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Washington, DC 20529



U.S. Citizenship  
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Services

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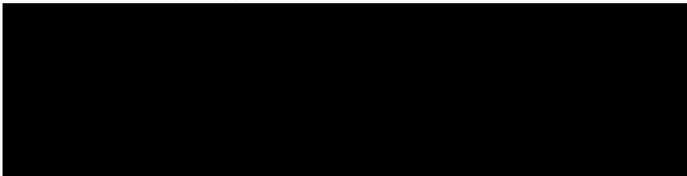
Office: VERMONT SERVICE CENTER

Date: DEC 15 2006

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:



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.

A handwritten signature in black ink, appearing to read "R. Wiemann".

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

The director denied the petition because the petitioner did not establish that he was battered or subjected to extreme cruelty by his wife and that he was a person of good moral character.

On appeal, counsel submits a brief 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 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:

(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 . . . , 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 self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

Section 101(f) of the Act states, in pertinent part:

No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is, or was –

(1) a habitual drunkard;

\* \* \*

(3) a member of one or more of the classes of persons, whether inadmissible or not, described in . . . subparagraphs (A) and (B) of section 1182(a)(2) of this title [section 212(a)(2) of the Act] . . . if the offense described therein, for which such person was convicted or of which he admits the commission, was committed during such period . . . .

\* \* \*

(8) one who at any time has been convicted of an aggravated felony (as defined in subsection (a)(43)) [.]

Section 212(a)(2)(A) of the Act includes, “any alien convicted of . . . a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime.”

Section 101(a)(43) of the Act states, in pertinent part: “The term ‘aggravated felony’ means . . . (F) a crime of violence (as defined in section 16 of title 18, United States Code, but not including a purely political offense) for which the term of imprisonment at least [sic] 1 year[.]”

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.

\* \* \*

(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. . . . 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.

The record in this case provides the following pertinent facts and procedural history. The petitioner is a native and citizen of Mexico who entered the United States in 1990 without inspection. On January 16, 1995, the petitioner married J-M-T-<sup>1</sup>, a U.S. citizen, in Washington. On January 2, 1996, the petitioner was served with an Order to Show Cause charging him as deportable for having entered the United States without inspection. On January 11, 1996, an immigration judge granted the petitioner voluntary departure by September 11, 1996 in lieu of deportation. On June 24, 1996, the legacy Immigration and Naturalization Service approved the Form I-130 petition for alien relative filed by the petitioner's wife on his behalf. On September 9, 1996, the immigration judge granted the petitioner's motion to reopen his deportation proceedings to allow for his adjustment of status based on his wife's approved visa petition. On June 9, 1998, the immigration judge granted the petitioner's application for adjustment of status and his application for a waiver under section 212(g) of the Act, conditioned on the petitioner's continuing alcohol outpatient care as long as required by state authorities. The petitioner, through former counsel, appealed the immigration judge's placement of conditions on the waiver. The Board of Immigration Appeals (BIA) sustained the appeal and remanded the case to the immigration judge. The

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

petitioner remains in proceedings before the Seattle Immigration Court of the Executive Office for Immigration Review (EOIR).

The petitioner filed this Form I-360 on October 18, 2003. On August 18, 2004, the director issued a Request for Evidence (RFE) of, *inter alia*, battery or extreme cruelty and good moral character. The petitioner, through counsel, requested and was granted additional time to respond and submitted further evidence on October 15 and December 15, 2004. On January 4, 2006, the director issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good moral character and battery or extreme cruelty due to unresolved issues concerning the petitioner's criminal record. The petitioner, through counsel, responded to the NOID with additional evidence. The director denied the petition on May 18, 2006 on the grounds stated in the NOID and counsel timely appealed.

On appeal, counsel claims that the director ignored substantial evidence and created "a new bar to self-petitioning by adding a new criterion that victims of domestic violence are not permitted to have any criminal history even when there is a direct connection to the abuse." We concur with the director's determination that the petitioner failed to establish his good moral character and the requisite battery or extreme cruelty. For the reasons discussed below, counsel's claims and the evidence submitted on appeal fail to establish the petitioner's eligibility.

#### I. The Petitioner's Criminal Record

The record documents the following criminal charges and dispositions for the petitioner.

