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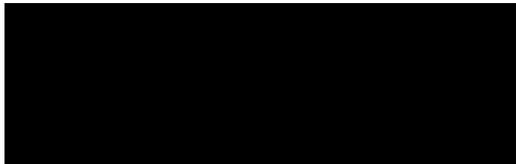
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

[REDACTED]  
EAC 05 180 52106

Office: VERMONT SERVICE CENTER

Date: APR 23 2007

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.

*Maura Deadnick*

for 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, 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 married his wife in good faith, that she subjected him to battery or extreme cruelty during their marriage and that he resided with his wife.

On appeal, counsel submits a one-paragraph statement and copies of documents previously submitted below. On the Form I-290B, counsel indicated that he would send a brief or evidence to the AAO within 30 days. Counsel dated the appeal October 10, 2006. To date, over six months later, the AAO has received nothing further from counsel or the petitioner.

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:

(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 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.

\* \* \*

(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 facts and procedural history. The petitioner is a native and citizen of China who entered the United States on December 21, 2000 as a B-1 nonimmigrant visitor. On November 18, 2001, the petitioner married M-A-<sup>1</sup>, a U.S. citizen, in California. The petitioner filed this Form I-360 on June 8, 2005. The director subsequently issued a Request for Evidence (RFE) of the requisite good-faith entry into the marriage, battery or extreme cruelty and joint residence. The petitioner, through counsel, responded with additional evidence. The director then issued a Notice of Intent to Deny (NOID) the petition for lack of the requisite good-faith entry into the marriage, battery or extreme cruelty and joint residence. The petitioner, through counsel, responded to the NOID with further evidence. The director denied the petition on September 18, 2006 on the grounds cited in the NOID and counsel timely appealed.

On appeal, counsel claims that the director did not address the fact that the petitioner's wife committed bigamy after their marriage, which "probably constituted the extreme and cruel treatment." We concur with the director's determinations. Counsel's statements on appeal fail to overcome the grounds for denial.

#### *Good Faith Entry into Marriage*

The petitioner submitted the following evidence relevant to his allegedly good-faith entry into marriage with his wife:

- The petitioner's affidavits dated May 24, 2005 and March 22, 2006;
- Affidavits from the petitioner's friends, [REDACTED];
- Bank of America statements jointly addressed to the petitioner and his wife that are dated February 26, March 27, May 29, June 26, and July 29, 2002;
- Cingular Wireless bills dated June 14 to 15, 2002 and June 16 to July 15, 2002;
- California Automobile Assigned Risk Plan Private Passenger Application that lists the petitioner and his wife as joint applicants, but which only the petitioner's wife signed on July 31, 2002;
- Copies of two envelopes of Verizon bills jointly addressed to the petitioner and his wife and dated November 25 and December 25, 2002;

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

- Psychological evaluation of the petitioner by Dr. [REDACTED], dated August 9, 2005;
- Photocopies of six photographs of the petitioner and his wife in wedding attire and on three other unidentified occasions.

In his May 24, 2005 affidavit, the petitioner states, "In August 2001, I met with [M-A-] at my friend's party. My feeling was good when I talked with her. After that, we fell in love. We got married on November 18, 2001. I hope my marriage would be very happy, because I love her." The petitioner does not further describe how he met his wife, their courtship, wedding, joint residence or any of their shared experiences, apart from his wife's alleged abuse.

The affidavits of the petitioner's friends also fail to provide detailed information to support his claim. [REDACTED] states, "I verify that [the petitioner] has a good faith marriage with [M-A-]" but provides no probative details. [REDACTED] briefly states, "Sometimes I visited their home and had dinner with them. So I verify that [the petitioner] has a good faith marriage with [M-A-]." [REDACTED] does not describe any occasions where he dined with the former couple in detail or provide any other relevant information. Accordingly, the testimony of [REDACTED] and [REDACTED] is of little probative value.

On the Form I-360, the petitioner states that he lived with his wife from November 2001 to November 2003. Despite their allegedly two-year long joint residence, the petitioner submitted bank statements and bills jointly addressed to the former couple dated only from intermittent periods between February 26 and December 25, 2002, less than half of the purported duration of their joint residence. In his March 22, 2006 affidavit, the petitioner explains that after the former couple's marriage, he received a notice from his bank that the money in their joint account had been taken. The petitioner states, "my wife owed \$33,335.70 from the government. Then I just learned as long as we had money in the joint account, it would automatically take it until we paid all the debt." The July 29, 2002 bank statement shows that the account was closed on July 9, 2002, but it does not state the reason for the closure.

