

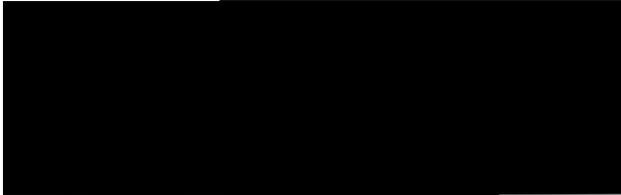
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: OCT 02 2008  
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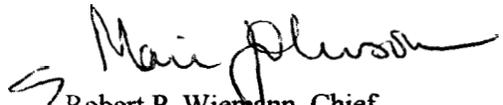
IN RE: Petitioner: [REDACTED]

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:  
[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, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks immigrant classification under section 204(a)(1)(A)(iii) of the Act (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 finding that the petitioner failed to establish that he resided with his spouse, that he was battered or subjected to extreme cruelty by his spouse during their marriage and that he entered into his marriage in good faith.

The petitioner, through counsel, submits a timely appeal.

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, 8 U.S.C. § 1154(a)(1)(J) states, in pertinent part:

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

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

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

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

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

(vii) *Good moral character.* A self-petitioner will be found to lack good moral character if he or she is a person described in section 101(f) of the Act. Extenuating circumstances may be taken into account if the person has not been convicted of an offense or offenses but admits to the commission of an act or acts that could show a lack of good moral character under section 101(f) of the Act. A 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 further explicated in the regulation at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part:

*Evidence for a spousal self-petition –*

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

\* \* \*

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

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

(v) *Good moral character*. Primary evidence of the self-petitioner's good moral character is the self-petitioner's affidavit. The affidavit should be accompanied by a local police clearance or a state-issued criminal background check from each locality or state in the United States in which the self-petitioner has resided for six or more months during the 3-year period immediately preceding the filing of the self-petition. 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 pertinent facts and procedural history. The petitioner is a native and citizen of Turkey who married T-E-<sup>1</sup> a U.S. citizen, in New York on September 20, 1999. T-E- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf on November 1, 1999. The petitioner filed a Form I-485, Application to Adjust Status, on that same date. Citizenship and Immigration Services (CIS) terminated action on the Form I-130 and Form I-485 on April 19, 2004.

The petitioner filed this Form I-360 on September 19, 2005. On December 1, 2005, the director issued a Request for Evidence (RFE) of, *inter alia*, the requisite residence, battery or extreme cruelty, and good-faith entry into the marriage. The petitioner responded to the RFE on January 17, 2006 and requested additional time to submit evidence. On March 21, 2006, the director issued a Notice of Intent to Deny (NOID) the petition, which notified the petitioner of deficiencies in the record and afforded him the opportunity to submit further evidence to establish his claim of residence, battery or extreme cruelty, and his good faith marriage. The petitioner responded to the NOID on April 20, 2006. The director denied the petition on June 7, 2007. The petitioner, through counsel, submitted a timely appeal.

On appeal, the petitioner states that the director "may have been biased against male self-petitioners or had limited experience in these matters" and argues that the evidence submitted is sufficient to establish his eligibility. Upon review, we find no gender bias on the part of the director and as will be discussed, we concur with the finding of the director that the petitioner has failed to meet his burden of proof and to establish his eligibility for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act.

### *Residence*

On the Form I-360, the petitioner indicated that he resided with his spouse from September 1999 until November 1999 and that they last resided together at [REDACTED] in Meadow, New York. As documentary evidence of their shared residence, the petitioner submitted copies of joint income tax returns, rental receipts and photographs. The tax returns, dated 1999, 2000 and 2001 are not signed by the petitioner and T-E-. In fact, the record contains a December 14, 2001 letter from the Internal Revenue Service (IRS) to the petitioner and T-E- regarding their 2000 tax return which indicates that the return contained no signatures. The petitioner submitted no further evidence regarding the resubmission of these 2000 tax returns and no evidence of the actual filing of their 1999 and 2001 returns. Regardless, the 2000 and 2001 tax returns are of no probative value in determining the petitioner's residence as, according to his own testimony, he only lived with T-E- for two months during 1999. As it relates to the petitioner's rental receipts, only one of the six receipts submitted by the petitioner was issued during the time that the petitioner and T-E- allegedly resided together in New

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<sup>1</sup> Name withheld to protect individual's identity.

York. Although he is not required to do so, the petitioner does not submit evidence of the lease agreement that he references in his personal statement and provides no explanation regarding why such evidence does not exist or is unobtainable. *See* 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). The petitioner's two personal statements provide no further probative details regarding his residence with T-E-, such as a description of their apartment, shared possessions, or other information other than to state that they rented the first floor of a house.

As discussed above, the record contains scant documentary evidence of the petitioner's claimed residence with T-E- and the testimonial evidence provided by the petitioner contains no further probative information. Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he resided with his spouse, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

#### *Battery or Extreme Cruelty*

At the time of filing, the petitioner submitted an affidavit dated August 22, 2005, in which he claimed that shortly after their marriage, T-E- decided to move to Atlanta, Georgia. The petitioner stated that he was not ready to move with her at that time but planned to follow her at a later date. During this separation, the petitioner claims that he began to feel "confused and manipulated" because T-E- did not call regularly and would create excuses for why the petitioner should not come to Atlanta. The petitioner states that nearly two years after their marriage when he finally moved to Atlanta to be with T-E-, he found out that T-E- had a relationship with another man with whom she had a child. The psychological evaluation from [REDACTED] and the affidavit from the petitioner's friend, [REDACTED] also submitted at the time of filing, reiterate the claims made by the petitioner in his August 22, 2005 statement regarding T-E-'s infidelity and the petitioner's feelings of shame, betrayal, and humiliation.

