigh the annulment decree, which explicitly states that the petitioner's first marriage was never consummated and the petitioner and his first wife never resided together.

In summary, a full, independent review of the record shows that the petitioner's first marriage to L-S- was entered into solely to procure immigration benefits for the petitioner. Accordingly, we concur with the director's determination that section 204(c) of the Act bars approval of the instant petition.

Good-Faith Entry into Marriage with L-L-S

We concur with the director's determination that the petitioner failed to demonstrate his good faith entry into his second marriage. The record contains the following evidence relevant to this issue:

- The petitioner's 14-page, undated, handwritten statement submitted with the petition, his 18-page May 18, 1997 letter and his second letter also dated May 18, 1997;
- Letters from the petitioner's friends and acquaintances, [REDACTED] and [REDACTED] and
- Copies of photographs of the petitioner, his second wife and other individuals at their wedding.

In his statement and letters, the petitioner conveys that he met his second wife at a country dance club in 1993, but they did not become romantically involved until July 1995. The petitioner states that he frequently danced with his second wife at the club and would often cook for her. The petitioner reports that he proposed to his second wife in August 1995 and that he comforted his second wife when her mother was hospitalized and later died. The petitioner states that he was very happy at their wedding in November 1995 and that the couple honeymooned in Myrtle Beach, South Carolina, where their marital problems began. Although the petitioner mentions that he sometimes consoled his second wife when she was crying, the petitioner does not further discuss any of their shared experiences, apart from his wife's alcoholism and alleged abuse.

In his May 18, 1997 letters, the petitioner asserts that he did not press charges against his second wife because he loved her and that he would not have sought help from organizations assisting alcoholics and their families if he did not marry his second wife in good faith. However, the petitioner submitted no documentation of his receipt of services from any such organizations. In addition, the petitioner describes in detail how he bought a cake for his wife on Valentine's Day in

1996, but she refused to accept it and the petitioner confided in his housemate, [REDACTED] and one of his wife's friends and her boyfriend. The petitioner also states that he shared the cake with [REDACTED] and their landlord, [REDACTED]. However, the petitioner submits no testimony from [REDACTED] his wife's friend or her boyfriend. In his March 12, 1997 letter, [REDACTED] confirms the petitioner's residence in his house, but does not mention this incident.

The statements of the petitioner's friends and acquaintances fail to provide detailed, probative information sufficient to establish his good-faith entry into his second marriage. Mr. [REDACTED] states that he was the petitioner's housemate and that in November 1995, the petitioner's second wife regularly spent the night at their home with the petitioner. Mr. [REDACTED] states that he only saw the petitioner's second wife once or twice after their marriage. Apart from briefly mentioning an occasion in the Spring of 1996 when the petitioner answered his second wife's telephone call, Mr. [REDACTED] does not describe his observations of the petitioner's or the former couple's relevant behavior prior to and during their marriage.

[REDACTED] describes an occasion in January 1995 when the petitioner came to work upset and confided in her about his marital problems. Ms. [REDACTED] states that later in the day, the petitioner told her that he was reconciling with his second wife and she observed that he was very happy. Ms. [REDACTED] does not indicate that she ever saw the former couple together and she provides no detailed description of the petitioner's behavior before or during his second marriage apart from the single incident in 1995. Rev. [REDACTED] confirms that he performed the former couple's wedding and states that the petitioner confided in him regarding his second wife's alcoholism and alleged abuse, yet [REDACTED] does not indicate that he knew the petitioner prior to his second marriage and he provides no detailed description of the petitioner's behavior that would indicate the petitioner's good faith in entering the marriage.

The photographs and the marriage certificate confirm that the petitioner and his second wife were married, yet these documents alone are insufficient to establish the petitioner's good-faith entry into the relationship.

The petitioner submitted no further evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii). Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). The testimony of the petitioner, his friends and acquaintances fails to provide detailed, probative information sufficient to establish that the petitioner entered into his second marriage in good faith, as required by former section 204(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I) (1996).

