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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

B9

FILE:

Office: VERMONT SERVICE CENTER

Date: **AUG 10 2010**

IN RE:

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)

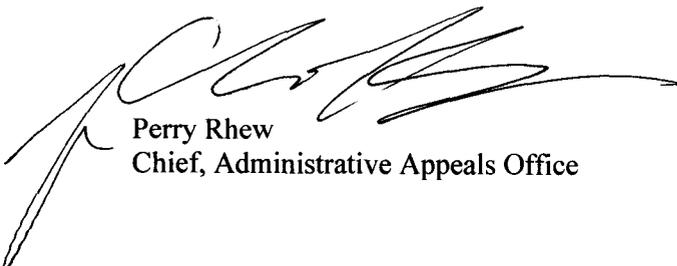
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The service center director 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, 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 on the basis of his determination that the petitioner had failed to establish: (1) that his wife subjected him to battery or extreme cruelty; and (2) that he married his wife in good faith. On appeal, counsel submits a memorandum of law 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, 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 explained further at 8 C.F.R. § 204.2(c)(1), which states, in pertinent part, the following:

- (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.

\* \* \*

- (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 filed under section 204(a)(1)(A)(iii) of the Act are explained further at 8 C.F.R. § 204.2(c)(2), which states, in pertinent part, the following:

*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.

\* \* \*

- (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 petitioner is a citizen of Kenya. He married [REDACTED] a citizen of the United States, on June 13, 2006 and, according to the Form I-360, lived with her until August 2007.<sup>2</sup> The petitioner submitted the instant Form I-360 on October 15, 2007. The director issued two subsequent requests for additional evidence to which the petitioner, through counsel, submitted timely responses. After considering the evidence of record, including counsel's responses to the director's requests for additional evidence, the director denied the petition on February 18, 2010. Counsel filed a timely appeal on March 22, 2010.

The two issues before the AAO are whether the petitioner has established that he was subjected to battery and/or extreme cruelty by [REDACTED] during their marriage and whether he married her in good faith. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Upon review of the entire record, the AAO finds that the petitioner has failed to overcome the director's grounds for denying this petition. Beyond the decision of the director, the AAO finds further that the petitioner has also failed to demonstrate that he and [REDACTED] resided together.

### **Battery and/or Extreme Cruelty**

The AAO will first consider the issue of whether the evidence of record supports a finding that the petitioner was subjected to battery or extreme cruelty by [REDACTED] during their marriage. In his January 24, 2008 statement, the petitioner recounted that after several months of marriage, [REDACTED] began disappearing for weeks at a time, and left him to care for her son. According to the petitioner, when this happened, [REDACTED] would take his car, his cellular phone, cash, and the house keys. The petitioner stated that [REDACTED] did not use the money he gave her to pay bills, as he intended, and she cashed checks

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

<sup>2</sup> In his January 24, 2008 self-affidavit, the petitioner indicated that he and [REDACTED] ceased living together in July 2007. In his letter, Dr. [REDACTED] stated that the petitioner told him the couple separated in October 2006.

that were mailed to the petitioner without his knowledge. His credit and debit cards also disappeared. He reported that when he confronted [REDACTED] over these matters she would become defensive and yell, throw things, and threaten him with deportation. According to the petitioner, these matters affected his performance at work and at school. He was also forced into debt, as he never recovered the money he had given [REDACTED] to pay bills. The petitioner stated that he was prescribed Zoloft for anxiety and depression. He tried to persuade [REDACTED] to attend marriage counseling, but she refused. Finally, in June 2007, [REDACTED] cashed a check for over two thousand dollars that had been sent to the petitioner. After the petitioner discovered her forgery the next month, and confronted [REDACTED] about it, she disappeared and left the petitioner a threatening voice-mail message. The petitioner stated that one week later, he took the petitioner's son to the home of [REDACTED]'s mother.