1. On November 6, 1992 the petitioner was arrested and charged with driving without a valid driver's license in violation of former section 46.20.021 of the Revised Code of Washington (RCW). On September 2, 1993, the petitioner pled and was found guilty as charged. The Grant County, Washington District Court sentenced the petitioner to 90 days of jail with 90 days suspended and a fine of \$662.60 with \$400 suspended on condition that the petitioner commit no similar offenses and pay the fine within one year. The court closed the case on November 3, 1997. (Grant County, Washington District Court Case No. [REDACTED] QPD).
2. On November 27, 1992, the petitioner was arrested and charged with driving under the influence (DUI) and without a valid driver's license in violation of RCW former §§ 46.61.502 and 46.20.021 respectively. On April 15, 1993, the petitioner pled guilty to both charges and the Grant County, Washington District Court found the petitioner guilty as charged. The court sentenced the petitioner to 365 days jail time with 364 days suspended and a fine of \$1,150 with \$750 suspended for the DUI charge and to 90 days jail time with 90 days suspended and a fine of \$500 with \$500 suspended for the second charge of no valid license. The court closed the case on November 3, 1997. (Grant County, Washington District Court Case No. [REDACTED] QPD).
3. On April 15, 1995, the petitioner was arrested and charged with fourth-degree assault in violation of RCW § 9A.36.041. On April 27, 1995, the King County, Washington District

Court, East Division, Shoreline entered the petitioner's plea or response of not guilty. On October 6, 1995, the court transcript states that the petitioner signed up for a one-year batterer's treatment program. On April 29, 1996, the court granted a stipulated order of continuance and ordered the petitioner to "follow conditions as outlined in order/ probation to monitor." On October 29, 1997, the court found the petitioner had met all of the conditions and the case was closed on November 3, 1997 (King County, Washington District Court, East Division Case No. [REDACTED]).

4. On February 21, 1996 the petitioner was arrested and charged with simple assault in the fourth degree and harassment (threats) in violation of RCW §§ 9A.36.041 and 9A.46.020 respectively. On February 26, 1996, the petitioner pled not guilty to the charges. On March 15, 1996, these charges were amended to identify the crimes as domestic violence offenses. On April 29, 1996, the King County, Washington District Court, Seattle Division granted a stipulated order of continuance and ordered the petitioner to "follow conditions as outlined in order / probation to monitor." The submitted court transcript of this offense dated February 28, 2006 states that the case remains open. (King County, Washington District Court, Seattle Division Case No. [REDACTED]).
5. On November 15, 1996, the petitioner was arrested and charged with driving under the influence (DUI) in violation of RCW § 46.61.502. The King County, Washington District Court, Seattle Division released the petitioner on condition that he not drink, drive or use drugs and return to court with proof of his thrice-weekly attendance at Alcoholics Anonymous meetings until he entered an alcohol abuse treatment program. On August 28, 1997, the court granted the petitioner's motion for deferred prosecution and ordered him to complete two years of probation and to have no violations during that time. On November 5, 1999, the court found that all conditions of the sentence were met and the petitioner's guilty plea was withdrawn and the case was dismissed. (King County, Washington District Court, Seattle Division Case No. [REDACTED]).
6. On December 24, 2001, the petitioner was arrested and charged with fourth degree assault in violation of RCW § 9A.36.041. On December 26, 2001, the court ordered the petitioner to have no contact with the victim, his wife. On January 10, 2002 the court denied the motion of the petitioner's wife to recall the no contact order and the no-contact order was twice extended until May 31, 2002. The court transcript states that on April 18, 2002, a Spanish interpreter was present and the "sworn statement of defendant on submittal or stipulation of facts [was] filed." The petitioner pled or responded guilty and the court found the petitioner guilty as charged. The Snohomish County, Washington South District Court sentenced the petitioner to 365 days of imprisonment, suspended 363 days, and imposed a fine of \$5,000 with \$4,900 suspended. The court placed the petitioner on probation for two years and ordered him to undergo an alcohol assessment. The docket record states that the petitioner entered an alcohol treatment program on August 5, 2002. (Snohomish County, Washington South District Court Case No. [REDACTED]).

On April 13, 2005, counsel submitted an order of the Snohomish County, Washington South District Court dated April 11, 2005. The order states:

This motion having come on regularly before the undersigned judge of the above court on the motion of Defendant to vacate conviction based upon violation of RCW 10.40.200 [advisement of deportation of aliens upon conviction] & RCW 10.73.110 [duty of court to advise defendant of one-year time limit for collateral attack] & due process considerations – and the Court having considered the records and files herein and being fully advised; Now therefore, it is hereby ordered that the original judgment and sentence is hereby amended as follows – 364/362 suspended; 5,000/5,000 – Court finds that all obligations to the court have been satisfied[.] Done in open court this 11<sup>th</sup> day of April 2005. Nunc Pro Tunc to 4/18/2002.