The petitioner also explains that he paid for the former couple's automobile insurance, but only his wife signed the application because at the time, he had not yet received his driver's license.<sup>2</sup> However, the petitioner submitted no evidence of his payment for the policy, that the policy was ever issued jointly, or that it was first issued in his wife's name only and that his name was later added.

The two Cingular Wireless bills, the envelopes of two Verizon bills, and the copied photographs are also insufficient to support the petitioner's claim. The Cingular Wireless bills and the Verizon envelopes date from only three months in the former couple's purportedly two-year long joint residence. The copied photographs show that the petitioner and his wife were photographed in

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<sup>2</sup> In his decision the director determined that the record contradicted the petitioner's explanation because the petitioner submitted a copy of his temporary license that was issued on "July 8, 2002," before the automobile insurance application was signed by his wife on July 31, 2002. However, the date of the petitioner's temporary license is not fully legible on the submitted copy. The copy reads, "DATE 7/8/0."

wedding attire and were together on three other, unidentified occasions, but the pictures alone do not demonstrate that the petitioner entered into their marriage in good faith.

The petitioner explains that his wife's financial situation prevented the former couple from maintaining a joint bank account, jointly filing income tax returns and from jointly purchasing a home or automobile. Yet the petitioner submits no evidence to corroborate his statement regarding his wife's financial situation. Even if the petitioner had sufficiently explained his lack of documentary evidence of the types listed in the regulation at 8 C.F.R. § 204.2(c)(2)(vii), and in the RFE and NOID, the testimony of the petitioner and his friends fails to provide detailed, probative accounts of the former couple's courtship, wedding and shared experiences sufficient to establish his entry into the marriage in good faith. Accordingly, the petitioner has not demonstrated that he entered into marriage with his wife in good faith, as required by section 204(a)(1)(A)(iii)(I)(aa) of the Act.

*Joint Residence*

The same evidence listed above in relation to the petitioner's claim of good-faith entry into the marriage is also relevant to the petitioner's alleged residence with his wife. In his May 24, 2005 affidavit, the petitioner does not discuss his residence with his wife, apart from the purported abuse that took place at their home. In the RFE, the director noted two discrepancies between the petitioner's claim that he resided with his wife from November 2001 until November 2003 and evidence in the record. First, in his psychological evaluation, Dr. [REDACTED] indicates that the petitioner left his wife in November 2002, not 2003. Second, on the automobile insurance application, the petitioner's wife indicated that she had lived at the [REDACTED] address in Monrovia, California for two years prior to the date she signed the application on July 31, 2002. However, the February 26, March 27, and May 29, 2002 bank statements are jointly addressed to the former couple at the [REDACTED] addresses in Alhambra, California. In his March 22, 2006 affidavit submitted in response to the RFE, the petitioner states:

I lived at . . . [REDACTED] before I got married till [sic] May 2002. Starting from May 2002, I lived at . . . [REDACTED], Alhambra, just for a short month. From June 2002, I moved to . . . [REDACTED]. From November 2002, I moved to . . . [REDACTED]

However, my wife, [M-A-], and I always used the address of . . . [REDACTED] because she felt it was too troublesome to change the address with the DMV. Therefore, she did not change her address on her driver's license.

The address on my driver's license is the one after I moved to . . . [REDACTED] for a long time, then I changed to this new address from the DMV.

In fact, [M-A-] and I were separate frequently since November 2002, but this was not known to the public. After one year, I felt that our relationship could not be retrieved, and then we openly separated.

In the first paragraph of this excerpt, the petitioner states that he lived at four different addresses. The petitioner refers only to himself and does not state that he resided with his wife at any of the four addresses. Rather, the petitioner states, "my wife, [M-A-], and I always used" the [REDACTED] address in Monrovia. The petitioner's statements fail to provide a coherent account of his alleged residence with his wife and do not resolve the discrepancy between his wife's address as stated on the automobile insurance application and the bank statements.