Although the petitioner initially stated that the problems had begun several months into their marriage, in his December 15, 2009 statement the petitioner reported that [REDACTED] changed "almost immediately" after the two were married. In addition to reiterating his prior statements, the petitioner added that [REDACTED] stopped spending time with him; refused to cook or clean; and was argumentative. Later, she began disappearing for days at a time, and left the petitioner to care for her son. When she would return, and the petitioner would ask where she had been, she would scream at him, call him names, tell him to go home to Africa; and throw glassware. The petitioner also stated that [REDACTED] used their joint credit card excessively and, after he canceled the card, [REDACTED] began cashing his paychecks without telling him. When he confronted her, [REDACTED] denied cashing his checks, told him that no one would believe him if he told anyone and that he would be deported, and threw a phone at him.

In his April 15, 2010 statement, the petitioner again recounted that although things went well after they were married, [REDACTED]'s attitude soon changed. Although unemployed, she stopped cooking, cleaning, and otherwise caring for the family. She soon began staying away from the house for days, and then weeks, at a time, leaving the petitioner to care for her son. When [REDACTED] disappeared, she took the only car the couple owned, which meant that the petitioner could not go to work or school. When the petitioner confronted [REDACTED] and asked what was wrong, she became furious, and told him he had no right to ask. [REDACTED] took control of the household finances, and charged the couple's joint credit card past its limit and cashed the petitioner's paychecks without his knowledge. However, she did not pay the bills with this money, which forced the petitioner to work extra hours. [REDACTED] called the petitioner names; ridiculed his heritage; and threatened his immigration status. Finally, in late 2006, [REDACTED] and the petitioner separated, and she took her son with her. According to the petitioner, he was "left an emotional and financial mess."

In his December 5, 2007 letter, [REDACTED] stated that although he knew that the petitioner and [REDACTED] were having marital problems, he was not aware of the details. He also stated that he loaned the petitioner money to help him pay his bills. In her December 18, 2007 letter, [REDACTED] stated that she was aware of conflict between the petitioner and [REDACTED], and that she often babysat [REDACTED]'s son when his mother disappeared. In her January 12, 2008 letter, [REDACTED] stated that the petitioner confided to her the troubles the couple was experiencing, and that she suggested marriage counseling.

The record also contains copies of medical records, which indicate that the petitioner visited Dr. [REDACTED], a psychiatrist, on August 10, 2006; September 14, 2006; September 24, 2006; October 19, 2006; November 17, 2006; and January 25, 2007. The report from the petitioner's first meeting with Dr. [REDACTED], which occurred less than two months after [REDACTED] and the petitioner were married, stated that the petitioner was suffering from difficulties in concentration, anxiety, and poor memory. It stated that these problems began in late 2005, after the petitioner returned to school, but had "exemplified" after his wedding. The report stated that the petitioner had taken Zoloft in the past, and that it had been helpful. Dr. [REDACTED] prescribed Zoloft for the petitioner's symptoms.

The record also contains an April 15, 2010 letter from [REDACTED] a child and family therapist, who stated that she began seeing the petitioner for individual psychotherapy in April 2009. Ms. [REDACTED] stated that the petitioner is being treated for post-traumatic stress disorder (PTSD), anxiety, and depression. She noted that in addition to therapy, the petitioner had been taking St John's Wort.

Finally, the record contains an April 13, 2010 letter from Dr. [REDACTED] who conducted a psychological examination of the petitioner. Dr. [REDACTED] stated that the petitioner told him that soon after the wedding, [REDACTED] began to change. Although she was unemployed, she stopped cooking, cleaning, and otherwise caring for the family. Soon, she began staying away from the house for days, and then weeks, at a time, leaving the petitioner to care for her son. When [REDACTED] disappeared, she took the only car the couple owned, which meant that the petitioner could not go to work or school. He stated that the petitioner told him that [REDACTED] screamed at him; threw various objects at him; threatened his immigration status; and threatened to tell his employers that he was in the United States illegally. Dr. [REDACTED] diagnosed the petitioner with major depressive disorder and generalized anxiety disorder.

In sum, the relevant evidence fails to establish that [REDACTED] subjected the petitioner to battery or extreme cruelty during their marriage. Although the record contains testimonial evidence that [REDACTED] threw glassware and other objects at the petitioner, the petitioner's testimony regarding such incidents is vague, generalized, and lacking in probative details regarding specific incidents of such abuse.