7. On July 10, 2003, the petitioner was arrested and charged with fourth degree assault in violation of RCW § 9A.36.041. On July 31, 2003, the court imposed a no contact order against the petitioner. On October 23, 2003, the Snohomish County, Washington South District Court dismissed the charge without prejudice and terminated the no contact order. (Snohomish County, Washington South District Court Case No. [REDACTED]).
8. On July 22, 2005, the petitioner was arrested and charged with fourth-degree assault in violation of RCW § 9A.36.041 in two separate cases. In the first case, the Lynnwood, Washington Municipal Court entered the petitioner's plea or response of not guilty and entered a no contact order against the petitioner on July 25, 2005. On December 22, 2005, the court entered a stipulated order of continuance for two years and ordered the petitioner to engage in no criminal violations, undergo an alcohol assessment and comply with probation during this time. On this same date, the court terminated the no contact order. This case remains open and is set to be reviewed on December 22, 2007. (Lynnwood Municipal Court, Snohomish County, Washington Case No. [REDACTED]).
9. In the second case of fourth-degree assault arising from the July 22, 2005 incident, the Lynnwood, Washington Municipal Court entered the petitioner's plea or response of not guilty on July 25, 2005. The court entered a stipulated order of continuance for two years on December 22, 2005 and ordered the petitioner to comply with probation, undergo an alcohol assessment, alcohol treatment and engage in no criminal violations during this time. This case remains open and is scheduled to be reviewed on December 22, 2007. (Lynnwood Municipal Court, Snohomish County, Washington Case No. [REDACTED]).

## II. Good Moral Character

Counsel claims that none of the petitioner's offenses statutorily bar a finding of his good moral character. Counsel does not acknowledge the full scope of the requisite determination. The assessment

of a petitioner's moral character does not end with a statutory analysis of the relevant criminal and immigration statutes, but also requires a discretionary determination. Section 101(f) of the Act enumerates specific conduct that bars a finding of good moral character, but that list is neither exhaustive nor exclusive. Section 101(f) of the Act explicitly states, "The fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character." The regulation at 8 C.F.R. § 204.2(c)(1)(vii) further prescribes:

A self-petitioner will also be found to lack good moral character, unless he or she establishes extenuating circumstances, if he or she . . . 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.

Accordingly, CIS may determine that an alien lacks good moral character as a matter of discretion even if the alien does not fit within one of the classes enumerated in section 101(f) of the Act. Such is the case here.

In exercising its discretion, CIS must weigh both positive and negative factors. *See Torres v. Guzman v. INS*, 804 F.2d 531 (9<sup>th</sup> Cir. 1986). The record in this case presents the following positive factors. The petitioner has a wife and four children who are U.S. citizens.<sup>2</sup> One of the petitioner's sons was born prematurely and has asthma. The petitioner has lived in the United States since 1990 and has been gainfully employed in this country. The petitioner completed a one-year domestic violence counseling program and a two-year alcohol treatment program, although he was required to complete these programs pursuant to court orders in his criminal cases. Numerous letters of support from his friends, employers, co-workers and family attest to the petitioner's positive and responsible work ethic, his devotion to his children and his assistance of others.

The record presents the following negative factors. The petitioner violated the immigration laws by entering the United States without inspection and remaining in this country without authorization. The petitioner has been arrested and charged with criminal offenses on nine occasions, resulting in three convictions and two dispositions that required the petitioner to complete court-ordered probation, domestic violence and alcohol treatment programs. The petitioner's 1996 criminal charges for assault and harassment (No. 4 above) remain pending. The court docket for this case indicates that the petitioner was placed on pretrial probation and that the adjudication of his case was deferred. The record is devoid of any evidence that the petitioner successfully completed probation and fulfilled the conditions stipulated in the court's order. The petitioner himself has provided no explanation of the underlying events or why the case has not been resolved. In addition, after this petition was filed in 2003, the petitioner was charged with two additional assault offenses in 2005, for which he remains on active supervised probation.

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<sup>2</sup> The petitioner states that he also has a daughter from a previous relationship in addition to the four sons from his marriage. However, the record does not indicate if the petitioner has any form of legal custody of his daughter, provides her with financial support, or has maintained a close relationship with her.