Battery or Extreme Cruelty

We concur with the director's determination that the petitioner did not demonstrate that his second wife battered or subjected him to extreme cruelty during their marriage. The record contains the

following evidence relevant to this issue:

- The petitioner's 14-page, undated, handwritten statement submitted with the petition, his 18-page May 18, 1997 letter and his second letter also dated May 18, 1997;
- Letters from the petitioner's friends and acquaintances, [REDACTED] and [REDACTED];
- Fairfax County, Virginia Police Department Investigation Report for a "domestic dispute" between the petitioner and his second wife on January 6, 1996 and a letter from the same department confirming the existence of a police report for a "suspicious event" occurring on March 5, 1996 in which the petitioner was the complainant; and
- Two letters confirming that the petitioner sought assistance from AYUDA in Washington, the District of Columbia.

In his statement, the petitioner relates that a few days after the former couple returned from their honeymoon, he woke up in the middle of the night and found his second wife in a drunken stupor. The petitioner states that his second wife got drunk repeatedly and was hostile and cursed him when she was inebriated. At some unspecified point, the petitioner reports that his second wife started to kick and punch him and tell him to get out of her house. The petitioner states that he maintained his previous residence and would go back to his own home whenever his wife became violent.

On January 5, 1996, the petitioner states that his second wife took his clothes out of the closet and was about to throw them out of the house when the petitioner called 911. The petitioner says that his second wife pulled out the telephone cord, but the call had already gone through and she began to put his clothes back in the closet. When the police called, the petitioner states that he told them he and his second wife were having a small problem, but everything was fine at that time. That evening, the petitioner states he returned from work to find his second wife inebriated and cursing him. The petitioner reports that he left her home, but returned close to midnight when his second wife kicked and punched him and threw things at him while cursing him. The petitioner states that he left her home and called the police. When the police arrived after midnight on January 6, 1996, the petitioner entered his second wife's home with the officers, packed his belongings and left. The petitioner describes confiding in his office manager, [REDACTED], later that day and calling his wife's friend, [REDACTED] who facilitated the former couple's reconciliation that evening.

The petitioner states that his second wife began drinking secretly and eventually lost her job. On February 6, 1996, the petitioner reports that he left his second wife's home at her insistence. On March 5, 1996, the petitioner reports that his second wife asked him to visit her daughter after work. As he was following his second wife's car on Lee Highway, the petitioner states that his second wife's son-in-law aggressively pulled up beside the petitioner's car, got out of his truck, tried to open the petitioner's car door and shouted that he had "something" for the petitioner. As the petitioner's second wife's son-in-law was returning to his truck, the petitioner states that he drove away because his second wife had told him that her son-in-law had a gun. The petitioner's second wife's son-in-law followed the petitioner and a police patrol car stopped them when the petitioner signaled for

help. The petitioner states that his second wife's son-in-law falsely told the officers that the petitioner was threatening his mother-in-law. The petitioner does not indicate that the officers filed a report, but he states that he went to the police station later that evening to file a report against his second wife's son-in-law.

The petitioner states that when he suggested that his second wife go to Alcoholics Anonymous, she got angry and threw him out of her apartment. The petitioner states that he sometimes feels suicidal and sought help from Rev. [REDACTED] and [REDACTED] which referred him to some places where he received counseling about alcoholism.

The remaining, relevant documents also do not establish the petitioner's claim. The January 6, 1996 police report states, in pertinent part:

[The petitioner and his second wife] were married 6 weeks ago. Tonight [the petitioner] decided to leave the marriage after recently discovering that his new wife . . . is an alcoholic. The two got into a verbal argument while [the petitioner] was packing up his belongings and the police were called. Accompanied by [REDACTED] . . ., I stood by until [the petitioner] could leave without incident. No further action[.]

In contrast to the petitioner's description of this incident, the police report does not indicate that the petitioner's second wife assaulted him or that she instigated the dispute. In his 18-page letter, the petitioner claims, "Had I not been threatened physically by my wife on that night I would not have deemed it necessary to call the police. . . . I refused to press any charges against my wife! I love my wife." Yet the police report does not indicate that the petitioner reported any physical violence or that the police asked the petitioner if he wanted to press charges against his second wife, but the petitioner declined. Consequently, the January 6, 1996 police report does not support the petitioner's claim that his second wife battered him on that date.