Nor does the evidence of record demonstrate that the actions of [REDACTED] constituted extreme cruelty. First, the AAO notes again that the testimonial evidence of record remains generalized in nature and lacks detailed, probative information regarding specific incidents of alleged abuse. Although the record indicates that the petitioner sought mental health treatment two months into the marriage, the record also shows that the petitioner was already, at that time, taking isoniazid, an antidepressant, and that he had been prescribed Zoloft, another antidepressant, in the past. Dr. [REDACTED]'s evaluation also does not establish the petitioner's claim. The evaluation was prepared on the basis of a single interview with the petitioner conducted more than three years after the petitioner separated from his wife, and the record indicates no further follow-up or treatment. Although the AAO does not question Dr. [REDACTED]'s professional qualifications, his letter submitted in this case largely repeats information conveyed to him by the petitioner regarding [REDACTED]'s behavior during

their marriage and Dr. [REDACTED]'s statements alone fail to establish that such behavior constituted extreme cruelty.

Although [REDACTED]'s non-physical behavior as described by the petitioner was unkind, the petitioner has failed to establish that her actions are comparable to the types of acts described in the regulation's definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi), which include forceful detention and psychological or sexual abuse or exploitation. Nor has the petitioner established that [REDACTED]'s non-physical behavior was accompanied by any coercive actions or threats of significant harm, or that her actions were aimed at insuring dominance or control over the petitioner. As noted by the Ninth Circuit Court of Appeals, "[b]ecause every insult or unhealthy interaction in a relationship does not rise to the level of domestic violence . . . , Congress required a showing of extreme cruelty in order to ensure that [the law] protected against the extreme concept of domestic violence, rather than mere unkindness." See *Hernandez v. Ashcroft*, 345 F.3d 824, 840 (9<sup>th</sup> Cir. 2003) (interpreting the definition of extreme cruelty at 8 C.F.R. § 204.2(c)(1)(vi)). The petitioner has failed to establish that [REDACTED] subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

#### Good Faith Entry into Marriage

The second issue before the AAO is whether the petitioner has established that he married [REDACTED] in good faith. As a preliminary matter, the AAO notes several inconsistencies in the petitioner's testimony and between his testimony and the evidence of record. The marriage certificate submitted by the petitioner states that the petitioner and [REDACTED] were married on June 13, 2006. However, in his first statement, the petitioner stated that he and [REDACTED] began dating "around 2005," dated for eight months, and married on June 13, 2005. In his third statement, he stated that he met [REDACTED] "around September or October" of 2004, that he proposed marriage around May of 2005, that they married on June 13, 2005, and that they separated in late 2006. The evaluation from the petitioner's August 10, 2006 meeting with Dr. [REDACTED] stated that [REDACTED] and [REDACTED] had been married for six months at that point. These inconsistencies diminish the probative value of the petitioner's testimony with regard to his good faith entry into the marriage.

The documentary evidence of record also fails to demonstrate the petitioner's good faith entry into the marriage. Although the life insurance policy indicates that [REDACTED] was the beneficiary of the policy as of August 20, 2007, it appears as though the couple had already separated by that point. Although the single statement from the Digital Credit Union dated July 28, 2007 indicates that the petitioner and [REDACTED] had joint accounts, the accounts were opened in May 2004, before the petitioner met [REDACTED]. It is unclear when [REDACTED] was actually added as a joint owner. [REDACTED]'s name does not appear as an account owner on a check written from this account on November 1, 2006. Although her name does appear as an account owner on checks written from this account on September 29, 2007, October 5, 2007, and October 21, 2007, the petitioner and [REDACTED] were no longer living together at the time those checks were written. The credit union statement lists the savings account balance as \$20 and the checking account balance as \$1,054. The statement lists no deposits or withdrawals evidencing, for example, that the accounts were actually used by the former couple to pay for their living expenses.

The routing and account numbers listed on checks written from this account differ from the routing and account numbers provided by the petitioner on his 2006 tax return; the tax refund was not deposited to this joint account. Nor is the evidence of a joint credit card evidence of shared financial obligations, as the petitioner has submitted no evidence that he or [REDACTED] ever used the card.