Counsel has also failed to provide complete conviction records for all of the petitioner's criminal charges. Although some of the court docket sheets indicate that no physical file exists because the cases are too old, the petitioner has not submitted all of the charging, plea (if any), verdict and sentencing documents for his more recent offenses or provided documentation from the appropriate court clerk that such documents do not exist.

Counsel contends that the petitioner's offenses are connected to his wife's alleged abuse. However, as discussed in the following section, the record does not establish that the petitioner's wife battered or subjected him or any of his children to extreme cruelty. While the evidence shows that the petitioner has experienced significant marital problems, the record does not establish that his marital difficulties were extenuating circumstances pursuant to the regulation at 8 C.F.R. § 204.2(c)(1)(vii). Rather, the record indicates that the petitioner's marital disputes involved mutual aggression.

After weighing the positive and negative factors in this case, we conclude that the negative factors outweigh the positive. Accordingly, the petitioner has not established that he is a person of good moral character, as required by section 204(a)(1)(A)(iii)(II)(bb).

### III. Battery or Extreme Cruelty

The record fails to establish, however, that the petitioner's wife battered or subjected him or any of his children to extreme cruelty, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act. The record contains the following evidence relevant to the petitioner's claim that his wife battered or subjected him to extreme cruelty:

- The court docket sheets and other documents regarding the petitioner's criminal offenses, as listed above on pages five to seven of this decision;
- The petitioner's written declarations dated April 13 and November 30, 2004 and March 2 and June 13, 2006;
- A questionnaire in the form of a checklist of abusive behaviors from the Central Minnesota Coalition Against Battered Women completed by the petitioner;
- Psychological assessment of the petitioner by [REDACTED] M.A., a psychotherapist, which is dated June 21, 2004;
- The written declaration of the petitioner's wife dated February 13, 2006;
- Psychological evaluation of the petitioner's wife dated June 14, 2006 by Dr. [REDACTED];
- Lynwood, Washington Municipal Court order dated June 13, 2006, in which the no contact

order issued against the petitioner's wife on July 25, 2005 was terminated at the petitioner's request;

- A letter dated November 7, 1996 from Consejo Counseling and Referral Services confirming the petitioner's attendance at a one-year domestic violence counseling program for perpetrators and a letter dated June 21, 1997 from Consejo confirming the petitioner's successful completion of the program;
- Letters from the petitioner's friends and coworkers [REDACTED], [REDACTED] and [REDACTED];
- Eight articles concerning domestic violence against men printed from <http://www.menweb.org>, <http://www.batteredmen.com> and <http://www.mensrights.com.au>;
- An article entitled "Victim-Defendants: An Emerging Challenge in Responding to Domestic Violence in Seattle and the King County Region."
- Photographs of a dent and scratches on a vehicle, purportedly inflicted by the petitioner's wife.

In his April 13, 2004 declaration, the petitioner explains that he and his wife began having problems after the birth of their first child in November 1995. The petitioner states that he and his wife could no longer communicate, that she humiliated him, threw him out of the house on several occasions, abandoned him on at least one occasion and hurt his feelings when she rejected his gifts. The petitioner also reports that his wife will not file taxes with him, accuses him of having affairs, controls their money and sometimes goes through his wallet and receipts to see how he is spending money.

The petitioner states that his wife has pushed, kicked and hit him many times. He reports that she has "done many things" to him in front of their children and that she verbally abuses their children and has sometimes told them that they are stupid and she did not want them.

In his declarations, the petitioner reports that his assault arrests all arose from disputes with his wife (or her relatives) and false accusations against him. In his April 13 and November 30, 2004 statements, the petitioner explains that in 1995, he had an argument with his wife's sister and then she and his wife accused him of having intimate relations with her sister's friend. The petitioner states, "[My wife] started to scream at me and threw me out. . . . [She] became angry and jealous. I was upset that her sister had lied and I got angry. I yelled at [her]. The neighbors got upset and called the police. I was accused of assaulting my wife. I was convicted of domestic violence and went to counseling. I have never hit my wife or anyone else."