The testimony of the petitioner's friends also fails to support his claim. Aimin Wang simply states that the petitioner "resided with his wife after he get [sic] married." Liu Rui attests to visiting the former couple at their home and thereby verifies that the petitioner resided with his wife after their marriage, but Liu Rui does not state the former couple's address or provide any further details regarding the former couple's allegedly joint residence. Accordingly, the testimony of the petitioner's friends is of little probative value.

The remaining bank statements, Cingular Wireless bills and Verizon envelopes do not support the petitioner's claim. The June 26 and July 29, 2002 bank statements and the Cingular Wireless bills are dated within just two months of the petitioner's allegedly two-year long joint residence with his wife. Although the petitioner states in his March 22, 2006 affidavit that he frequently separated from his wife beginning in November 2002, he does not explain the lack of jointly addressed documentation from the prior year of his marriage. Finally, the Verizon envelopes are dated November 25 and December 25, 2002, after the petitioner states that he and his wife began separating.

The testimony of the petitioner, his friends and the relevant documentary evidence fails to demonstrate that the petitioner resided with his wife, as required by section 204(a)(1)(A)(iii)(II)(dd) of the Act.

*Battery or Extreme Cruelty*

The record contains the following evidence relevant to the petitioner's claim that his wife subjected him to battery or extreme cruelty during their marriage:

- The petitioner's affidavits dated May 24, 2005 and March 22, 2006;
- Psychological evaluation of the petitioner by Dr. [REDACTED], dated August 9, 2005;
- Copy of the petitioner's Experian credit reports dated September 2, 2004 and May 24, 2005;
- Copy of Sprint Fraud Management Denial Letter addressed to the petitioner and dated October 11, 2004; and
- Results of a California criminal records search of the petitioner's wife performed by a private investigation firm and copies of some of the relevant portions of California law.

In his May 24, 2005 affidavit, the petitioner states that in March 2002 he returned from a trip to find that the former couple's checking account was overdrawn. The petitioner states that his wife denied using the money, but when he confronted her with evidence that she had taken the money, she slapped him on his face, shouted expletives at him and then threw a stool at his face. The petitioner reports that he blocked his face with his arm and the stool hit his arm causing it to bleed and bruise. The petitioner states that his wife chased him to the door and he had to run away. The petitioner explains that he did not see an American doctor because he was ashamed, but that a friend who is a Chinese doctor saw him and gave him some Chinese medicine.

The petitioner states that his wife always asked him for money, told him she did drugs, said she had friends that could "get him" if he did not behave, and beat him on a couple of other, unspecified occasions. The petitioner reports that his wife was arrested and jailed for a few months and that when she returned, she brought her boyfriend to their home. As a result, the petitioner states he had to move to another house.

The petitioner states that in August 2004, he got a credit report which showed that someone had received two credit and one cellular telephone accounts in his name and that the related bills were all past due. The petitioner reports that after an investigation revealed that his wife had opened the accounts, he confronted her and she shouted at him and said she did not care if he called the police because at most, she would be jailed again, but he would be sent back to China. Finally, the petitioner states that he found out that his wife married someone else while the former couple was still married.

Dr. [REDACTED] indicates that his psychological evaluation of the petitioner is based on two meetings of unspecified length and the administration of two psychological tests. Dr. [REDACTED] states that the petitioner scored 47 on the Beck Depression Inventory, indicating severe depression, but that the Minnesota Multiple Personality Inventory-2 "profile seems to be invalid." Dr. [REDACTED] "DSM IV Diagnosis" states that the petitioner suffers from "Major Depression, single episode, severe and Post-traumatic Stress Disorder" on Axis I and that the petitioner is subject to the psychosocial stressor of "Abuse by wife" with a severity level of four on Axis IV.