The April 4, 1996 letter from the police department confirming the existence of, but not including, a report for a "suspicious event" on March 5, 1996 also does not support the petitioner's claim of battery or extreme cruelty. While it states that the incident occurred on "Leesburg PI," the letter does not name the petitioner's second wife or her son-in-law or provide any further corroborative details. The letter states that police reports "are not released unless so ordered by a court." However, a similar letter with the same statement accompanied the January 6, 1996 police report. The petitioner has not explained why he was able to obtain a report for the January 6, 1996 incident, but not for the March 5, 1996 incident.

The letters from AYUDA also fail to support the petitioner's claim. The December 8, 1996 letter states that the petitioner sought help from the domestic violence agency, but "there was nothing that . . . Ayuda could do for [him]" except give him a list of attorneys who filed cases under the Violence Against Women Act. The March 19, 1997 letter states, "According to [the petitioner], his wife had become violent with him on several occasions. It was in reference to this violence, that [the

petitioner] sought AYUDA's services. . . . [W]e were unable to take [the petitioner's] case." On appeal, counsel submits evidence that AYUDA only assists residents of the District of Columbia and that the petitioner was living in Virginia at the time he sought the agency's assistance. However, the petitioner does not explain why the letters from AYUDA state that the agency only gave him a list of attorneys that might assist him when he states that AYUDA referred him to places where he could receive counseling regarding his second wife's alcoholism. Moreover, while the petitioner lists the names and telephone numbers of three such organizations, he submits no documentation that he actually received counseling from any of these entities and that the counseling included probative discussions of the alleged abuse.

The testimony of the petitioner's friends and acquaintances does not establish that his second wife subjected the petitioner to battery or extreme cruelty during their marriage. Mr. [REDACTED] simply states that in October 1995, the petitioner told him that he might be moving out, but that the petitioner later informed Mr. [REDACTED] that "due to troubles with his recent marriage, he had decided to keep the room." Mr. [REDACTED] states that in early January 1996, the petitioner returned to the house they shared "in an agitated state, saying his wife was physically and verbally abusing him." Mr. [REDACTED] says that the petitioner confided in him many times about "his problems" with his second wife, but he describes no incidents of abuse that he witnessed and he does not discuss in probative detail the petitioner's behavior upon his return to their house in January 1996, or any particular incidents of alleged abuse as related to him by the petitioner.

[REDACTED] describes the incident in January 1996 when the petitioner arrived at work visibly upset and confided in her that his second wife "was mistreating him," that she was a heavy drinker and made "constant threats – including verbal and physical abuse." Yet [REDACTED] does not indicate that she observed any incidents of abuse and she does not further describe, in probative detail, the petitioner's behavior or any of the purported abuse he disclosed to her during the January 1996 incident. Rev. [REDACTED] states that the petitioner called him a few months after his marriage and "related stories of his wife's alcoholism and abuse of him personally." Rev. [REDACTED] states that he referred the petitioner to Al-Anon and kept in touch with him, yet Rev. [REDACTED] describes no particular incidents of abuse in any probative detail.

On appeal, counsel asserts that the fact that [REDACTED] and [REDACTED] did not witness incidents of abuse is "illustrative of the secretive nature of domestic violence" and that the responses the petitioner received from the police and AYUDA "were typical responses to male victims." Counsel cites an article entitled, "Abused Men: The Hidden Side of Domestic Violence" written by Philip W. Cook in 1998 and printed from the website <http://www.batteredmen.com> in support of her claim that the petitioner did not receive appropriate responses to his request for help with the alleged abuse due to societal stigmas and misconceptions. However, the petitioner himself does not indicate that the police or AYUDA declined to assist him. To the contrary, on both of the occasions leading to the two police reports, the petitioner states that he sought the assistance of the police and filed the reports. He does not indicate that the police officers discounted his description of the underlying conflicts or otherwise declined to assist him. The petitioner also states that AYUDA helped him by

referring him to alcoholism counselors. Accordingly, the record does not support counsel's intimation that societal bias against male survivors of domestic violence prevented the full documentation and description of the alleged abuse in this case.