Regarding the December 2001 incident, the petitioner states that on Christmas Eve his wife went out in the morning and did not return until the evening. The petitioner reports that upon her return, his wife got upset, threw him out and called the police. The petitioner states, "She told the police that I had

pushed her. I was arrested and convicted again for domestic violence. I have never hit her. I did yell, and I am sorry that I yelled at her. Even though we lived together, [she] got a no contact order against me.” In his November 30, 2004 declaration, the petitioner states that his wife went to the hearing for this case and screamed “I want my husband to be free because it was simply a discussion. He is the father of my sons!” The judge responded and said, ‘You got him here! Since you sent him to jail, I am keeping an order of protection.’” The court transcript for this case states that on January 10, 2002 the court denied the motion of the petitioner’s wife (under the prosecutor’s objection) to recall the no contact order.

In his November 30, 2004 declaration, the petitioner explains, “I always felt helpless that I would loose [sic] my case if I tried to fight. I am illegal. I have no voice or power. I am nothing. I felt that I had no choice but to be compliant, go to the ordered classes, pay the fines. I never thought about fighting my case. I was afraid of being deported[.]”

In his April 13, 2004 declaration, the petitioner states that at one point when they were separated and he was under a no contact order, his wife went to his jobsite and yelled that she had had an affair with another man who was better than the petitioner. The petitioner explains that he “felt awful and was determined . . . to get another girl.” When his wife found out that he had dated another woman, the petitioner states that his wife found him at work, punched him in the face, scratched his car with her keys, went to his apartment, ripped his clothes and had their children throw the clothes outside in front of many people. The petitioner also admits that he “was never an angel” during the problematic periods of his marriage.

In his March 2, 2006 declaration the petitioner states that his 2005 assault charges arose from a dispute with his wife about her relatives staying in their home. The petitioner states that his wife got mad, threw things and scratched their car. The petitioner explains that at one point he threw a beer bottle at a fence in anger, but it did not hit his wife. The petitioner called the police, but left when they did not arrive. However, the petitioner states that a few days later the police called and accused him of hitting his wife. The petitioner speculates that the police must have arrived after he left and that his wife “must have said something to them.”

In response to the NOID, the petitioner submitted the court docket sheet regarding his charges for fourth-degree assault (domestic violence) and harassment (domestic threats) in 1996. However, the petitioner provides no explanation of the events surrounding the underlying incident and subsequent criminal proceedings.

In his June 13, 2006 statement submitted on appeal, the petitioner explains that on June 12, 2006 he had a dispute with his wife’s son and called the police. The petitioner’s wife arrived and the police arrested her for violating a no contact order. The petitioner states that he went to court the next day to have the no contact order withdrawn. On appeal, the petitioner submitted a copy of the termination of the no contact order at the petitioner’s request. However, the petitioner does not explain the underlying criminal case against his wife, submit records of any domestic violence related criminal proceedings

against her, or indicate that he was the documented victim of any such proceedings. The petitioner's statements show that his assault charges were all related to disputes with his wife (or her relatives), but the petitioner's explanations do not outweigh the documentation of his five criminal proceedings for assault involving domestic violence and the petitioner's statements do not establish that his wife's behavior rose to the level of battery or extreme cruelty.

The remaining evidence also fails to support the petitioner's claim. The letters of the petitioner's friends and coworkers indicate that his wife mistreated him, but do not establish battery or extreme cruelty. Ms. [REDACTED] states that the petitioner and her husband worked together and that the petitioner's wife called her on occasion to question her about the petitioner's whereabouts or complain about him working late. Mr. [REDACTED] states that the petitioner's wife would call and yell at the petitioner when he and the petitioner took their children out fishing and would also call Mr. [REDACTED] at work and yell at him for keeping the petitioner at work late. Mr. [REDACTED] explains that the petitioner stayed at his home a couple of times when the petitioner's wife kicked him out and that when Mr. [REDACTED] took the petitioner home, they found that the petitioner's wife had cut up his clothes. Mr. [REDACTED] further states that when the petitioner had a no contact order, the petitioner's wife would still come to their workshop or call the petitioner at work and yell at him to go home.

Ms. [REDACTED] the petitioner's co-worker, states that on several occasions in 2002, she saw the petitioner's wife drive to the workshop with the couple's children, scream at them to get out of the car and then leave the children without speaking to the petitioner. Ms. [REDACTED] explains that she would tell the petitioner and he would have to quit work and take his children home. Ms. [REDACTED] further states that the petitioner's wife would come to the office while the petitioner was at another jobsite and take their van forcing the petitioner to pick up his children in their truck, which did not have enough seat belts. Ms. [REDACTED] also reports that the petitioner's wife called the office many times and demanded that Ms. [REDACTED] give her the petitioner's paycheck or tell her where the petitioner was working that day. Ms. [REDACTED] states that at one point, the petitioner missed work because he was hiding from his wife and thought that he would lose his job.