As noted by the director in the RFE, the petitioner did not see Dr. [REDACTED] until nearly two years after he finally separated from his wife in November 2003. The director also noted that Dr. [REDACTED] states that the petitioner reported that his wife subjected him to sexual abuse and attempted to extort money from him in order to continue her support of his immigration case, but the petitioner did not address these issues in his first affidavit. In his March 22, 2006 affidavit submitted in response to the RFE, the petitioner states that he was very depressed after the former couple's separation, but he thought that "psychological doctor . . . is for lunacy person [sic] only" and that he went to see Dr. [REDACTED] after an introduction from a friend. The petitioner further states that his wife treated him like a "sex slave," forced him to engage in certain intimate acts and insulted his masculinity. The petitioner explains, "At first, I thought these were very privacy issues, and I could not open my mouth to talk about it. Therefore, I did not mention [sic] when I filed the application. I only told the doctor." The petitioner further states, "After I got married, [my wife] asked for money all the time, and intimidated me if I did

not give her money that she won't apply green card for me. . . . Furthermore, she told me never think about to apply green card [sic] by myself." The petitioner does not describe any specific incidents of his wife's intimidation in detail.

The private investigator's report regarding the criminal record of the petitioner's wife, the Experian credit report and the Sprint Fraud Management Denial Letter do not fully support the petitioner's claim. The private investigator's report states that the petitioner's wife has a criminal record in Orange and Los Angeles Counties in California and that on January 11, 2001, she was charged with possession of a controlled substance. The petitioner submitted no evidence of his wife's conviction and imprisonment during their marriage. More importantly, the petitioner's testimony fails to establish that his wife's purported drug use and criminality encompassed her infliction of battery or extreme cruelty upon the petitioner. In his May 24, 2005 affidavit, the petitioner states that his wife told him that she did drugs. In his discussion of the March 2002 and August 2004 incidents, the petitioner does not indicate that his wife was under the influence of drugs at those times or that her behavior was caused by her desire to obtain drugs. In his March 22, 2006 affidavit, the petitioner simply states that his wife "got drunk and did drugs." Again, he describes no incidents of alleged abuse that were caused by his wife's use of controlled substances or occurred while she was under the influence of drugs.

The September 2, 2004 Experian credit report contains handwritten notations that four of the seven listed accounts do not belong to the petitioner. The May 24, 2005 Experian report states that of four accounts investigated, two were deleted and two remain. The petitioner submitted no evidence to corroborate his statement that an investigation found that his wife had opened the deleted accounts. The Sprint letter states that the petitioner's fraud claim was denied because "address provided on drivers license matches address on account." The letter is equivocal and does not corroborate the petitioner's claim that his wife opened a fraudulent account in his name.

Although Dr. [REDACTED] states that the petitioner suffers from major depression and post-traumatic stress disorder caused, in part, by his wife's abuse, the petitioner's own testimony and the relevant documents fail to support Dr. [REDACTED]'s conclusion and the petitioner's claims. In his May 24, 2005 affidavit, the petitioner states that his wife battered him in March 2002 and on "a couple" of other, unspecified occasions. In his March 22, 2006 affidavit, the petitioner states, "Abused by my wife was very shameful. I could not tell my parents and others." However, in his May 24, 2005 affidavit, the petitioner states that a friend came to see him after the March 2002 incident and gave him some Chinese medicine. The petitioner does not submit any testimony from this friend. Although he is not required to do so, the petitioner does not explain why such evidence does not exist or is unobtainable. See 8 C.F.R. §§ 204.1(f)(1), 204.2(c)(2)(i). The petitioner fails to describe any other incidents of battery in probative detail. The petitioner also does not describe in sufficient detail any particular incidents of his wife's purported intimidation and threats regarding his immigration status.

The petitioner reports that during their marriage, his wife had an extramarital affair and married another man. On appeal, counsel asserts that the petitioner's wife's bigamy "probably constituted the [sic] extreme and cruel treatment." The record contains a copy of the "Customer Copy" of a

California License and Certificate of Confidential Marriage indicating that the petitioner's wife married another man on September 6, 2002. However, the document is not signed by the person solemnizing the marriage and the space for the "date accepted for registration" is blank. These omissions indicate that the marriage was never registered. Even if the record sufficiently documented the bigamy and extramarital affair of the petitioner's wife, the evidence does not show that these actions alone were forms of extreme cruelty, rather than events contributing to the breakdown of the petitioner's marriage.

In sum, the relevant evidence fails to establish that the petitioner's wife subjected him to battery or extreme cruelty during their marriage, as required by section 204(a)(1)(A)(iii)(I)(bb) of the Act.

The petitioner failed to demonstrate that he entered into marriage with his wife in good faith, that he resided with his wife and that she subjected him to battery or extreme cruelty during their marriage. 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.

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.