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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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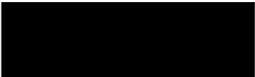


U.S. Citizenship  
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Services

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FILE:  Office: VERMONT SERVICE CENTER Date: JAN 20 2011

IN RE: Petitioner: 

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 \$630. 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,

Chief, Administrative Appeals Office

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

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

On June 9, 2010, the director denied the petition, determining that the petitioner had not established he had been subjected to battery or extreme cruelty perpetrated by his United States citizen spouse and had not established that he entered into the marriage in good faith. Counsel for the petitioner timely submits a Form I-290B, Notice of Appeal or Motion, and additional documents.

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 based on his or her relationship to the abusive spouse, resided with the abusive spouse, and is a person of good moral character. Section 204(a)(1)(A)(iii)(II) of the Act, 8 U.S.C. § 1154(a)(1)(A)(iii)(II).

Section 204(a)(1)(J) of the Act states, in pertinent part:

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

The eligibility requirements are explained 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.

\* \* \*

(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 set forth 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.

\* \* \*

(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 matter provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Russia. He entered the United States on or about April 2, 2003 as a J-1 exchange visitor. On September 28, 2005, the petitioner married ██████<sup>1</sup>, the claimed abusive United States citizen. On November 23, 2005, ██████- filed a Form I-130, Petition for Alien Relative, on the petitioner's behalf. Subsequent to an interview, United States Citizenship and Immigration Services (USCIS) denied the Form I-130. The record includes evidence that ██████ filed for divorce from the petitioner in 2008 and that the petitioner requested that the Judge in charge of the divorce case grant the divorce on November 5, 2008. The record, however, does not include a final judgment of divorce. On November 14, 2008, the petitioner filed the instant Form I-360, Petition for Amerasian, Widow(er) or Special Immigrant. The petitioner indicated on the Form I-360 that he resided with ██████- from September 2005 to October 2006. On January 16, 2010, the director issued a request for evidence (RFE). Upon review of the record, including the petitioner's response to the RFE, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty perpetrated by ██████ and that he had not established that he had entered into the marriage in good faith. The petitioner timely submitted an appeal and additional evidence.

#### *Abuse*

In the petitioner's initial statement sworn to on August 29, 2009, he declared that: he left his work at a farm and found work in the city at ██████'s request; ██████- transferred her documents to a college in Chicago to continue her education there; the couple married in the fall of 2005; in the fall of 2006, ██████ changed and always had to attend to her school matters; she often failed to pick up the phone when he called, would not return his messages, and changed her address several times; during their rare meetings she would tell him she had to deal with her school issues and again would not answer his calls and would change her address. The petitioner stated that in August 2007, he learned that ██████ had sold gifts he had given to her and used the money to buy a ticket to Europe and she had not answered or returned any of his calls and changed all her electronic addresses. The petitioner noted that he learned that ██████- was going to return to the United States in the summer of 2008 but that she had filed for divorce from him.

The record included a September 3, 2008 letter signed by ██████ licensed clinical social worker at the Task Force on Family Violence, who noted that the petitioner had reported that his

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

wife had left him more than a year previously and had filed for divorce. Mr. [REDACTED] suggested several techniques to assist the petitioner in dealing with his moods. The record also includes an August 26, 2008 medical record indicating that the petitioner complained of depression and a note that the petitioner's wife was divorcing him.

In response to the director's RFE, the petitioner provided a second statement, dated March 2, 2010. The petitioner declared that: [REDACTED] deliberately made him dependent on her, deliberately used him, and wanted him to be confused and in pain; she cheated on him and left him for another man; laughed at him and sold the gifts he had given her; and filed for divorce without speaking to him. The petitioner also provides the April 2, 2010 affidavit of [REDACTED] who declares that she saw [REDACTED] act in a loving manner, got the petitioner to buy her things, and then she left him.

Based on the record, the director determined that the petitioner had not established that he had been subjected to battery or extreme cruelty as defined by the statute and regulation.

On appeal, counsel for the petitioner asserts that the petitioner was a victim of mental cruelty. Counsel contends that the petitioner was manipulated, that his spouse used him for financial purposes, tricked him into loving her and then abandoned him and filed for divorce. Counsel resubmits the petitioner's initial statement and articles on the subject of emotional abuse.

Upon review of the record, the petitioner's statement does not provide the detailed, probative evidence that establishes eligibility for this benefit. The petitioner's statement is general and lacks specific information regarding the claimed abuse. Because the petitioner's statements are critical in establishing extreme cruelty or battery, his statement must include sufficient detail of specific events and incidents to establish that he was subjected to abuse. The petitioner does not allege that [REDACTED] subjected him to battery but rather bases his claim on the alleged mental cruelty perpetrated by his former spouse. The petitioner, however, does not provide any probative evidence that [REDACTED] behavior consisted of manipulative tactics aimed at ensuring her dominance and control of him. The petitioner does not describe in probative detail any specific threatening or controlling behavior of his wife. Nor does the petitioner demonstrate that her nonviolent actions of infidelity, abandonment and divorce constituted psychological or sexual abuse or were otherwise part of an overall pattern of violence. The petitioner's statement that [REDACTED] deliberately used him and wanted him to be in pain is not accompanied with any specific events or circumstances and thus is insufficient to establish that he was subjected to extreme cruelty as set out in the statute and regulation. Similarly, the statement of [REDACTED], who declared she saw [REDACTED] act in a loving manner in an effort to get the petitioner to buy her things, is not accompanied with probative detail of specific events and observations, but rather is based on her speculation regarding [REDACTED] intent.