In his second statement, dated April 18, 2006, the petitioner again described T-E-'s affair and his feelings related to discovering the infidelity. The petitioner then provided additional claims that were not noted in his previous statement, in the psychological evaluation, or by [REDACTED]. Specifically, the petitioner claimed that T-E- was possessive, that she humiliated him in front of his friends, called him names, and "often became hysterical and violent." The petitioner does not describe any incident of violence perpetrated against him or provide examples of T-E-'s actions. The petitioner claimed that T-E- threatened to have him deported, that she took the phone away from him and wanted to "control [him] physically, emotionally and financially." Finally, the petitioner claimed that T-E- did not cook or clean their apartment and that she demanded sexual relations at times that made the petitioner feel humiliated. The petitioner does not explain why he failed to make these claims in his initial statement.

Although the petitioner also submitted two additional statements from friends [REDACTED] and [REDACTED] who describe their beliefs regarding the cultural differences and challenges faced by the petitioner in coming to the United States and marrying a Christian woman, neither statement describes any specific behavior by T-E-, other than her extramarital affair, as evidence to support a finding that

the petitioner was battered or subjected to extreme cruelty.

Finally, the petitioner submitted an Internet article entitled “Sexual Humiliation, Gender Confusion and the Horrors at Abu Ghraib,” which counsel describes as an article “highlighting sexual humiliation and particular cultural and religious vulnerabilities of Muslim males.” Counsel does not, however, provide any correlation between the article, which focuses on allegations made against U.S. military personnel regarding prisoners at the Iraq prison, and the petitioner’s relationship with T-E.

Upon review, we find that the claims made by the petitioner and the evidence submitted on his behalf do not establish that he was battered or that T-E-’s actions rose to the level of the acts described in the regulation at 8 C.F.R. § 204.2(c)(1)(vi), which include *forceful detention, psychological or sexual abuse or exploitation, rape, molestation, incest, or forced prostitution*. While the petitioner may have felt humiliated and betrayed by T-E-’s behavior, the description of T-E-’s non-physical behavior does not demonstrate that her actions were accompanied by coercive acts or threats of harm, or that her actions were aimed at ensuring dominance or control over the petitioner. Accordingly, the petitioner has failed to establish that he was battered or subjected to extreme cruelty by T-E- spouse during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### *Good Faith Entry into Marriage*

In his statement dated August 22, 2005, the petitioner stated that he was introduced to T-E- in 1999 through a mutual friend. He further stated that after they dated “for a short time,” he fell in love, felt “comfortable talking to her,” and could trust her. The petitioner offered no further description of their courtship or his feelings for T-E-, claiming only that he decided to get married in the fall of 1999. We note that according to the Form G-325A, Biographic Information, submitted by T-E- in support of the Form I-130 she filed on the petitioner’s behalf, T-E- resided in Macon, Georgia from August 1995 until September 1999 when she married the petitioner. The record further reflects that the petitioner resided in New York during this time but the petitioner does not address this fact in his statement. The petitioner’s April 18, 2006 provides no further information regarding their long-distance courtship except to generally state that they visited each other and spoke on the telephone.

The documentary evidence, which consists of photographs, tax returns, rental receipts, and phone bills is similarly lacking. While the petitioner’s photographs document that the petitioner and T-E- were together at a particular place and time, they are of little probative evidence of the petitioner’s intent in marrying T-E-. As previously stated, although the petitioner has submitted copies of tax returns, the record contains no evidence that the returns were signed and ultimately filed by the petitioner and T-E- during their marriage. Also, as previously discussed, although the petitioner has submitted numerous rent receipts, the petitioner acknowledges that he and T-E- resided together for only one of the months for which he submitted a receipt. Finally, although the petitioner submitted copies of three phone bills as evidence of conversations that took place between the petitioner and T-E- during their nearly two-year separation, the bills do not indicate the individual who placed the call or the individual who received the call. Regardless, the fact that the petitioner may have called T-E-

once during this two-year period does not establish the petitioner's claim of a good faith marriage. Although the petitioner submitted a copy of his Form I-485, correspondence and interview notices related to his adjustment of status interview, and the letter from the IRS addressed to the petitioner and T-E- at an address in Georgia as evidence of his good faith marriage, we do not find these forms or notices from his previously submitted applications have any probative value regarding his intent in marrying T-E-. Similarly, the receipt of a single letter addressed to the petitioner and T-E- at an address where the petitioner has failed establish that he resided, is not sufficient to meet his burden of proof in establishing a good faith marriage.

Accordingly, we concur with the finding of the director that the petitioner has failed to establish that he entered into marriage with T-E- in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, we find an additional issue that precludes approval of the petition.

#### *Good Moral Character*

The regulation at 8 C.F.R. § 204.2(c)(2)(v) states that primary evidence of a petitioner's good moral character is an affidavit from the petitioner, accompanied by local police clearances or state-issued criminal background checks from each place the petitioner has lived for at least six months during the three-year period immediately preceding the filing of the self-petition. The record reflects that during the three-year period prior to the filing of the petition in September 2005, the petitioner resided in Florida, Texas, and California. The petitioner failed to submit a personal statement which discusses his good moral character and clearances from the states of Florida and Texas. Although the petitioner did submit a clearance letter from the San Diego County Sheriff's Department, the clearance was based upon the name "[REDACTED]" with a date of birth of July 5, 1961. However, the record reflects that the petitioner has used an alias, "[REDACTED]" and that his date of birth is May 7, 1961. Based upon the petitioner's failure to submit a statement regarding his good moral character, clearances from Florida and Texas, and the fact that the single clearance submitted was based upon an incorrect date of birth and only one of the names used by the petitioner, we hereby withdraw the director's affirmative determination on this issue and find that the petitioner has failed to establish that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb) of the Act.

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. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.