With regard to the joint leases submitted by the petitioner, the term of the first lease began on September 1, 2005, and the second began on June 1, 2006. Given that the petitioner has stated that he and [REDACTED] dated for eight months before they married and that, according to the marriage certificate, they married on June 13, 2006, it is unclear why they would have signed a joint lease with a term beginning on September 1, 2005, before they had begun dating. Furthermore, the language of that lease indicates that the petitioner and [REDACTED] were already living together, at a different address, when they signed that lease, indicating they were living together prior to September 1, 2005. The AAO notes further that the petitioner stated on the Form I-360 that he and [REDACTED] did not begin living together until June 2006. Given these discrepancies, these leases are of little evidentiary weight.

The cable television bills are not evidence of shared financial obligations, as they were issued after the couple had ceased living together. The same is true of the 2006 income tax return: although filed jointly, it was filed on July 20, 2007. Based upon the petitioner's testimony in his January 24, 2008 affidavit, it is unclear whether he and [REDACTED] were still living together at that point. Based upon the petitioner's testimony to Dr. [REDACTED], he and [REDACTED] had been separated for nine months by that point.

Nor are the three pictures submitted by the petitioner on appeal evidence of his good faith entry into the marriage, as they are undated and uncaptioned. They demonstrate only that the petitioner and [REDACTED] were together on one occasion.

The AAO has reviewed the entire record and finds that, in sum, the relevant testimonial and documentary evidence fails to establish that the petitioner married [REDACTED] in good faith. In addition to the conflicting information regarding when he and [REDACTED] began dating, when they began living together, and when they were married, the petitioner's testimony lacks sufficient probative detail providing insight into his intentions upon entering into the marriage. There are insufficient probative details about the petitioner's initial relationship with [REDACTED] and his subsequent interactions with her to allow a conclusion that the petitioner entered into the marriage in good faith. The petitioner has not overcome this ground for the director's denial on appeal. The petitioner has failed to establish that he entered into marriage with [REDACTED] in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

### Joint Residence

Beyond the decision of the director, the AAO finds the evidence does not establish that the petitioner and [REDACTED] shared a joint residence. The marriage certificate submitted by the petitioner states that the petitioner and [REDACTED] were married on June 13, 2006, and the petitioner stated on the Form I-360, that he and [REDACTED] lived together from June 2006 until August 2007. However, in his first statement, the petitioner stated that he and [REDACTED] began dating "around 2005," dated for eight months, and married on

June 13, 2005. In his third statement, he stated that he met ██████ “around September or October” of 2004, that he proposed marriage around May of 2005, that they married on June 13, 2005, and that they separated in late 2006. The evaluation from the petitioner’s August 10, 2006 meeting with Dr. ██████ stated that and ██████ had been married for six months at that point, indicating a marriage date of February 2006. In his April 13, 2010 letter, Dr. ██████ stated that the petitioner told him that he and ██████ met in late 2004, married in June 2005, and separated in October 2006. The testimonial evidence of record, therefore, contains several inconsistencies with regard to the length and timeframe of the alleged joint residence. Counsel’s appellate brief indicates that the couple began living together prior to September 1, 2005, which adds yet another discrepancy.

The petitioner’s documentary evidence adds further confusion. The term of the first joint lease began on September 1, 2005, and the second began on June 1, 2006. The language of the first joint lease, whose term began on September 1, 2005, indicated that the petitioner and ██████ were already living together, at another address, by that point. However, the couple’s marriage certificate indicates that as of June 13, 2006, the petitioner and ██████ were not living at the same address.

The inconsistencies in both the petitioner’s testimonial and documentary evidence with regard to the dates during which he and ██████ shared a joint residence undermine his claim to having shared such joint residence. Considered in the aggregate, the relevant evidence fails to demonstrate that the petitioner resided with ██████ as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act. For this additional reason, the petition may not be approved.

### Conclusion

On appeal, the petitioner has failed to overcome the director’s grounds for denial and has not established that he was abused by ██████ during their marriage or that he married her in good faith. Beyond the decision of the director, the petitioner has also failed to demonstrate that he resided with ██████. The petitioner, therefore, is ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii), and this petition must remain denied.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the 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 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. 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 and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.