The petitioner's medical records and the letter of Mr. [REDACTED] do not provide a causal connection between the petitioner's depression and specific incidents of abuse as set out in the statute and regulation. As described in this matter, abandonment and divorce are not actions that constitute extreme cruelty.

Upon review of the totality of the record, the petitioner has not offered probative testimony or other evidence that demonstrates he was the victim of any act or threatened act of physical violence or extreme cruelty, that [REDACTED]'s non-physical behavior was accompanied by any coercive actions or threats of harm, or that her actions were aimed at insuring dominance or control over the petitioner. The petitioner's statement and the statements he made to others lack the probative detail necessary to establish that [REDACTED] subjected him to battery or that her actions constitute extreme cruelty as defined in the statute and regulation. Although the petitioner may have experienced pain at his former spouse's abandonment and divorce, the record, including the articles regarding emotional abuse, do not demonstrate that the petitioner was subjected to extreme cruelty as defined in the statute and regulation. The petitioner fails to establish that his spouse'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.

### *Good Faith*

In the petitioner's initial August 29, 2008 statement, he indicated that he met [REDACTED] in the summer of 2003 and about six months later at a Christmas party he met her again and that they soon started dating. The petitioner indicated that [REDACTED] proposed marriage to him and he initially did not accept but by early fall of 2004, [REDACTED] became insistent that they marry in order to maintain their relationship. The petitioner indicated that by the fall of 2004 he realized he loved [REDACTED] but they decided to wait until [REDACTED] was a more mature age before they got married. The petitioner noted further that they married in the fall of 2005 and that [REDACTED] transferred to a school in Chicago. In the petitioner's statement in response to the director's RFE, the petitioner indicated that [REDACTED] proposed to him and pushed him into the relationship and that he depended on her and loved her.

In addition to the petitioner's statements, the record also includes photocopies of photographs of the couple on several different occasions and statements from [REDACTED] who state generally they were aware of the couple's marriage and that they seemed happy together. The record further includes a statement of auto insurance coverage from April 2008 to June 2008 and income tax returns for the years 2006 and 2007.

Based on the above information, the director determined that the petitioner had not established that he had entered into the marriage in good faith. Counsel does not address this issue on appeal.

Upon review of the totality of the information in the record, we concur with the director's determination. The petitioner's testimony is vague and general and does not set forth his intent in entering into the marriage in probative detail. The declarants who submitted statements on the petitioner's behalf provide no probative details regarding their observations of the petitioner's allegedly good faith entry into marriage with his spouse. As the director observed, the auto insurance coverage is for a period of time subsequent to the date the petitioner indicates his spouse had left him and the photographs do not assist in determining the petitioner's intent in

entering into the marriage. Similarly, the tax returns do not establish the petitioner's intent when entering into the marriage. The petitioner's marriage certificate confirms the marital relationship, but does not establish the petitioner's own good faith in entering into the marriage. The key factor in determining whether a petitioner entered into a marriage in good faith is whether he or she intended to establish a life together with the spouse at the time of the marriage. *See Bark v. INS*, 511 F.2d 1200 (9th Cir.1975). The record in this matter does not include sufficient relevant evidence to establish that the petitioner entered into marriage in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

Beyond the decision of the director, the petitioner has also failed to establish that he jointly resided with [REDACTED] during the marriage. In the petitioner's initial statement, he indicates that [REDACTED] moved from Milwaukee to Chicago at the time of their marriage. The petitioner provides no testimony regarding the couple's joint residence. He does not provide a description in detail of their residential building, their apartment, their home furnishings, their neighbors, any of the jointly-owned belongings, or any of their daily routines within the residence. In this matter, the petitioner's spouse apparently lived in Chicago while attending university. The term "residence" means the place of general abode; the place of general abode of a person means his or her principal, actual dwelling place in fact, without regard to intent. Section 101(a)(33) of the Act. As the record does not include evidence of the petitioner and [REDACTED] joint residence and [REDACTED] apparently lived in Chicago from the time of their marriage and in Europe prior to the dissolution of the marriage, the record does not establish that the couple jointly resided together. For this additional reason, the petition will be denied.

Further, beyond the decision of the director, the petitioner has not established a qualifying relationship with [REDACTED]. The petitioner's letter to the judge handling his divorce proceedings requests that the judge dissolve the marriage on November 5, 2008, prior to the petitioner's filing of the Form I-360 on November 14, 2008. As the petitioner has not established that he was subjected to battery or extreme cruelty, he has not shown that the dissolution of the marriage was on account of abuse. Section 204(a)(1)(A)(iii)(II)(CC)(ccc). Accordingly, the petitioner has not provided evidence that he had a qualifying relationship with [REDACTED] when the Form I-360 petition was filed. For this additional reason, the petition will be 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 143, 145 (3d Cir. 2004) (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. As always, the burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here that burden has not been met.

**ORDER:** The appeal is dismissed. The petition remains denied.