In summary, the petitioner's own testimony fails to describe particular incidents of abuse in probative detail sufficient to establish that his second wife's behavior rose to the level of battery or extreme cruelty. The petitioner states that his second wife assaulted him, but he fails to describe her actions in sufficient detail and the police report corresponding to the January 1996 incident does not indicate that any physical abuse took place on that or any other date. The petitioner's description of his wife's nonviolent behavior does not rise to the level of extreme cruelty as described by the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which includes psychological and sexual abuse or exploitation and forceful detention. The remaining, relevant evidence indicates that the petitioner's second wife was an alcoholic and that the petitioner experienced marital and personal problems due to her alcoholism, but the evidence does not demonstrate that the behavior of the petitioner's second wife rose to the level of battery or extreme cruelty. Accordingly, the petitioner has not established that his second wife battered or subjected him to extreme cruelty during their marriage, as required by former section 204(a)(1)(A)(iii)(I) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(I) (1996).

Shared Residence

We confirm the director's determination that the petitioner has not demonstrated that he resided with his second wife. The record contains the following evidence relevant to this issue:

- The petitioner's 14-page, undated, handwritten statement submitted with the petition, his 18-page May 18, 1997 letter and his second letter also dated May 18, 1997,
- Letters from the petitioner's landlord and housemate, [REDACTED] and [REDACTED]
- Fairfax County, Virginia Police Department Investigation Report for a "domestic dispute" between the petitioner and his second wife on January 6, 1996; and
- October 4, 1996 letter from the Yorkville Assistant Project Manager stating that the petitioner resided at [REDACTED] in Fairfax, Virginia for one month in 1996.

In his statement, the petitioner reported that he moved in with his second wife to her home in Fairfax, Virginia after their honeymoon, but that he maintained his previous residence where he would return whenever his second wife became violent. The petitioner states that he first left his wife's home on January 6, 1996, but returned that evening. The petitioner says that he left his wife's home again on February 6, 1996 and indicates that he never returned after that date. In his 18-page letter, the petitioner asserts that he lived with his second wife, but was unable to continuously reside with her due to her purported abuse. The petitioner does not, however, describe the residence he allegedly shared with his wife in any detail. He does not state the address at which they purportedly lived together and he does not provide any probative information about their domestic life, apart from the alleged abuse. Accordingly, the petitioner's testimony itself is insufficient to establish that he resided with his second wife.

The remaining, relevant evidence also fails to establish the requisite joint residence. The petitioner's second marriage certificate lists his second wife's address as an apartment at [REDACTED] in Fairfax, Virginia. On the petitioner's Form G-325A, Biographic Information, which he signed on April 20, 2006, he states that he lived at the [REDACTED] residence from November 1995 to February 1996. However, [REDACTED] and [REDACTED] confirm that the petitioner maintained his residence at [REDACTED]'s house in Arlington, Virginia throughout his second marriage. While the January 6, 1996 police report lists the [REDACTED] apartment as both the petitioner's and his second wife's address, the report simply confirms that the petitioner packed his belongings and left his wife's home on that date. The report does not establish that the petitioner was residing with his wife, rather than temporarily staying with her. Finally, contrary to the petitioner's assertion that he began residing with his second wife in November 1995, the letter from the Yorkville Manager only confirms the petitioner's residence at the [REDACTED] apartment from January 3 to February 9, 1996 and fails to state that the petitioner's second wife also lived at the apartment during that time.

The record contains no other documentation of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(iii). Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 103.2(b)(2)(iii), 204.1(f)(1), 204.2(c)(2)(i). On appeal, counsel does not address this issue or submit any further, relevant evidence. The relevant testimony and documents submitted below fail to demonstrate that the petitioner resided with his second wife, as required by former section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii) (1996).

Extreme Hardship

We concur with the director's determination that the petitioner did not demonstrate that his deportation would result in extreme hardship to himself. The petitioner submitted the following evidence relevant to this issue:

- The petitioner's July 21, 1997 affidavit; and
- His sister's March 18, 1997 letter.

In his affidavit, the petitioner claims that he would suffer extreme hardship upon his deportation due to the "nature and extent of the psychological consequences of [his second wife's] abuse;" his loss of access to the U.S. courts and criminal justice system and the ability to obtain unspecified orders of protection, criminal prosecution and family law court orders; his continuing need for social, medical and mental health services which "might not be available" in Malaysia; his age (46 in 1997) and length of residence in the United States; his inability to obtain sustainable employment in Malaysia; the "tremendous psychological impact of deportation" on him; and the loss of contact with his two sisters in the United States.