Mr. [REDACTED] the petitioner's co-worker, states that the petitioner's wife once came to their workshop and rudely yelled at people asking about the petitioner's whereabouts. Mr. [REDACTED] also confirms that the petitioner's wife once dented the petitioner's vehicle and hid it from him for two weeks so he could not get to work, putting his job in jeopardy. The statements of Mr. and Mrs. [REDACTED], Ms. [REDACTED] and Mr. [REDACTED] indicate that the petitioner's wife has harassed and mistreated him, but their testimony does not establish that her behavior rose to the level of battery or extreme cruelty.

Ms. [REDACTED] psychological evaluation of the petitioner is based on her review of his own declaration and unspecified related documents and a single interview with the petitioner of unspecified duration on June 9, 2004. Ms. [REDACTED] diagnoses the petitioner with Post Traumatic Stress Disorder and describes several incidents of the petitioner's wife's alleged abuse, some of which are not supported by the record. For example, Ms. [REDACTED] states that the petitioner's wife went to his worksite and punched him in the face and that "[m]any people at work witnessed this act of violence and have written letters

corroborating his story.” Yet neither Ms. [REDACTED] nor Mr. [REDACTED] report witnessing the petitioner’s wife punch him or otherwise physically assault him.

In her February 13, 2006 declaration submitted on appeal, the petitioner’s wife states that he did not abuse her, but her testimony does not establish that she battered or subjected the petitioner or any of his children to extreme cruelty. The petitioner’s wife explains that she accused her husband of cheating, called the police when he refused to leave and said things “to get him in trouble with the law.” She also states, “[The petitioner] has never been abusive against me. I have called the police in the past because I was angry at him. If he was really abusive I wouldn’t be with him.” The petitioner’s wife also attributes their marital difficulties to their disputes regarding her son from a different relationship.

Dr. [REDACTED] psychological evaluation of the petitioner’s wife submitted on appeal also fails to support the petitioner’s claim. Dr. [REDACTED] states that the petitioner’s wife became challenging and irate when Dr. [REDACTED] pointed out contradictions in her statements. Dr. [REDACTED] reports that the petitioner’s wife “clearly present[ed] with an anxiety disorder and multiple phobias – these could be confirmed by behavioral observations” and he concludes, “Behavioral observations and the interview dynamic plainly demonstrated that [the petitioner’s wife] can act entitled, demanding and verbally aggressive.” While the evaluation indicates that the mental health of the petitioner’s wife may be compromised and that she exhibited verbally aggressive behavior during the meeting, it does not establish that the petitioner’s wife battered or subjected him or any of his children to extreme cruelty.

The checklist of abusive behaviors completed by the petitioner is of little probative value because it lacks any description of specific examples of the listed behaviors exhibited by the petitioner’s wife. Similarly, the articles concerning domestic violence against men and domestic violence victim-defendants in King County, Washington provide a relevant context for assessing the petitioner’s claims of abuse, but the articles do not specifically support a finding of battery or extreme cruelty in this case. Finally, the photographs of the damaged vehicle are insufficient to establish the petitioner’s claim.

The relevant evidence indicates that the petitioner has had a troubled relationship with his wife that has involved mutual aggression, but did not include his wife’s battery or extreme cruelty. During the course of his marriage, the petitioner was prosecuted for five fourth-degree assault offenses, was convicted of at least one fourth-degree assault offense against his wife and was subject to multiple no contact orders in connection with his criminal proceedings. In addition, the petitioner was ordered to attend a one-year domestic violence counseling program for perpetrators, was placed on probation in the past and remains under active supervised probation in connection with his 2005 assault proceedings. His 1996 assault and harassment case also remains open and the petitioner has failed to provide any explanation of the underlying events of this case. On appeal, the petitioner submits evidence of a no contact order entered against his wife on July 25, 2005, but also provides a copy of the termination of that order at his request. The record is also devoid of any evidence or explanation of the underlying criminal case against his wife.

The petitioner has failed to establish that he is a person of good moral character and that his wife battered or subjected him or any of his children to extreme cruelty. The petitioner is consequently ineligible for immigrant classification pursuant to section 204(a)(1)(A)(iii) of the Act and his petition must be denied.

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.