The record does not support the petitioner's claims. As previously discussed, the petitioner has not demonstrated that his second wife battered or subjected him to extreme cruelty. He has submitted no evidence that he has ever sought or wishes to seek an order of protection from, or criminal prosecution of, his second wife (or her son-in-law) or maintenance from his second wife in family court. To the contrary, the petitioner has explained that he did not press criminal charges against his wife or her son-in-law because he loved her and did not want to do anything to upset her. The petitioner states that he sometimes feels suicidal, but he submits no evidence that he has sought or has received social, medical or mental health services for any physical or mental health condition. The petitioner has also failed to provide evidence that such services would, in fact, not be available to him in Malaysia. At the time the petition was filed, the petitioner was not of an advanced age, had resided continuously in the United States for less than a decade and had previously returned to Malaysia without any documented difficulties. Finally, the petitioner fails to describe the unspecified "psychological impact" that deportation would have on him or the significance of his loss of contact with his sisters in the United States.

The petitioner's sister states that the petitioner was unemployed when he returned to Malaysia in 1986 and that the petitioner would face "age and race discrimination" in Malaysia where 95 percent of the jobs "are for" people of other ethnicities. The petitioner submitted no documentation to corroborate his sister's statements regarding discrimination against the petitioner's ethnicity in Malaysia.

Yet even if they had been sufficiently documented, the petitioner's economic hardship and loss of close contact with his sisters would not establish extreme hardship. The common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship). *See also INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding the BIA's determination that the mere showing of economic detriment is insufficient to warrant a finding of extreme hardship).

The record does not support the petitioner's claims of potential hardship nor document the discrimination mentioned by the petitioner's sister. Moreover, under judicial and administrative precedent binding at the time this petition was filed, the petitioner's claims of economic hardship and loss of family ties are insufficient to establish extreme hardship. Accordingly, the petitioner has failed to demonstrate that his deportation to Malaysia would result in extreme hardship to himself, as required by former section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II) (1996).

Qualifying Relationship and Eligibility for Immediate Relative Classification

Beyond the decision of the director, the petitioner has also failed to demonstrate that he had a qualifying relationship with his second wife and was eligible for immediate relative classification based on such a relationship. The marriage certificate states that L-L-S- was divorced and that her marriage to

the petitioner was her second. As evidence of a qualifying marital relationship, the regulation required evidence of the legal termination of all prior marriages of both the self-petitioner and the abusive spouse. 8 C.F.R. § 204.2(c)(2)(ii). Although this regulation was superseded by statute in 2000, the amendment did not have retroactive effect. *See* Victims of Trafficking and Violence Protection Act of 2000, § 1503(b)(1), Pub. L. 106-386 (Oct. 28, 2000). Accordingly, at the time this petition was filed, the petitioner was required to submit evidence of the legal termination of his second wife's prior marriage in order to establish the validity of his marriage to L-L-S-. The petitioner failed to do so. Consequently, the petitioner has not demonstrated that he had a qualifying relationship with his second wife, as required by former section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii) (1996).

The petitioner has also failed to demonstrate that he was eligible for immediate relative classification based on a qualifying relationship with his second wife for two reasons. First, the petitioner has not established a qualifying relationship because he has not demonstrated the validity of his second marriage. As the petitioner has not established the requisite qualifying relationship, he has also not demonstrated his eligibility for immediate relative classification based on such a relationship. Second, the regulation requires all self-petitioners to comply with section 204(c) of the Act. 8 C.F.R. § 204.2(c)(1)(iv). As previously discussed, section 204(c) of the Act bars approval of this petition due to the determination that the petitioner's prior marriage was entered into for the purpose of evading the immigration laws. Accordingly, the petitioner has not demonstrated that he was eligible for immediate relative classification based on his second marriage, as required by former section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii) (1996).

The petitioner has failed to demonstrate that he had a qualifying relationship with his second wife, that he was eligible for immediate relative classification based on such a relationship, that he entered into marriage with his second wife in good faith, that he resided with his second wife, that she subjected him to battery or extreme cruelty during their marriage and that his deportation would result in extreme hardship to himself. Accordingly, the petitioner is ineligible for immigrant classification under former section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii) (1996). Section 204(c) of the Act further bars approval of this petition.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the district office or service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003). The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361 (2007). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.